INDEPENDENT
HIGHER EDUCATION
AUSTRALIA

IHEA SUBMISSION TO TEQSA

Consultation paper: Fees and charges proposal: Cost recovery for quality assurance and regulation of higher education

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INDEPENDENT HIGHER EDUCATION AUSTRALIA

Submission to: Tertiary Education Quality Standards Agency (TEQSA)

Response to: Fees and charges consultation

Independent Higher Education Australia (IHEA) acknowledges the opportunity to comment on the Consultation paper: *Fees and charges proposal: Cost recovery for quality assurance and regulation of higher education*.

1. Introduction

The decision of the Australian government to implement cost recovery for the regulation of quality in Australian higher education from 1 January 2022 will have serious implications for the independent higher education sector primarily due to:

(1) massive increases in operational costs for independent providers, particularly small and niche providers, and their students
(2) increasing student tuition fees caused by rising operational costs and driving increased student debt as the cost of the quality regulator ultimately flows on to HELP Loans
(3) an imbalance in the impacts of cost recovery on Australia's small independent sector which comprises only 10% of student enrolments but will pay 65% of the regulators recovered costs; and
(4) implementation at a time when the higher education sector continues to be affected by the ongoing economic impacts of the COVID-19 pandemic.

IHEA recognises that the decision to apply cost recovery principles to the quality regulation of higher education is a decision of the federal government. We acknowledge that revenue raised through cost recovery will contribute to Commonwealth general revenue and not directly to TEQSA's budget. It is, however, the calculated cost of the TEQSA activity that will determine the amount of revenue the Commonwealth charges providers, and ultimately students, to fund TEQSA budget allocations.

IHEA **does not** support the decision of the federal government to apply cost recovery to the regulation of higher education quality. We base this opposition on the following:

- That the Cost Recovery Framework does not appropriately apply to the quality regulation of higher education. The total Australian economy and society are beneficiaries of high-quality higher education, and all Australians are recipients of government activities that regulate higher education quality.
- Implementing TEQSA cost recovery risks negative impacts on the competition, innovation, and financial viability of those who will pay the charges.

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- Higher education contributes the bulk of Australia's $39bn international education industry ensuring a $16m allocation by the Commonwealth to the agency regulating quality standards in the industry is a small amount and accords with public interest
- The relatively small number of regulated entities results in high costs to individual businesses.
- The extreme range of institution sizes (i.e., 33 EFTSL to 70,000 EFTSL) makes equitable distribution of costs virtually impossible.
- Domination of the total sector by large public institutions largely funded by the Commonwealth creates an incentive to recover the largest possible amount of costs from the independent sector which comprises mainly small and medium businesses and not-for-profit providers.
- Cost recovery will be passed on to students, adding millions of dollars to student HELP debt.

2. Recommendations

i. **That TEQSA urge the federal government to reconsider applying cost recovery to higher education quality regulation**
Cost recovery in higher education fails the Government Charging Policy and will seriously impact the competition, innovation and/or financial viability of providers subject to the charges.

If the federal government will not reconsider TEQSA cost recovery, IHEA recommends:

ii. **That the implementation of higher education quality cost recovery be further deferred**
The implementation of cost recovery on 1 January 2022 is too early for a sector still facing the impacts of the COVID-19 pandemic with borders closed, ongoing uncertainty of domestic viral outbreaks and slow economic recovery in critical industries. The sustainability of many providers continues to be supported by regulatory fee waivers.

iii. **That the approach to cost recovery be redesigned**
The current cost recovery approach inequitably impacts the independent sector; is unnecessarily complex; is disproportionately applied to smaller providers; and inadequately supported by service obligations and so needs to be redesigned. IHEA would like to work with TEQSA to ensure a workable model is implemented.

iv. **That the federal government's recovery of the costs of quality regulation be apportioned simply and fairly based on institutions' EFTSL load**
While the total economy and society benefit from quality education, the main beneficiaries of quality regulation and the point of delivery are enrolled students. Therefore, the fairest means to recover costs of the regulation is according to student beneficiaries. Cost recovery could be achieved through the introduction of a Higher Education Student Administration fee.

v. **That a service charter of TEQSA performance obligations underpin the application of cost recovery**
It is proposed that the Charter be negotiated with the total sector through the range of peak bodies representing TEQSA regulated entities prior to implementation of cost recovery.

