Regional Universities Network
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MODERNISING AND STRENGTHENING TEQSA'S POWERS

REGIONAL UNIVERSITIES NETWORK

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CHARLES STURT UNIVERSITY | CQUNIVERSITY | FEDERATION UNIVERSITY AUSTRALIA | SOUTHERN CROSS UNIVERSITY
UNIVERSITY OF NEW ENGLAND | UNIVERSITY OF SOUTHERN QUEENSLAND | UNIVERSITY OF THE SUNSHINE COAST

The Regional Universities Network (RUN) welcomes the opportunity to provide feedback to the Department of Education's Modernising and Strengthening TEQSA's Powers consultation paper.

RUN is a national collaborative group of seven regional Australian universities: Charles Sturt University, CQUniversity Australia, Federation University Australia, Southern Cross University, University of New England, University of Southern Queensland, and University of the Sunshine Coast.

This submission reflects the positions of RUN institutions, and in doing so, also aims to represent the views of the communities which RUN universities serve; the one-third of Australians who live outside of metropolitan centres in regional, rural, and remote locations.

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TABLE OF CONTENTS

OVERVIEW **4**
A REGULATORY SYSTEM THAT PUTS STUDENTS FIRST **8**
Q1. What changes to the TEQSA Act are needed to ensure students are at the centre of the regulatory system? *9*
Q2. What changes to the TEQSA Act and the regulatory system are required to allow TEQSA to take a more risk-based approach to regulation of the sector, prioritising engagement on risks which have the greatest impact? *10*
Q3. Should providers have a positive duty to comply, and maintain compliance, with the Threshold Standards, in order to better protect student and other stakeholder and community interests? *11*
Q4. Are any changes to the TEQSA Act and the regulatory system needed to support First Nations self-determination in higher education? *11*
A MODERN REGULATOR WITH POWERS TO ADDRESS EMERGING AND SYSTEMATIC CHALLENGES **12**
Q5. How can TEQSA's regulatory focus shift more towards proactive risk prevention or should it remain primarily on compliance with the Threshold Standards? *13*
Q6. How can TEQSA be empowered to use a wider range of timely enforcement approaches when justified and in the public interest? *14*
Q7. Should TEQSA have new powers to immediately suspend a provider's registration in response to acute risks? *14*
Q8. Is the overall regulatory architecture working effectively to manage risks in the sector? *15*
Q9. What powers does TEQSA need to step in when it is justified and in the public interest? *16*
Q10. Are there other powers TEQSA should have, comparable to other modern regulators, when balanced against the need for an efficient and streamlined regulatory approach? *16*
OPPORTUNITIES TO STREAMLINE REGULATION FOR UNIVERSITIES AND OTHER EDUCATION PROVIDERS, SO THEY CAN FOCUS ON TEACHING AND LEARNING **17**
Q11. What regulatory requirements or actions could be accomplished in a more efficient way that may lead to increased productivity, while ensuring regulatory outcomes are achieved? *18*
Q12. What opportunities exist to streamline regulation between TEQSA, the Department of Education, the National Student Ombudsman, or other Commonwealth, State and Territory government bodies? *19*
Q13. Should TEQSA's functions be broadened to allow better access to transfer complaints to other agencies, for example with the National Student Ombudsman? *20*
Q14. How could the TEQSA Act be amended to ensure providers are required to implement recommendations made by the National Student Ombudsman? *20*
Q15. Would more standardised public disclosure of information improve accountability, assist students in choosing courses of study or providers, assist Government to assess the effectiveness of public investment, and help providers to demonstrate compliance? *20*
A SYSTEM THAT SUPPORTS A JOINED UP TERTIARY SYSTEM, HELPING MORE AUSTRALIANS GET THE SKILLS AND QUALIFICATIONS THEY NEED **21**
Q16. Are changes to the TEQSA Act needed to support better joined-up arrangements across higher education and vocational education? *22*
REFERENCES **23**

OVERVIEW

RUN supports the role of a strong and effective sectoral regulator that operates in a principled, proportionate, risk-based manner in accordance with the powers established under the TEQSA Act and in alignment with the Higher Education Standards Framework (the Thresholds Standards). RUN also supports the role played by the Higher Education Standards Panel (HESP) and its responsibilities related to the standards for delivery of higher education in Australia.

The core role of TEQSA has rightfully been, and should continue to be, to regulate Australia's universities against the Threshold Standards. As such, RUN does not believe there is a case for an expansion of TEQSA's current legislative powers. TEQSA currently operates within a legislative framework that enables it to uphold the high standards befitting a world class higher education system that is characterised by institutional diversity and autonomy. RUN believes there is a strong case, however, for TEQSA to be resourced more appropriately so that it may function more effectively with the powers that it already has. To realise greater effectiveness from TEQSA, RUN advocates for better regulatory activity, not more regulation, and not more powers enshrined under the TEQSA Act.

RUN OPPOSES
the expansion of TEQSA's current legislative powers.

This consultation process affords an opportunity for Australia to ask important questions about the design, remit, and objectives of what would constitute an effective regulator. In recent times there has been an evolving push towards more prescriptive regulatory activity. We must ask if this is the right path to continue taking for a regulator that oversees a world class university system characterised by diverse, responsive, and autonomous public providers?

RUN's submission primarily seeks to outline the key principles that should inform the mandate of an effective regulatory landscape, and in doing so, reflect upon how regulatory principles are upheld or undermined by the proposed amendments to TEQSA's legislative framework and remit.

Guiding Principles for an effective regulator
Australia's higher education system is widely recognised as being amongst the strongest and most reputable in the world. This is a remarkable achievement in an advanced and highly competitive global marketplace. This reflects the collective actions of all of Australia's public universities over the course of decades via the world class teaching, research, and global engagement that each consistently undertakes. Australia's university system is globally recognised for its high degrees of integrity, diversity and institutional responsiveness to the unique place-based social missions that steer each individual provider. This diversity and institutional autonomy in meeting distinct social mission was galvanised by the findings of the Australian Universities Accord, and will subsequently be enshrined by the mandate of the Australian Tertiary Education Commission (ATEC) in setting unique institutional compacts that recognise and uphold the different role played by each university within the communities each serves. Preserving the integrity, diversity, autonomy and community responsiveness of the providers within our vibrant higher education sector must be the foundational principle of our regulatory framework, just as it will be with the ATEC.

