
Home and Away: cross-currents of regulatory policy in Australia and the UK

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DAVID Palfreyman, in the preceding issue of *Oxford Magazine* (No 430, 8th Week, HT 2021), invited us to consider the historical observation that, “over recent decades, Australia has often led the way in HE reforms, to be followed a little later by very similar policy changes in the UK”. It’s a view I’ve had plenty of opportunities to consider (not least on the long flights to and from downunder) as I moved from the UK HE sector to the Australian in 2015 and then back again in 2020. The perspective is concentrated on regulatory policy in higher education and is inevitably shaped by my particular roles: as Chief Executive of QAA here, then CEO of the Tertiary Education Quality and Standards Agency (TEQSA, Australia’s national HE regulator) in Melbourne, and now in London as Vice-Chancellor of an old institution, but young university, at St Mary’s, Twickenham, and regulated rather than regulating.

When established by the Australian federal parliament in 2011, TEQSA certainly set the model for a new approach to HE regulation, or “external quality assurance”. The approach—risk-based, data-driven, and with a firm legislative basis—was certainly influential, not least because TEQSA was the first national regulator to put the approach into practice. Some parts of the higher education world—most notably the US—looked and didn’t like what they saw: an attack, they thought, on university autonomy and the more genteel traditions of academic audit, quality assurance and the institutional visits by teams of academic experts that had characterised the approach of TEQSA’s predecessor, the Australian Universities Quality Agency (AUQA).

In Australia’s version of what Sir David Watson memorably described as the ‘Quality Wars’ (“*Who killed what in the quality wars?*”, QAA Briefing Paper, Dec 2006), AUQA spoke the language of quality assurance and enhancement; TEQSA was unambiguously regulatory in both tone and intent. Other jurisdictions, seeking the sensitivity to institutional diversity, reduction in regulatory burden, greater accountability and cost-effective regulation of rapidly expanding HE sectors promised by the advocates of a risk-based approach, eagerly sought to incorporate features of the Australian model in their own systems. In an illustration of David Palfreyman’s observation, the adoption of risk-based frameworks was a feature of the process of reform of HE regulation in England that ultimately resulted in the establishment of the Office for Students in 2017/18.

The creation of a national regulator in the form of TEQSA was a key element of the Australian government’s 10-year reform agenda, *Transforming Australia’s Higher Education System* (2009); indeed, if you accept the view of the Howard Partners’ report, *Rethinking Australian Higher Education* (2021) to which David Palfreyman directs our attention, it is the only objective from that list to have been achieved over the decade (other views are available). Even in Australia, though, TEQSA’s robust

approach to its regulatory duties attracted critics, and those voices grew in number and volume in a remarkably short period of time. Established by statute in 2011 and operational in 2012, the infant TEQSA found itself under critical national review at the government’s request in 2013. The resulting report (*Review of Higher Education Regulation*) by the eminent experts Professors Kwong Lee Dow and Valerie Braithwaite led, simply put, to a very significant clipping of TEQSA’s wings, not to mention a steep reduction in both its financial and staff resourcing. Dow and Braithwaite called for a sharp scaling back of the reporting burden which risk assessment placed on providers (TEQSA’s original framework had over 40 risk indicators—the current version has 12) and, in particular, for TEQSA to cease engaging in sector-wide or ‘thematic’ assessments of issues such as the quality of providers’ third party arrangements or their English language requirements. There was criticism of what Dow and Braithwaite described as a ‘one size fits all’ approach to risk assessment which, it was argued, meant that the key purpose of a risk-based approach (to focus attention, resource and regulatory action on the areas of high risk) was being subverted, with consequent burdens for universities that in reality offered very little risk at all. In an illustration of the fact that Australian-UK influence on these matters flows in both directions, the report noted approvingly the contrasted approach taken by the QAA and HEFCE:

“The United Kingdom’s Quality Assurance Agency (QAA) and its supervisory regulator—the Higher Education Funding Council for England (HEFCE)—have adopted a risk-based approach to regulation. However, the QAA/HEFCE’s approach to identifying risk is pragmatically far less scoped and detailed than TEQSA; with institutional track record providing the test for risk—rather than probabilities or formalized risk indicators.”

Dow and Braithwaite were highly critical of a regulatory approach which seemed to treat higher education institutions as simply ‘objects’ of regulation, in which, “the regulator makes a demand and the regulatee complies with the demand”. Instead, the report argued, TEQSA should regulate as a partner, recognising “the expertise, knowledge and commitment of the party [the HE providers] being regulated”.

The government accepted all the report’s recommendations. Of particular significance was the instruction to TEQSA to cease engaging in sector-wide quality reviews, which, under the bland title of *Ministerial Direction No. 2 of 2013*, required that TEQSA should, “only [work] on sectoral quality assessment activities if TEQSA has surplus resources after fully achieving [its regulatory] tasks and priorities”.