3. Opposition to the Application of Cost Recovery Principles

IHEA questions the applicability of the federal government's Charging Framework to the regulation of quality standards in higher education.

Identifiable Individuals and Groups

Australian Cost Recovery Guidelines advise that "*where appropriate, non-government recipients of specific government activities should be charged for some or all of the costs of those activities*."[1]

The Charging Policy Statement also asserts that *"Where specific demand for a government activity is created by identifiable individuals or groups, they should be charged for it unless the government has decided to fund that activity.*[2]

IHEA proposes that demand for the regulation of quality in higher education is not created by 'identifiable individuals or groups', rather it is essential to the total Australian economy and society. This includes international, national, and state economies, all Australian industries, the broader Australian community, and student consumers.

Impact of Cost Recovery Considerations

The Australian Government's Cost Recovery Guidelines state that one the considerations given to deciding what activities that will be cost recovered is "*the impact of cost recovery on competition, innovation or the financial viability of those who may need to pay charges and the cumulative effect of other government activities*".[3]

Applying cost recovery to Australian higher education providers risks negative impacts on the competition, innovation, and financial viability of providers subject to the charges. Several IHEA members have indicated ongoing registration as an Australian higher education provider will be unviable under a cost recovery regime. A loss of providers and the inequitable application of costs and ability for providers to absorb the charges will reduce competition in the sector and deprive students of access to innovative courses that a diversity of providers brings.

Increased course accreditation costs will be anti-innovation as providers reconsider the development of new courses which attract higher costs and are targeted at niche demand in the economy. In a rapidly changing economy, cost recovery will 'price out' risk and innovation at a time when economic recovery will be built on new skills.

Alternatively self-accrediting providers, including universities but very few independent providers, will have a competitive advantage of being able to develop new courses without incurring charges. The capacity for self-accrediting institutions to avoid incurring regulatory charges results in systemic anti-competitive regulatory settings for the sector. That the charging Agency also determines the self-accrediting status of regulated entities undermines confidence in the appropriateness of cost recovery in higher education quality regulation.

[1] Australian Government Cost Recovery Guidelines (RMG 304) which can be found at: https://www.finance.gov.au/publications/resource-management-guides/australian-government-cost-recovery-guidelines-rmg-304

[2] https://www.finance.gov.au/government/managing-commonwealth-resources/managing-money-property/managing-money/australian-government-charging-framework/charging-framework

[3] Australian Government Cost Recovery Guidelines (RMG 304) which can be found at: https://www.finance.gov.au/publications/resource-management-guides/australian-government-cost-recovery-guidelines-rmg-304

IHEA proposes that TEQSA urge the government to reconsider cost recovery because of the impact that it will have on competition, innovation, and the financial viability of those who will be required to pay the charges.

4. Timing of Implementation

Implementation of TEQSA cost recovery has been deferred several times since being first announced in the 2018 federal budget as government grappled with the likely impact on providers subject to the charges.

Likely negative impacts on the ongoing viability of providers subject to charges have increased since the cost recovery proposal was announced. Implementation of the charges is now scheduled to occur at a time when the higher education sector remains severely impacted by the COVID-19 pandemic.

The effects of regulatory fees and charges on providers have acknowledges in the stimulus and support packages announced during 2020 and 2021. Government mechanisms to sustain the sector during the COVID-19 pandemic have included regulatory fee waivers and it now seems counter-intuitive to introduce massively increased regulatory charges while the economic impacts of the of the pandemic continue. At the time of writing the second most populous Australian state is in lockdown and vaccination rates remain low.

Many higher education providers are operating with reduced revenue and staffing to maintain their delivery of a quality education to domestic and onshore international students. Cost recovery charges will stress businesses further, risking business failure, student displacement and a loss of diversity and innovation in Australian higher education.

IHEA proposes that the quality of Australian higher education will be better protected by deferral of implementation of cost recovery to enable an assessment of the applicability of the charging framework and with any proposed cost regime not implemented until large scale resumption of international student arrivals and the opportunity for education business recovery.

5. The Proposed Cost Recovery Approach

For IHEA to support cost recovery implementation, there would need to be significant changes made to the model proposed by TEQSA. IHEA cannot support the current model for the following reasons:

Massive increases in operational costs for independent providers

The proposed approach to cost recovery is inequitable.

The proposed cost recovery implements a disproportionate level of impost on the independent sector that is small in overall size, largely made up of small and niche providers and has the least capacity to absorb costs.