The consultation paper presents a fundamental juncture in the evolution of TEQSA, one that veers further away from the principles of diversity and uniqueness, instead in favour of a model of increasingly granular prescription that attempts to steer individual providers towards sectoral sameness. It is RUN's concern that the consultation paper proposes an expansion of TEQSA's legislated powers and mandate that would ultimately have an erosive effect on the diversity, autonomy, and social responsiveness of Australia's world class university providers. Inevitably, this continued trajectory towards an increasingly prescriptive and standardised model of university would come to resemble a metro-centric model, which would be

largely unfit for purpose in regional and peri-urban contexts. The question must be asked if this is the direction we wish to steer our higher education system? Is Australia's higher education system best served by a regulator that is empowered by principle, or a regulator that is mired by prescriptive oversight?

RUN believes TEQSA should be a well-resourced, contemporaneously informed, proportionate and risk-based regulator that upholds the Threshold Standards. It should seek to preserve the integrity, diversity, and autonomy of providers, rather than facilitating a standardised sameness of Australia's providers through an increasingly granular, prescriptive model of regulation.

RUN BELIEVES

TEQSA should be a well-resourced, contemporaneously informed, proportionate and risk-based regulator that upholds the Threshold Standards.

TEQSA Act Reviews

Since its inception, TEQSA has undergone two significant reviews of its Act and activities, namely:

- Review of Higher Education Regulation (2013) by Professor Kwong Lee Dow AO and Professor Valerie Braithwaite.
- Review of the impact of the TEQSA Act on the higher education sector (2017) by Deloitte Access Economics.

Both reviews have comprehensively examined TEQSA and its activities, with the most recent review finding:

> *"...this Review does not recommend changes that would significantly alter the current regulatory architecture established by the Act. Broadly, this Review finds that the Act is operating effectively and as intended."*[1]

However, RUN believes there is always room to review the ongoing suitability and effectiveness of TEQSA and its regulatory mandate, as the sector evolves. Like previous reviews, RUN welcomes this current review, but firmly believes that the case to increase TEQSA's powers has not been made and is not supported by any evidence-based justification. RUN believes that TEQSA already holds the appropriate powers to act upon any range of matters that have the potential to undermine the Threshold Standards within the sector today, and into the foreseeable future. This is not to say that RUN would not support further reviews of TEQSA's Act and regulatory framework in the future, if/when appropriately justified by evolving circumstances.

RUN holds concerns there has been a conflation between the purpose of the TEQSA Act and the Threshold Standards to which TEQSA regulates, as reflected in the Consultation Paper.

Students at the centre of the regulatory sector

RUN believes that students, rightfully so, have always been the primary focus of TEQSA's existing purview. Part A (1-2) of the Threshold Standards – Student Participation and Attainment; and Learning Environment – clearly position students at the centre of TEQSA's core regulatory gaze. It should be noted that TEQSA was originally designed to regulate a student-centred system while giving institutions more autonomy by upholding the Thresholds Standards. As noted by then Minister for Education Julia Gillard:

> *"Our new student-centred system will give institutions more autonomy but will be underpinned by the Tertiary Education Quality Standards Agency to ensure quality. TEQSA's approach to regulation is based on risk, leaving high-quality providers to flourish without unnecessary regulation."*[2]

It would be useful if TEQSA could provide additional information regarding the issues of concern that they are seeking to mitigate via a broadening of powers. If there is a view that students should be made even more central to the regulatory oversight of TEQSA, then it would be more appropriate to simply amend the Threshold Standards (in consultation with the HESP and the sector) rather than pursuing

unnecessary new powers via legislative amendments to the TEQSA Act. RUN believes that the interests of students are appropriately and rightfully central to the Threshold Standards already, but should the case be made that student interests require further enhancement within the Threshold Standards, then RUN would support and participate in a process of Threshold Standard amendment as appropriate.

RUN universities strongly believe in ensuring that students have positive outcomes before, during and after their time studying at our universities. RUN is proud that its students routinely record rates of satisfaction, and graduate employment outcomes, that exceed the sector average. Nonetheless, RUN does not support TEQSA expanding its powers to regulate student outcomes such as employment outcomes. This would be an unworkable proposition, given the primary pressures acting upon students succeeding at (or after) university – represented overwhelmingly by family, financial, and employment factors – exist well outside the control of any university.

It should be noted that the initial workings of the new National Student Ombudsman (NSO) reveal that the overwhelming majority of student complaints being assessed to date relate to matters such as[3]:

- course administration (e.g. delays or misinformation about in-course enrolment, transfers, changes in course design/structure, recognition of prior learning and special consideration) comprising 32 per cent of all complaints.
- Processes relating to unmet academic requirements or misconduct, comprising 19 per cent of all complaints
- Teaching and learning (e.g. course quality, placements/work-integrated learning and supervision), comprising 19 per cent of all complaints.
- Fees and other financial issues, comprising 14 per cent of all complaints.

TEQSA and the ATEC

The timing of implementing TEQSA's proposed new powers is problematic, as there remains no clear view, for instance, of what specific powers and scope will be held by the ATEC, and how these powers may complement, duplicate, or undermine those of TEQSA.

There is an opportunity for the Government to pause and undertake a comprehensive, simultaneous, and planned consideration of the higher education regulatory environment. There would be clear benefit in a planned approach to considering the legislative intent and coordination between, for example, amendments to/design of the HESA Act, the proposed ATEC Act, NSO legislation, and the TEQSA Act (including consideration of the Provider Category Standards and Threshold Standards). This would ensure clear remits and responsibilities between these important bodies, while avoiding regulatory gaps, overlap, and misalignment. The current disjointed, piecemeal approach to these important regulatory designs/amendments are likely to result in duplicated or conflicting regulatory burden, alongside other unintended consequences that impact upon students and the universities they rely upon.

RUN RECOMMENDS

the Government to pause and undertake a comprehensive, simultaneous, and planned consideration of the higher education regulatory environment.

Regulatory Burden

RUN believes that a broadening of TEQSA's regulatory powers is not only unnecessary, but will accompany an increase to the regulatory burden carried by providers, at the expense of student-facing resources. The compounding higher education regulatory landscape disproportionately encumbers Australia's smaller/regional universities – those universities who typically perform the sector's heavy lifting in tertiary participation amongst equity cohorts, while routinely achieving the highest levels of student satisfaction and graduate employment outcomes. It is Australia's smaller/regional universities who

have the least capacity to continue absorbing the escalating magnitude of regulatory burden without compromising student supports, experiences and opportunities. These impacts run counter to the objective of a regulatory system that puts students first.

There has been an increasing and accelerating trend of prescriptive and interventionist regulation to Australia's higher education sector over recent years. This approach to regulation has had already significant impact upon providers. Not only has the majority of this regulation been unfunded, but it often is also unhelpfully duplicated and spread across agencies and jurisdictions. RUN is supportive of a regulatory activity review with the aim to streamline regulatory activity, with regulation being underpinned by a proportionate, risk-based approach.