Fast forward to 2021—why might any of this regulatory history be of interest now? Well, even by the time I arrived at TEQSA in 2015, it was very clear that the ‘sector-wide’ issues were not going away for HE regulation in

Australia or indeed anywhere else. In fact, it is precisely the thematic, cross-cutting issues that engage the interest of the media, politicians and the public in a way that the routine quality reviews aimed at confirming, yet again, that well-resourced, successful, over-subscribed universities are 'high quality' often fail to do. But when, for example, a major TV documentary suggests that international students are being admitted without adequate English language, or campaigners argue that there is a crisis of sexual assaults and harassment on campuses, or that the easy availability of paid-for ('contract') cheating services is a major problem, or that 'cancel culture' is eroding academic freedom, then governments (and, sometimes but not invariably, voters and taxpayers behind them) understandably want some answers and assurance – and there is an expectation that the regulator will have a view (and take any necessary action), particularly when, as in TEQSA's case, that regulator has a statutory responsibility to "protect and enhance Australia's reputation for quality higher education".

And so, issue by issue, it became necessary for TEQSA to reengage with "sectoral quality assessment activities" and to be resourced to do so. Indeed, the reengagement often came through a direct ministerial request. Concerns about a lack of clarity in HE admissions requirements, with consequent disadvantage particularly to those applicants already disadvantaged in other ways, led to a review and then an Admissions Transparency Implementation Plan in 2017. A report by the Australian Human Rights Commission (AHRC) on the extent of incidents of sexual assault and harassment on campuses across the country (*Change the Course*, 2017) prompted a government request to TEQSA to survey how the HE sector was responding to the report's recommendations, with a report back to the Minister in 2019, together with a request to publish guidance on good practice for the sector. Media coverage of problems encountered by overseas students whose English language ability was, allegedly, insufficient to cope with the courses to which they had been admitted led to TEQSA reviewing the position on the ground through a survey of all providers, followed by compliance assessments of ten universities. Growing evidence of the widespread nature and criminal links of so-called contract cheating sites and services culminated in the government passing legislation to make such sites illegal and establishing a Higher Education Integrity Unit at TEQSA (about which, more below) to provide resources for, and to work with, HE providers in tackling the problem.

In some cases, particular issues led to the involvement of agencies or individuals other than the national regulator; academic freedom and cybersecurity are good examples. Sir Michael Barber's Commemoration Lecture delivered at King's College, London earlier this year (and extracted in the preceding issue of *Oxford Magazine*) addressed perceived problems of freedom of speech and academic freedom in higher education. In Australia, the issue, and its manifestation in a (relatively small) number of campus incidents, have been the subject of extensive media coverage. In response the government, in 2019, called on the Hon. Robert French, retired Chief Justice of Australia and Chancellor of the University of Western Australia, to review the matter. The result was a Model Code on Freedom of Speech, offered to, but not imposed upon, Australian universities.

Cybersecurity came into sharp focus as a result of a massive security breach at the Australian National University

(home of the National Security College) in 2018 which allowed hackers to access 19 years' worth of personal information for staff and students. The government's response focused on the establishment of a University Foreign Interference Taskforce.

But these issues were exceptions, deemed to require specialist expertise (respectively from the legal world and the national security agencies), and were in any case linked back to TEQSA's regulatory work through clarifying specific expectations found in more general form in the Higher Education Standards Framework, the basis for TEQSA's regulatory work. Given the wider range of recent sector-wide developments and the wish to involve the regulator in them, usually directly, in response to public concern, it's perhaps not surprising that an independent review of the impact of the TEQSA Act (the legislation that had established the agency in 2011), concluded in its subsequent report to government that *Ministerial Direction No.2* of 2013 should be repealed, clearing the way for sector-wide and thematic assessments to reassume their place in the regulatory tool-box.

That the regulator is now fully involved once again in 'sectoral quality assessment' is clear both in TEQSA's inaugural 'compliance report', published in March this year, and in the establishment of a national Higher Education Integrity Unit, based at TEQSA. The compliance report flags the agency's "compliance priorities" for the coming year and they include the sector-wide issues of *Safeguarding people* (including dealing with sexual assault and harassment), *Protecting sector integrity* (tackling academic fraud, unregistered providers and contract cheating), *Maintaining information security* (including "inadequate system protection" and intellectual property) and, with particular relevance after a year in which the impact of the pandemic on HE business models has been profoundly disruptive, *Monitoring financial standing*.

The Higher Education Integrity Unit will, according to TEQSA, "enhance our capacity to work with the higher education sector and government agencies to identify and respond to emerging integrity risks within the sector".

Do any of these issues resonate in the UK in 2021? In England, at least, they do. As in Australia, it is precisely the sector-wide issues that command political and public attention. QAA is campaigning for legislation to outlaw contract cheating; the Secretary of State proposes to legislate for a Free Speech and Academic Freedom Champion and to require the OfS to introduce a new registration condition on free speech and academic freedom; the government is consulting on a post-qualifications admissions system, intended to 'level-up' HE admissions which "lack transparency"; and, in the wake of the growing evidence highlighted on the *Everyone's Invited* website of widespread sexual assault and harassment in educational settings, including universities, the sector awaits the revised 'statement of expectations' for providers on the responses to and management of cases of sexual assault and harassment.

Michael Barber, in the speech referred to above, said that he doesn't "believe the widely held view that what happens now in America is necessarily a sign of things to come here". By directing our attention to Australia, David Palfreyman may well be nearer the mark.

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