IHEA's survey of member institutions reports actual and projected TEQSA costs over a 10-year period. Actual TEQSA expenditure was determined for the previous 5 years with projected next 5-year expenditure based on the published fee schedules. While results will reflect varying business models and forward plans, a diverse cohort of independent 14 providers ranging in size from 13 to 11,811 EFTSL report a percentage change in regulatory costs ranging from 162% to 1100%.

Table 1: Regulatory Cost comparison previous 5 years / forward 5 years.

Independent Institution	EFTSL	TEQSA Costs Last 5 Years	Projected TEQSA Costs Next 5 years	Percentage change
Provider 1	1,410	$40,000	$480,000	1100%
Provider 2	23	$28,000	$196,030	600%
Provider 3	11,811	$110,500	$732,310	563%
Provider 4	875	$70,500	$442,000	526%
Provider 5	527	$27,000	$133,700	395%
Provider 6	359	$55,000	$263,000	378%
Provider 7	100	$47,000	$186,000	296%
Provider 8	23	$32,000	$125,000	291%
Provider 9	13	$32,000	$115,520	261%
Provider 10	113	$98,000	$300,000	206%
Provider 11	1,431	$329,514	$987,000	199%
Provider 12	631	$131,300	$390,000	197%
Provider 13	801	$70,000	$200,000	186%
Provider 14	39	$5,000	$13,100	162%

Advice from TEQSA is that the proposed cost recovery model is projected to raise around $16m and will apportion approximately two-thirds of this impost to Australia's small independent sector which comprises 10% of student enrolments[4]

Disproportionate Imposts on Small Providers

The proposed approach to cost recovery will disproportionately impact small providers.

Australia's small and niche higher education providers ensure diversity, innovation and professional qualifications are central to our national higher education profile. The IHEA membership includes small providers offering programs in Agricultural Science, Allied Health, Creative Industries and professional qualifications in Accountancy, Tax and Governance.

Modelling a basic snapshot of regulatory activities (renewal of registration and accreditation (one course) and new annual levy) with current and proposed imposts as applied to large and small providers demonstrates disproportionate impact of the proposed cost regime.

Table 2: Cost comparison, current / proposed standard suite – renewal of registration and accreditation and new annual levy

Provider Type	EFTSL	Registration Renewal Assume Medium level effort		% Change	Re-Accreditation (incl. any size discounts)		Annual Levy (1) EFTSL based charge (HEIMS total 1,148,159 EFTSL @ .23/EFTSL)		Annual Levy (2) Shared Across Providers (186 providers)	
		Current	Proposed		Current	Proposed	Current	Proposed	Current	Proposed
Small Independent Provider	100	$20,000	$100,100	405%	$8,000	$7000	0	$23	0	$29,010
Medium Independent Provider	1000	$20,000	$100,100	405%	$8,000	$12,600	0	$230	0	$29,010
Large University (Monash)	70000	$75,000	$100,100	33%	N/A	N/A	0	$16,100	0	$29,198

Totals of the costs above demonstrate the inequities of the current approach on small providers and on students. On the basic snapshot of regulatory activities, the small provider (100 EFTSL) currently pays 37% of the costs of the large university. This rises to 93% of the costs under the proposed cost recovery approach.

[4] HEIMS Data – 2019 Full Year Student Summary data found at: https://www.dese.gov.au/higher-education-statistics/resources/2019-student-summary-tables

Table 2a: Total Cost comparison, small/large provider; current / proposed standard suite – renewal of registration and accreditation and new annual levy

Provider Type	EFTSL	Total Costs		% Cost for Small Provider vs Large University		Total Proposed Impact per EFTSL
		Current	Proposed	Current	Proposed	
Small Independent Provider	100	$28,000	$136,133	37%	93%	$1363
Medium Independent Provider	1000	$28,000	$141,940	37%	98%	$142
Large University (Monash)	70,000	$75,000	$145,210	N/A	N/A	$2

Many of Australia's small higher education businesses and professional associations with business models finely tuned to student demand and competitive pricing to attract students will face significant hardship if the proposed cost recovery model is applied. More than half of the small institutions reporting in IHEA's member survey indicated that the proposed cost recovery model would cause a reconsideration of their TEQSA registration. Implementation of the proposed approach to cost recovery will result in a loss of diversity in Australian higher education.