RUN holds concerns that the new powers proposed for TEQSA are being driven more by external optics rather than in response to any limitations to TEQSA's existing powers impacting upon student experience and provider quality today. RUN would argue that a more worthwhile focus of Government intervention into the effectiveness of TEQSA would be to resource the regulator more appropriately so that it may function more effectively with the powers that it already has. If TEQSA requires additional operational scope, this should be achieved via an updating of the Threshold Standards to which they regulate, rather than legislative changes that broaden powers unnecessarily.

Resourcing TEQSA

It remains unclear how TEQSA will utilise its increased fee intake to enhance its regulatory activities and powers, if its capped staffing levels remain unchanged. For TEQSA to best use its existing powers, consideration must be given to ensuring that it can recruit the best staff possible, and be able to expand its staffing base to meet areas of regulatory concern as they arise.

There have been occasions where TEQSA seems to have had difficulty in attracting and retaining personnel with the requisite breadth and depth of sectoral experience to perform its regulatory functions effectively. In lieu of unnecessary new powers, RUN believes that TEQSA can be made more effective in its regulatory duties by building its ranks of human capital that hold a more contemporaneous understanding of the sector, and its diverse, individual institutions, from an informed operational perspective.

There is a general perception amongst universities that TEQSA lacks genuine proximity to the sector that it oversees. Its detachment from the operational realities of our universities would benefit greatly from a formal schedule of visitation to each provider. An effective engagement model with the sector could also involve more targeted recruitment of staff from a broad range of universities, alongside the introduction of a formal secondment model (as practiced by the interim ATEC). Such initiatives would afford TEQSA a stronger appreciation of the operational dynamics unique to each institution as well as the diversity of student cohorts, strategies, and social missions that exist between providers. Such an approach would enable TEQSA to better understand the role that diversity plays in a world class higher education system, while giving insight to the unintended consequences that arise from an increasingly granularised prescriptive regulatory framework. A more contemporaneous understanding of the sector would also help TEQSA to avoid its focus being captured by media reports or other external influences that seek to weaponise the regulator for purposes unrelated to a provider's adherence to the Threshold Standards.

RUN RECOMMENDS

that TEQSA be supported to provide better regulation of the higher education sector with the powers it currently holds, rather than receive broader new powers.

A REGULATORY SYSTEM THAT PUTS STUDENTS FIRST

A REGULATORY SYSTEM THAT PUTS STUDENTS FIRST

Q1. What changes to the TEQSA Act are needed to ensure students are at the centre of the regulatory system?

RUN firmly believe that TEQSA's existing focus is the correct and appropriate focus for a proportionate and risk-based regulator worthy of a world class tertiary education system. It is important to note that students are currently firmly established at the centre of TEQSA's existing purview. Part A (1-2) of the Threshold Standards, to which providers are held (and it should be noted is the opening of the Threshold Standards) is Student Participation and Attainment; and Learning Environment.

RUN BELIEVES
that TEQSA's existing focus is the correct and appropriate focus for a proportionate and risk-based regulator worthy of a world class tertiary education system.

Beyond this, RUN holds significant concerns that without clarity on how student-centred regulation will be measured, regulation will be broad, lack focus, and lack clearly defined definitions. Furthermore, regulatory burden must be considered. For example, the introduction of new Support for Students policy guidelines (with compliance managed by the Department of Education) and the establishment of the new NSO, both place significant unfunded regulatory burden upon providers. It also further raises the issues of regulatory overlap and regulatory duplication. RUN believes that TEQSA would be best regulating against the Threshold Standards utilising its already substantial and appropriate powers.

RUN recommends commencing a meaningful consultative process about incorporating the Support for Students guidelines into the Threshold Standards. A practical consideration would be engaging the university sector to provide further guidance on what reasonable and proportionate evidence of ongoing compliance will mean for the sector, the regulator, and students alike. RUN believes that any essential consideration of future changes must ensure that student cohorts are considered, and not individual student circumstances.

RUN RECOMMENDS
the Government commence a meaningful consultative process about incorporating the Support for Students guidelines into the Threshold Standards.

While RUN believes that students are already embedded centrally within the regulatory system, the TEQSA Act could be amended to include a primary regulatory principle of protection and promotion of student interest, or that student interests are referenced in connection with the existing regulatory principles of necessity, risk, and proportionality.

Further, from within TEQSA's current data collection exercises, in conjunction with other existing data collection exercises, TEQSA could report annually on how regulatory activities have improved student outcomes and not just provider compliance. It is, however, essential that TEQSA maintains transparency as to how risk judgements are made. TEQSA's oversight should always be proportionate, and it is vital to the interests of students, universities, and the communities that they serve that providers remain autonomous institutions free from regulatory micromanagement.

A REGULATORY SYSTEM THAT PUTS STUDENTS FIRST

Q2. What changes to the TEQSA Act and the regulatory system are required to allow TEQSA to take a more risk-based approach to regulation of the sector, prioritising engagement on risks which have the greatest impact?

RUN cautiously supports a limited shift from rigid cyclical reviews to a more flexible, data-informed model that targets the most significant risks to students. However, a clearer definition of risk is needed, and the sector needs to be properly consulted to ensure that risk is balanced with efficiency and accountability.

RUN holds concerns that the current prolonged processes for cyclical assessment conducted by TEQSA significantly undermines the value of the process to institutions and the students they serve. The cyclical assessment processes are important, but TEQSA needs to be able to undertake them in a more efficient and timely way. This is combined with the widespread perception that TEQSA has difficulty attaining and retaining deep sectoral or institutional knowledge. It is vital that TEQSA be able to attract and retain highly qualified staff that develop genuine sectoral knowledge to enable more effective regulatory processes. At present, delays associated with the cyclical assessments are increasing and generate significant uncertainty for providers.

RUN BELIEVES
the cyclical assessment processes are important, but TEQSA needs to be able to undertake them in a more efficient and timely way.

A focus on continuous risk monitoring would allow TEQSA to respond faster to emerging risks, however clearer explanations about how this would work in practice are needed, including what continuous risk monitoring would involve and the role of TEQSA in setting clear expectations for risk management. It is imperative that providers are not micro-managed.

TEQSA could consider a tiered oversight model, where low-risk providers (universities) are subject to lighter, periodic checks, and higher-risk providers are monitored more closely. Such an approach, however, would require the establishment of rigorous safeguards to ensure that smaller and regional universities are not disproportionately burdened by continuous reporting.

RUN supports data-driven risk identification facilitated through TEQSA having access to sector-wide data. Data sharing between agencies must be established to minimise additional regulatory burden upon institutions.

TEQSA's cyclical assessment processes must not be duplicated by external accrediting bodies, particularly in relation to institutional quality assurance systems. For self-accrediting institutions, where TEQSA has already assured the provider's compliance with the Threshold Standards, including its internal accreditation and quality assurance mechanisms, there should be clearer delineation to prevent unnecessary duplication at the 'course of study' level especially by professional bodies.

A REGULATORY SYSTEM THAT PUTS STUDENTS FIRST

Q3. Should providers have a positive duty to comply, and maintain compliance, with the Threshold Standards, in order to better protect student and other stakeholder and community interests?

There is no evidence that any public provider in Australia today, nor at any point in the past, has ever approached their obligations toward the Threshold Standards with anything other than a positive duty to comply, and a positive duty to maintain compliance. All providers, at all times, must comply with the Threshold Standards. The Threshold Standards are not optional, and nor should they ever be so. Providers do not wait for re-registration to suddenly comply with the Threshold standards, so a positive duty is something that providers are already doing.

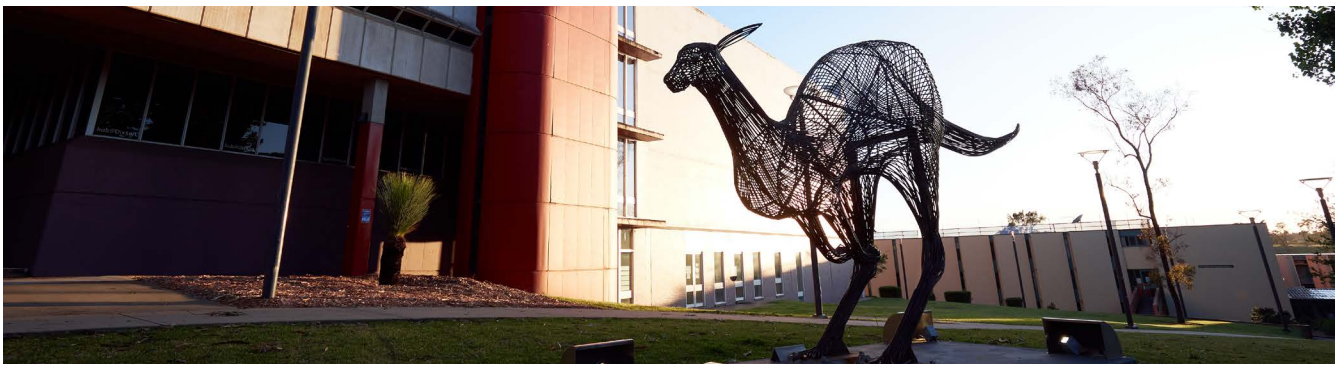
RUN BELIEVES
that providers do not wait for re-registration to suddenly comply with the Threshold standards, so a positive duty is something that providers are already doing.

Notwithstanding this, RUN is generally supportive of a legislated positive duty for providers to maintain ongoing compliance, framed as "reasonable and proportionate" to avoid excessive burden. This could potentially be drafted (pending further consultation with the sector) as:

The Higher Education Provider must:

a. maintain effective internal systems and processes to monitor, review and assure compliance with the Threshold Standards on an ongoing basis; and
b. take timely and appropriate action to address identified risks or breaches that may impact students, staff, or the integrity of the higher education sector.

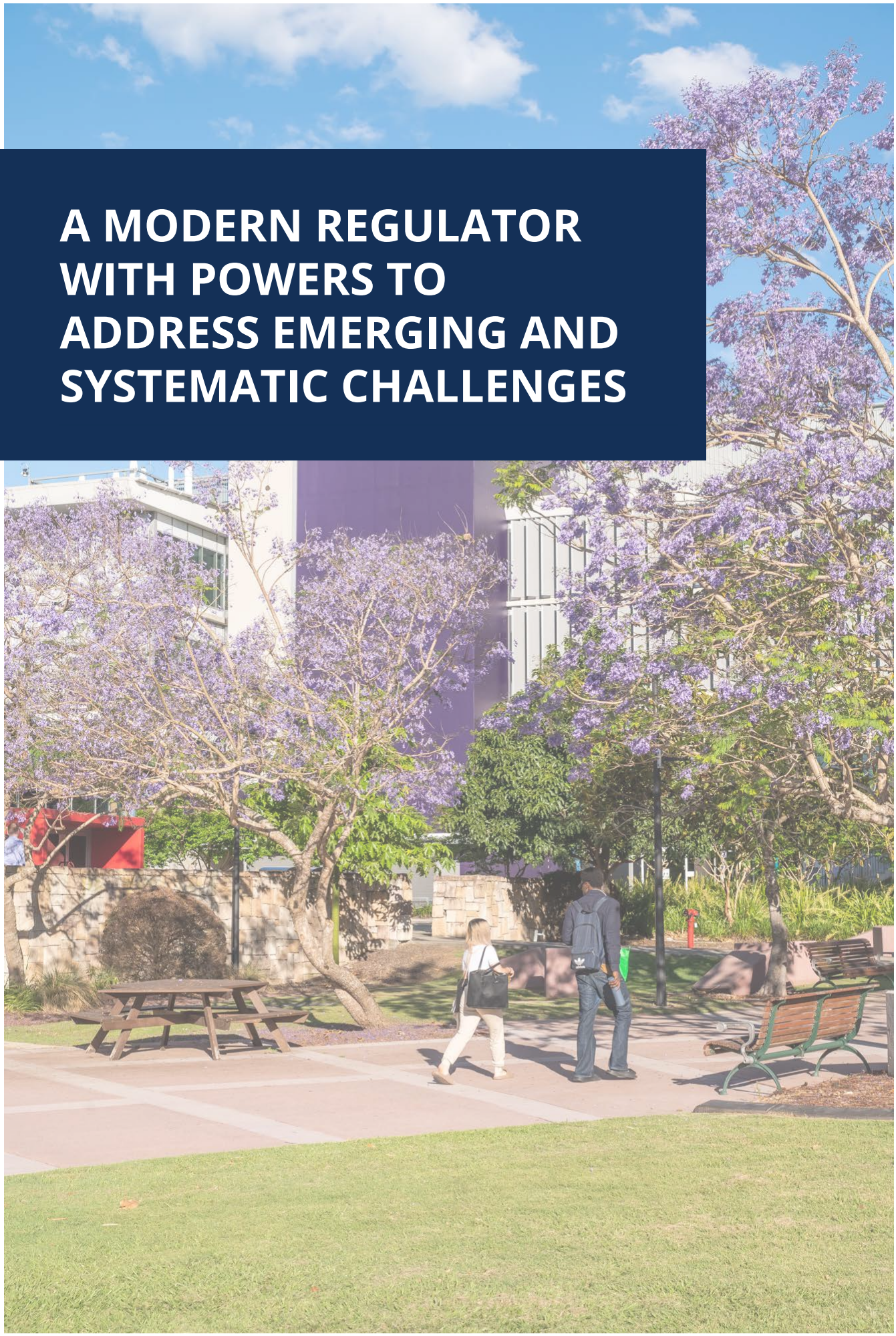
It would be essential for TEQSA to have regard to the provider's size, nature, complexity, risk profile, and capacity. There must be consideration that the purpose of penalties, including enforceable undertakings, which may arise if a provider is found to have breached the positive duty obligations, do not unduly impact upon the ability of the provider to operate and must be proportionate to any breach, in the unlikely case that it occurs.