Student Disadvantage - Rising Fees and Student Debt

The proposed approach will increase tuition fees and student HELP debts.

In both the public and independent sectors, higher education provider operations are funded on the basis of student enrolments. In the public sector operations are funded through a mix of public funding and subsidised student contributions, while in the independent sector students pay full tuition fees.

Large public institutions with substantial operational budgets underpinned by public funding and serviced by a range of commercial revenue sources will have greater capacity to absorb increased operational expenditure. Even in this environment, rising operational costs will, over time, drive pressure to increase public students' contribution levels. For Australia's independent sector, the pressures are more immediate. Australia's small, medium, and not-for-profit higher education businesses largely operate with a single revenue source – tuition fees. These businesses have no option but to pass increased operational costs on to students.

Table 2a illustrates the capacity of institutions to absorb regulatory costs. The large public university needs to manage a cost of $2 per student across 70,000 enrolments while the small provider is faced with costs of $1,363 per student across 100 enrolments.

The flow-on to tuition fees to cover rising regulatory costs will result in increased HELP loans and in effect see the cost of regulating quality for students paid for by student debt. In fiscal terms, the costs of regulating higher education will shift to an asset on the Commonwealth balance sheet through the 'debt book'. It is IHEA's view that increasing student debt as a mechanism to pay for quality regulation of the higher education system is out of step with community expectations and not in the public interest.

Complex and inefficient charging model

The proposed approach to cost recovery is complex, inefficient and needs simplification.

The proposed approach applies a range of charging measures that negatively impact the efficiency of implementation and the transparency of the overall cost regime.

It is proposed to implement five methods of cost recovery across the work of the Agency:

- A flat fee application cost
- An hourly rate cost
- A provider size scaled fee
- A per EFTSL rate cost
- A cost shared across the total number of providers

IHEA acknowledges the efforts of the Agency to allocate costs on defined regulatory activities within the government costing framework. The outcome however is a complex calculation of regulatory costs, that lacks a detailed and rigorous underpinning by time and motions study, and that results in the smallest component of the total sector, with the least capacity to pay, being subject to the bulk of the cost recovery imposts.

IHEA proposes that total cost recovery being allocated according to institutions' student enrolments (EFTSL) would provide a transparent and simple approach to cost recovery for regulation of quality in Australian higher education.

Service obligation charter is essential

The proposed approach fails to include agency obligations to the sector.

A massive increase in cost recovery from the regulated sector (10% recovery to 90% recovery) is proposed without a service obligation charter confirming the rigor, efficiency transparency, and fairness of the recovery regime.

Sector dissatisfaction with TEQSA performance is not uncommon. IHEA presentations to the Agency have included results of provider surveys that report performance concerns including: a lack of timeliness; unclear advice; repetitive requests for already submitted information; a lack of feedback on adequacy of submitted information; unreasonable use of 'voluntary undertakings' and responses to them; inadequate (one-way) communication; regularly changing, ill-informed and/or inaccessible case managers; expert-shopping and/or reliance on experts without independent sector knowledge; public sector bias; contested risk assessments; a high level of reviewable AAT decisions; and failure of the one-size-fits-all regulatory approach.

This list reflects a range of concerns raised over time and should not be considered as a list of active issues. IHEA acknowledges efforts to address performance concerns when they are raised with the Agency and the accessibility and attention to direct concerns that IHEA receives when we progress issues on behalf of our members. IHEA's MoU with TEQSA recognises our representative role which we welcome and value. Notwithstanding this, it is a reasonable expectation of regulated entities as well as students and the broader Australian community that rigorous service obligations underpin the work of the agency responsible for higher education quality standards.

IHEA proposes that a service obligation charter be negotiated with the total sector through the range of peak bodies representing TEQSA regulated entities prior to implementation of cost recovery.

Regulatory Duplication and Red-Tape

There is duplicated regulatory activity across the sector's regulators.

Dual Sector (co-regulated) providers will face a massive increase in charges from at least two different sources - TEQSA and ASQA – and, for many, additional charges arising from the Department's CRICOS cost recovery for regulatory activity. These providers will be subject to a huge increase in administrative burden and cost, with the impacts being contrary to the government's stated commitment to reducing red tape and administrative burden on Australian businesses.