Q4. Are any changes to the TEQSA Act and the regulatory system needed to support First Nations self-determination in higher education?

As a general principle repeated throughout this submission, RUN does not believe that the TEQSA Act needs to be amended to achieve any of the stated objectives of the Consultation Paper. Regardless, RUN would urge TEQSA to first consider the outcomes and recommendations arising from the proposed First Nations-led review of the higher education system (as recommended by the Australian Universities Accord Final Report), so as not to unintentionally undermine this important review with premature legislative action.

A MODERN REGULATOR WITH POWERS TO ADDRESS EMERGING AND SYSTEMATIC CHALLENGES



A MODERN REGULATOR WITH POWERS TO ADDRESS EMERGING AND SYSTEMATIC CHALLENGES

Q5. How can TEQSA's regulatory focus shift more towards proactive risk prevention or should it remain primarily on compliance with the Threshold Standards?

TEQSA's primary regulatory focus should be on compliance with the Threshold Standards. It would not be appropriate for TEQSA's regulatory focus to shift towards more proactive prevention, nor has there been a strong case presented that would warrant such a shift.

RUN BELIEVES
TEQSA's primary regulatory focus should be on compliance with the Threshold Standards.

There may be some capacity for proactive risk-prevention mechanisms, but this capacity must remain limited to only where that risk is likely to impact compliance with the Threshold Standards. Maintaining TEQSA's core focus on the Threshold Standards is essential to uphold regulatory clarity and to avoid jurisdictional confusion with other bodies, such as the ATEC and the NSO. Clear communication would be essential to ensure prevention efforts are experienced as supportive and risk-reducing, not as an additional compliance burden.

TEQSA itself can become more proactive in how effectively it upholds compliance of the Threshold Standards by seeking an in-house skills base that has a more contemporaneous understanding of the sector, and its diverse, individual institutions. There is a general perception that TEQSA lacks genuine proximity to the sector, in part due to its difficulties in attracting and retaining a staffing base with in-depth operational tertiary experience and understanding. This is compounded by an absence of effort/initiatives that seek to build and maintain a more contemporaneous knowledge base.

RUN RECOMMENDS
that TEQSA develops a more contemporaneous understanding of the university sector.

TEQSA's proximity to, and understanding of the sector, and thereby its effectiveness as a regulator, would benefit greatly from a clear schedule of visitation to each of the public providers that it oversees. A more effective engagement model with providers could be enhanced by targeted staffing recruitment activities and/or secondments directly from within the sector, which would assist in building greater in-house expertise and knowledge at TEQSA. A more proactive engagement model with the sector would enable TEQSA to better understand the unique operational dynamics of each institution, and the diversity of student cohorts, strategies and social missions that exist between providers. It would also enable TEQSA to better understand the role that diversity plays in a world class higher education system, while appreciating how an overtly prescriptive regulatory framework may undermine this diversity. This would be of particular benefit to smaller and/or regional universities, whose diverse characteristics are most differentiated from the default metro-centric view that has historically prevailed within the higher education policy and regulatory landscape.

RUN BELIEVES
TEQSA would benefit greatly from a clear schedule of visitation to each of the public providers that it oversees.

A MODERN REGULATOR WITH POWERS TO ADDRESS EMERGING AND SYSTEMATIC CHALLENGES

Q6. How can TEQSA be empowered to use a wider range of timely enforcement approaches when justified and in the public interest?

TEQSA, as a regulatory body, should have no powers in determining the public interest, however loosely defined. Universities have always been places for civil movements, free speech and expression, including on a wide range of matters. Key questions arise, the most pressing of which is: 'What is the public interest and how is it defined?' RUN firmly believes that TEQSA should exist to regulate against the Threshold Standards.

RUN is more sympathetic regarding the range of TEQSA's enforcement powers. RUN recommends that TEQSA adopt a graduated, proportionate suite of enforcement tools (e.g. compliance notices, penalties), similar to that of other regulators, such as the Fair Work Ombudsman. The current powers to cancel or shorten registration/accreditation are too blunt and too high stakes, with potentially detrimental impacts upon students. Introducing intermediate enforcement options would allow TEQSA to act more frequently without immediately risking disruption to students.

RUN RECOMMENDS
that TEQSA adopt a graduated, proportionate suite of enforcement tools.

Q7. Should TEQSA have new powers to immediately suspend a provider's registration in response to acute risks?

TEQSA should not be granted new powers to suspend a provider's registration in response to acute risks. The discussion paper has not outlined (or provided an example of) what constitutes an acute risk, specifically, that which results from provider behaviour, that is affecting the tertiary sector, nor has it established any grounds on which such an action would be appropriate or aligned to the powers of a proportionate, risk-based regulator. Further, the potential impact upon students of provider suspension following 'acute risk' incursions would be highly consequential, and this directly conflicts with the consultation paper's stated objectives in placing students at the centre of higher education regulatory activities.

RUN DISAGREES
that TEQSA should be granted new powers to suspend a provider's registration in response to acute risks.

It must be noted that a key source of acute, external risk impacting the sector in recent years – that defined by immediate, high impact failures that threaten students, institutional stability or sector integrity – has come from the perturbation of the higher education policy landscape. In this context, the implications of acute risk arising from policy volatility have been well documented. It is unclear how TEQSA would regulate against this occurring in the future, with or without the acquisition of new powers.

TEQSA already possesses significant and appropriate powers to respond to risk unrelated to policy perturbation. Furthermore, procedural fairness must not be undermined as part of TEQSA's core regulatory functions. Providers have a right to natural justice, and it is appropriate that TEQSA follows a multi-step process as part of its proportionate and risk-based mandate.

RUN BELIEVES
that TEQSA already possesses significant and appropriate powers to respond to risk.

A MODERN REGULATOR WITH POWERS TO ADDRESS EMERGING AND SYSTEMATIC CHALLENGES

Q8. Is the overall regulatory architecture working effectively to manage risks in the sector?

The current overall regulatory architecture is not working effectively, as it does not truly reflect the principles of proportionate, risk-based, light-touch regulation informed by a contemporaneous understanding of tertiary operating environments. Instead, the regulatory architecture is becoming increasingly and overtly prescriptive, which has an erosive effect on the institutional diversity and autonomy that otherwise defines a vibrant, world class university system.

RUN BELIEVES
the regulatory architecture is becoming increasingly and overtly prescriptive.

The current regulatory architecture is also departing from a proportionate risk-based approach of adherence to the Threshold Standards, towards a more knee-jerk and disproportionate approach often based upon public commentary/media reports, lagged data, or non-contemporary advice. If Australia were to design an effective regulator from scratch, it would be one that understands the sector better while valuing the unique and diverse roles of each of the providers within it, regulating against an agreed set of Threshold Standards in a risk-based, proportionate, and light-touch manner. While the current regulatory architecture is not ideal, it could be made worse by pursuing unnecessary legislative amendments that push the regulator further into a knee-jerk, prescriptive mindset with broadened powers.

The suggestion of amending the TEQSA Act to allow the creation of binding legislative instruments such as enforceable codes is not supported by RUN.

RUN DISAGREES
to amending the TEQSA Act to allow the creation of binding legislative instruments such as enforceable codes.

This would inevitably add to the already burgeoning compliance costs faced by higher education providers in a context where the creation of the ATEC will also be introducing new obligations. At present, there remains no clear view of what specific powers and scope will be held by the ATEC, and how these powers may complement, duplicate or undermine those of TEQSA. RUN holds concerns at the potential for misaligned regulatory and compliance development, and the unintended consequences that may manifest for students and the universities they rely upon. It would be in the interest of students, providers, and regulators for the Government to undertake a comprehensive, simultaneous, planned approach in determining the powers, domains, remits, and responsibilities for both ATEC and TEQSA as well as the NSO.

RUN RECOMMENDS
the Government undertake a comprehensive, simultaneous, planned approach in determining the powers, domains, remits, and responsibilities for both ATEC and TEQSA as well as the NSO.

A MODERN REGULATOR WITH POWERS TO ADDRESS EMERGING AND SYSTEMATIC CHALLENGES

Q9. What powers does TEQSA need to step in when it is justified and in the public interest?

TEQSA already has considerable enforcement powers including enforceable undertakings. RUN believes that these powers provide TEQSA with sufficient scope to address concerns around provider compliance with the Threshold Standards, including those relating to governance. If TEQSA is of the view that these powers are insufficient, a far more nuanced and detailed discussion paper is required for consideration. Simply stating a need for additional powers is sufficient.

There are further considerations, worthy of a more nuanced discussion than what is in the consultation paper, about what constitutes public interest, and who would be responsible for defining it. TEQSA must continue to carry out the role of being a proportionate and risk-based regulator that regulates against clearly defined Threshold Standards. Where there are genuine evolving issues, they should be considered by the HESP and incorporated into the Threshold Standards.

It would be wholly inappropriate for TEQSA to have the power to appoint a monitor, independent adviser or administration to a University Governing Body. As a starting point, there would need to be a thorough consultation and national discussion about what constitutes a serious failure in governance, and if there are instances of defined serious failures occurring at Australian universities today. In the absence of such a discussion or consultation, RUN strongly opposes any suggestion of additional powers.

RUN OPPOSES

TEQSA being empowered to appoint a monitor or advisor to a University Governing Body.

Q10. Are there other powers TEQSA should have, comparable to other modern regulators, when balanced against the need for an efficient and streamlined regulatory approach?

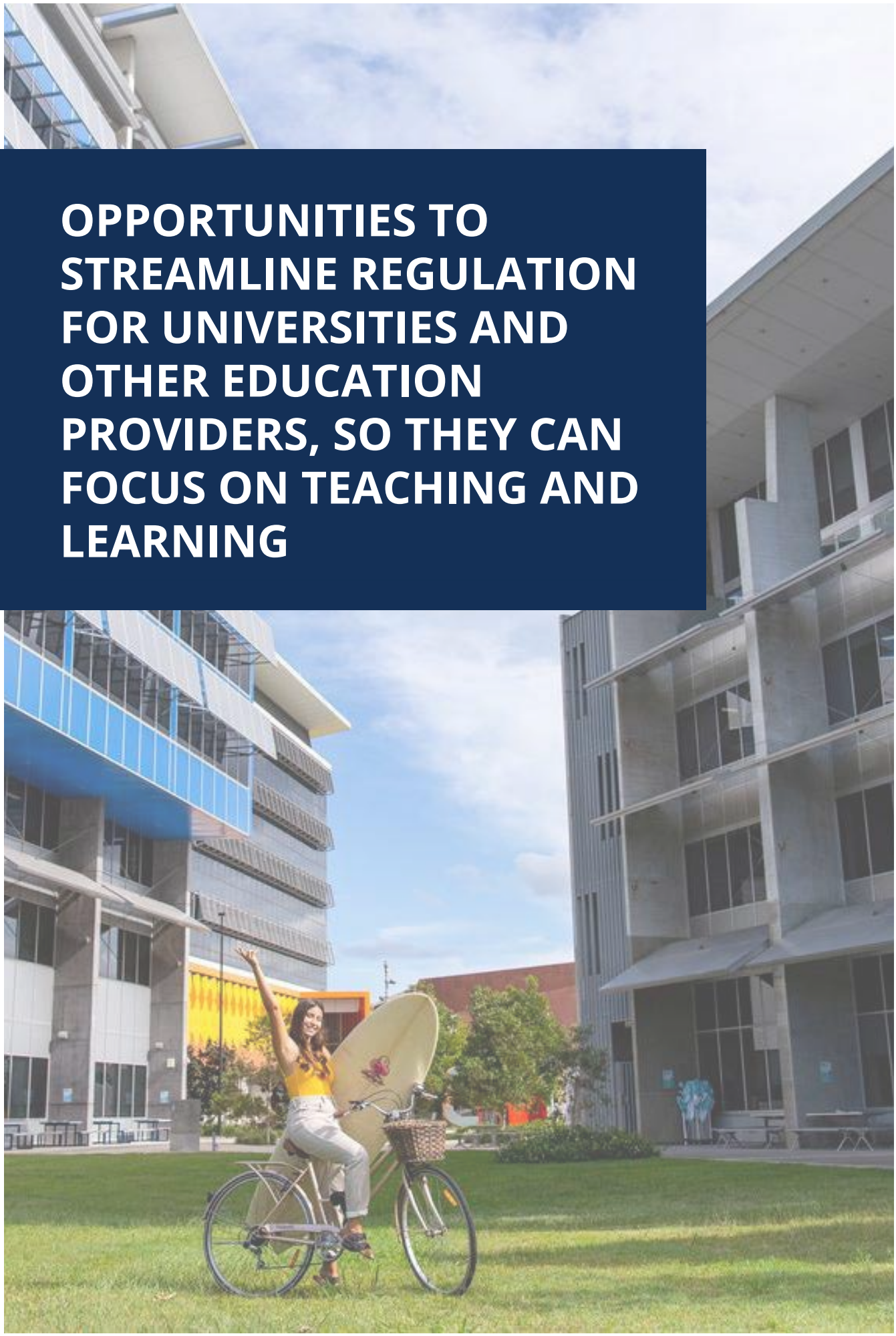
It is of paramount importance that TEQSA's primary focus should be on improving the way it performs its current functions, under the fullness of the powers it already holds, in a more timely and therefore useful way to safeguard the quality, integrity, and reputation of Australia's world class higher education system. This focus will ensure quality outcomes for providers and students. RUN firmly believes that new powers are not required for TEQSA to be able to evolve into a more effective regulator.