IHEA's recently commissioned independent study of tertiary sector regulatory maps duplication of regulatory activities by TEQSA and ASQA an identifies simple reforms to reduce burden on co-regulated entities. IHEA proposes that regulatory duplication be eliminated prior to the implementation of cost recovery across the total tertiary sector to ensure that new cost recovery regimes do not further entrench regulatory burdens and unreasonable costs.

IHEA is eager to work with the government and sector regulators on the findings and recommendations of IHEA's commissioned report to streamline and simplify regulation for co-regulated providers.

5. Consultation Questions

Brief response to questions raised in the Consultation Paper

What are your views on TEQSA's proposed approach to implementing increased cost recovery in line with the Government's policy?

This question has been addressed in detail in the body of the submission, the key points being:

- IHEA does not agree that TEQSA cost recovery fits into the Government Charging Policy
- IHEA proposes that if TEQSA cost recovery is to be implemented, it should be deferred as implementing it during a time of economic crisis recovery while providers are struggling with the impacts of the pandemic poses a risk to diversity, innovation and student choice in the sector
- IHEA seeks a redesign of TEQSA's cost recovery approach to avoid disadvantaging students, inequitable distribution of costs to providers, and a complex and inefficient charging model
- IHEA proposes that a Service Obligation Charter is essential
- IHEA will work with TEQSA, ASQA and the Department of Education, Skills and Employment to remove duplication of regulatory activities for co-regulated providers, prior to the implementation of charges being applied to these activities

Do you agree or disagree with TEQSA's proposed approach to attribute application- based costs according to relative regulatory effort?

- IHEA proposes that if cost recovery is to be implemented, costs should be apportioned on the basis of student enrolments (EFTSL) to ensure an equitable charging regime on behalf of all students

- IHEA is alarmed at the massive increase in costs that will be applied to providers under proposed application fees including:
    - Registration Renewal 92%-719% increase
    - ESOS Re-registration (non-SAA) – 470% increase
    - Accreditation renewal – 192% increase (before scaling) Increases for all providers with 500+ students
    - SAA Application – 371% increase
- IHEA requires more detail of the costings (actual and projected) underpinning the assessment of regulatory effort
- IHEA seeks detail on processes to assess in advance the level of proposed level regulatory effort for particular provider types or characteristics
- IHEA proposes that TEQSA consider instituting a cap on the total fees that can be charged to providers so that planning and budgeting can take place with some certainty of what TEQSA charges will cost an institution in a given year
- IHEA proposes that the costs of application fees be gradually implemented with scaled pricing over a seven-year timeframe to ensure equity for providers across the registration cycle

Do you have any comments on the proposed method of adjusting course accreditation fees based on a provider's student numbers?

- IHEA acknowledges the efforts to provide cost relief for smaller providers but notes that the costs of accreditation increase for all providers with more than 500 students
- IHEA is concerned about the inconsistency of providing costs relief for smaller providers in only one area of regulatory activity and questions why a similar approach was not taken to reduce registration costs
- IHEA proposes that the costs of application fees be gradually implemented with scaled pricing over a seven-year timeframe to ensure equity for providers across the accreditation cycle

Do you agree or disagree that the cost of compliance and investigatory activities should be borne by those providers being investigated?

- IHEA is concerned to ensure that TEQSA does not become a complaints' handling organisation
- IHEA proposes a clear and transparent policy be developed on the complaints handling function of the Agency following sector consultation
- IHEA proposes investigations be mediated or managed informally through Case Managers before providers incur more costs
- IHEA is concerned that investigation charges must be itemised so that providers have clarity and there is transparency around the charging model
- IHEA seeks clarity and transparency around the $150 per hour rate and what it covers to ensure it is justified
- IHEA believed that TEQSA should show confidence in provider's meeting the higher education standards and so ensure that frivolous complaints and those that are unlikely to be substantiated are not investigated creating unnecessary costs
- IHEA is concerned about the impact of the single provider charges on relationships between regulator staff, case managers and providers and open communication
- IHEA proposes that a method of appealing charges also be implemented so that providers have the right and opportunity to challenge costs they see as unfairly or unnecessarily being applied to them

Do you have any comments on the structure of the proposed new annual levy?

- IHEA opposes the method of charging the annual levy where the costs are equally apportioned across all providers regardless of their size and capacity to pay and its unfair application to smaller providers
- IHEA supports a levy charged on a per EFTSL basis for all institutions
- IHEA is concerned that the $30,000 annual charge will be the tipping point for many small and niche providers and encourage the proliferation of non-award professional courses

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