The discussion paper would have benefited from an outline of what is deemed to be 'comparable modern regulators' and to benchmark processes where TEQSA is lacking. With no such case being offered, it is difficult for meaningful consultation to occur, or decisions to be made that would justify TEQSA being granted additional powers drawn from other regulators. What is essential, however, is that TEQSA consistently improve its own processes to deliver a more efficient and streamlined regulatory approach, especially when considering the use of limited taxpayer funds to both administer the regulatory activity of TEQSA, and the use of taxpayer funds in provider compliance activities. Notwithstanding the above comments, TEQSA should work with other Government Departments and Agencies to ensure that appropriate data sharing agreements are in place to reduce regulatory burden and overlap. The defining principle of 'collect once, use often' should apply to any data collected regarding regulatory compliance monitoring.

RUN RECOMMENDS

TEQSA work across Government to ensure that appropriate data sharing agreements are in place to reduce regulatory burden and overlap.

OPPORTUNITIES TO STREAMLINE REGULATION FOR UNIVERSITIES AND OTHER EDUCATION PROVIDERS, SO THEY CAN FOCUS ON TEACHING AND LEARNING



OPPORTUNITIES TO STREAMLINE REGULATION

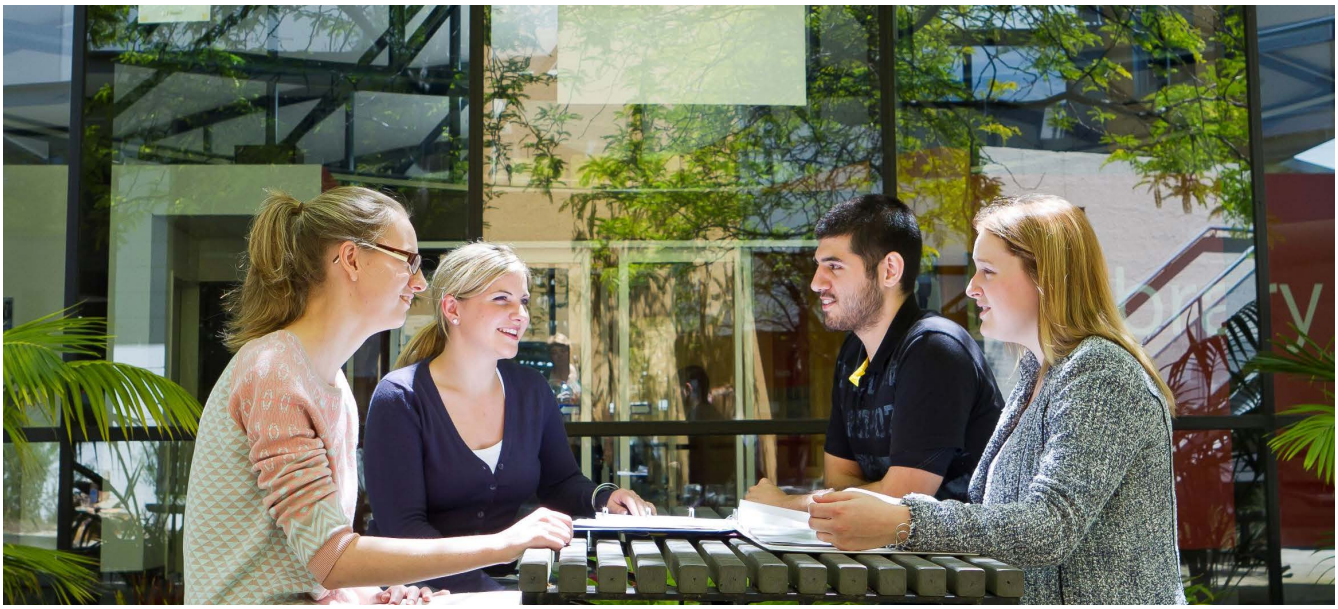
Q11. What regulatory requirements or actions could be accomplished in a more efficient way that may lead to increased productivity, while ensuring regulatory outcomes are achieved?

Australia's higher education sector is characterised by an increasingly complex regulatory environment made more onerous by avoidable duplication and jurisdictional overlap between departments, agencies and levels of Government. This compounding regulatory landscape disproportionately encumbers Australia's smaller/regional universities – those universities that typically perform the sector's heavy lifting in tertiary participation amongst equity cohorts, while routinely achieving the highest levels of student satisfaction and graduate employment outcomes. It is Australia's smaller/regional universities that have the least capacity to continue absorbing the escalating magnitude of regulatory burden without compromising student supports, experiences and opportunities. RUN advocates for streamlined reporting and regulatory processes, characterised by a 'collect once, use often' approach to reporting and data collection to reduce duplication. This would enable providers to have the opportunity for greater focus and resourcing towards teaching, learning and research. RUN would also support changes to the TEQSA Act to include timelines for completion of cyclical reviews by TEQSA, and more timely responses on re-registration processes.

RUN RECOMMENDS
for streamlined reporting and regulatory processes, characterised by a 'collect once, use often' approach.

RUN RECOMMENDS
changes to the TEQSA Act to include timelines for completion of cyclical reviews by TEQSA, and more timely responses on re-registration processes.

RUN welcomes TEQSA's intentions to find ways to make its regulatory processes more efficient to improve productivity. However, RUN believes that should TEQSA's regulatory powers and functions be further expanded, then an accompanying increase in the regulatory burden carried by providers would be inevitable and would occur at the expense of student-facing resources. This outcome would clearly conflict with the objective of realising a student-first system.



OPPORTUNITIES TO STREAMLINE REGULATION

Q12. What opportunities exist to streamline regulation between TEQSA, the Department of Education, the National Student Ombudsman, or other Commonwealth, State and Territory government bodies?

Australian universities operate in a highly regulated environment, which is an important and necessary feature of a robust and sustainable tertiary sector. Nonetheless, there are features of this regulatory environment that represent avoidable duplication in reporting and data collection, resulting in unnecessarily complex regulatory burdens borne by providers. Australia's higher education regulatory framework is multi-jurisdictional, with providers being accountable to the regulatory requirements of TEQSA at a Commonwealth level (in addition to regulatory requirements for dual-sector providers via the Australian Skills Quality Authority (ASQA)), the ATEC, and various other requirements at a State and Territory level. Often, the data and reporting requirements across this multi-jurisdictional landscape are duplicated, resulting in unnecessarily higher costs of compliance. In recent years, several new compliance requirements have been introduced with associated cost burdens. These include Foreign Interference registers, Tertiary Collection of Student Information, Unique Student Identifier, and Transparency in Higher Education Expenditure Data Collection. While RUN recognises the importance of these compliance initiatives and supports their inclusion in Australia's tertiary regulation framework, the cumulative cost of compliance continues to grow with no corresponding provisions made in funding models. The continual growth in regulatory compliance equates to a significant investment in resourcing that otherwise diverts from the core business of teaching, learning, and research. These costs are more difficult to absorb when operating in sub-scale environments, such as regional student catchments.

RUN BELIEVES

the continual growth in regulatory compliance diverts resources from the core business of teaching, learning, and research.

RUN would support clear remits outlining the respective responsibilities of TEQSA, the Department of Education, the NSO, and other Commonwealth, State and Territory government bodies. These clear remits must avoid duplication or overlap between parties and jurisdictions and be supported by enhanced communication channels between all. RUN supports the ATEC conducting a sectoral 'deep dive' (as proposed by the Treasurer) prior to and subsequently informing potential changes to the TEQSA Act. This 'deep dive' should involve the participation of all relevant parties/jurisdictions, guided by a regulatory principle of 'collect once, use often'.

RUN recommends a comprehensive multi-jurisdictional review of the sector's regulatory environment with scope to reduce the duplication of reporting and data collection and to ease the regulatory burden upon universities via a more streamlined 'collect once, use often' model.

RUN RECOMMENDS

a comprehensive multi-jurisdictional review of the sector's regulatory environment to reduce the duplication of reporting and data collection.

OPPORTUNITIES TO STREAMLINE REGULATION

Q13. Should TEQSA's functions be broadened to allow better access to transfer complaints to other agencies, for example with the National Student Ombudsman?

RUN would support the adjustment of TEQSA's functions to enable the transfer of student complaints to the most appropriate body, on the proviso that this process is directed by clear guidelines and thresholds that determine what and when matters are transferred and designed to avoid obfuscation of responsibility and/or double handling.

Q14. How could the TEQSA Act be amended to ensure providers are required to implement recommendations made by the National Student Ombudsman?

As a regulator, TEQSA should use the powers and functions available to it to ensure individual providers continue to meet the Threshold Standards. Recommendations made by the NSO to a provider are just that – recommendations. They are not enforceable actions. Any recommendations made by the NSO constitute a process between the Ombudsman and the provider that should be approached by those parties in good faith, with procedural fairness, and student interest embedded in the process. Unless matters of student complaint encroach upon a provider's ability to meet its Threshold Standards, there should be no reason for TEQSA to insert itself into the jurisdiction of the NSO.

Q15. Would more standardised public disclosure of information improve accountability, assist students in choosing courses of study or providers, assist Government to assess the effectiveness of public investment, and help providers to demonstrate compliance?

RUN supports a transparent higher education system where individual providers are accountable for the student outcomes, teaching quality, and research impact that they generate using public funds. Already, comprehensive and publicly accessible information is freely available to students to inform enrolment decisions via, for instance, the Quality Indicators for Learning and Teaching, Excellence in Research Australia/ proposed Research Insights Capability, and the Department of Education Higher Education Statistics Collection. RUN would always support enhanced transparency, standardisation and accessibility of public data on provider performance, but would suggest such a coordinating role would sit outside the remit of a proportionate and risk-based sectoral regulator, and may be more appropriately positioned within the Department, the ATEC, or State-based admissions agencies.

A SYSTEM THAT SUPPORTS A JOINED UP TERTIARY SYSTEM, HELPING MORE AUSTRALIANS GET THE SKILLS AND QUALIFICATIONS THEY NEED

A SYSTEM THAT SUPPORTS A JOINED UP TERTIARY SYSTEM

Q16. Are changes to the TEQSA Act needed to support better joined-up arrangements across higher education and vocational education?

RUN supports continued work to achieve a more cohesive and joined-up tertiary education system that affords students clearer, simpler, multidirectional pathways between vocational and higher education.

However, RUN rejects the idea that the TEQSA Act, in its current form, plays any role in the persistence of historical barriers that prevent a more joined-up vocational and higher education system. Rather, the respective funding systems of the higher education and vocational sectors remain incompatible, and if left unaddressed, will continue to undermine any efforts towards a more joined up system. Compounding this sectoral wedge is the very different approaches to regulation taken by TEQSA and ASQA. RUN believes that a more effective framework of communication and coordination between TEQSA and ASQA would support greater harmonisation between the sectors.

- ***RUN BELIEVES***
  that a more effective framework of communication and coordination between TEQSA and ASQA would support greater harmonisation between the sectors.

RUN also holds concerns that any move towards a more prescriptive regulatory framework will suppress the diversity and flexibility within the higher education sector required by individual higher education providers to respond to place-based opportunities that require harmonised coordination with vocational providers.

- ***RUN BELIEVES***
  a more prescriptive regulatory framework suppress the diversity and flexibility within the higher education sector.

RUN cautions TEQSA against undermining or pre-empting the outcomes of the Commonwealth's Tertiary Roadmap and Dual Sector Regulatory Strategy with premature legislative action. It is vital that the strategy first be allowed to inform what a nationally joined-up sector would look like, and how this may best be achieved to enable a best-practice regulatory response.

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