



INDEPENDENT
HIGHER EDUCATION
AUSTRALIA

IHEA'S SUBMISSION:

COMMONWEALTH INTEGRITY COMMISSION EXPOSURE LEGISLATION

ATTORNEY-GENERAL'S DEPARTMENT

19 February 2021



Submission to: The Attorney-General's Department

Response to: *Commonwealth Integrity Commission Exposure Legislation*

Independent Higher Education Australia

IHEA is a peak body for Australia's registered and accredited independent higher education providers with campuses across Australia.

The majority of Australian independent providers are members and educate students in a range of disciplines including Law, Agricultural Science, Architecture, Business, Accounting, Tourism and Hospitality, Education, Health Sciences, Theology, Creative Arts, Information Technology and Social Science. IHEA members are higher education institutions with both for-profit and not-for-profit models and educate domestic and international students in undergraduate and postgraduate programs.

The Australian independent higher education sector comprises more than 140,000 students and 120 institutions, with independent providers variously accredited to offer courses across the full AQF range.

Membership of IHEA is only open to providers that are registered with the Australian regulator – Tertiary Education Quality and Standards Agency (TEQSA). Membership is also conditional on continued compliance with IHEA's Code of Good Practice.

IHEA's primary goal is promoting equity, choice and diversity for all Australian higher education students.

Executive Summary:

IHEA members thank the Attorney-General's Department for its consultation on this exposure legislation and for the opportunity to provide a submission. IHEA supports the principle behind the exposure legislation, that public investment and funds be protected from corruption and malfeasance. However, there are too many uncertainties and a lack of clarity around some central issues that need to be addressed before IHEA could support the legislation. The key issues IHEA sees with the current exposure legislation are:

1. The justification for including higher education providers that are not publicly funded entities remains unclear.
2. Including independent higher education providers creates unnecessary overlap and duplication in jurisdiction of anti-corruption and integrity regimes at the state and federal levels.
3. A range of provider types and the business models they use to operate have not been adequately considered and so the precise nature of who and what entity, or part thereof, that will be responsible to the CIC in these different business models is unclear.
4. Ensuring compliance with the requirements of the CIC and that proper governance is undertaken in relation to this will create an onerous and unnecessary burden on independent higher education providers.

A change in the definition of a "Higher Education Provider" in the exposure legislation from the TEQSA Act's definition of a provider with those institutions in the Table A category of the Higher Education Support Act, would resolve these challenges.

Further consultation will be required on further versions of the legislation to ensure that these issues are addressed and to ensure there are not adverse unintended consequences of the legislation for the higher education sector.

IHEA's comments on the exposure legislation:

1. Principle of Protection of Public Money

IHEA members are very supportive of the principle of ensuring adequate protections for public money, including measures to ensure corrupt activities do not occur with the use of those funds.

The government invests a great deal of funding into the Higher Education system and it is necessary to ensure that tax-payers and students who are enrolled at higher education providers are protected through assurance that their institution is not engaged in malfeasance.

Where higher education providers are publicly funded, it is right that public money is covered by an anti-corruption regime to ensure legal and appropriate use of the funding that is received. Independent institutions already fall under the jurisdiction of state-based anti-corruption and integrity bodies and so this additional entity also having jurisdiction will create unnecessary duplication in consumer and tax-payer protection and also generate onerous reporting burdens.

It is unclear to IHEA members that higher education providers that do not receive government funding should be included in the jurisdiction of a body designed to "investigate corruption within the Commonwealth public sector and in the higher education and research sectors".¹ Although independent higher education providers are an important element of Australia's higher education system, including private business entities in an anti-corruption regime that is designed, it seems, with the public sector in mind, and indeed fits these higher education providers into an arm of the Commission that is labelled the "Public Sector Integrity Division", is not sufficiently justified in the exposure legislation or its accompanying Fact Sheet.

2. Avoiding Duplication of Jurisdiction

IHEA members are concerned that the Commonwealth Integrity Commission (CIC), as proposed in the exposure legislation, will duplicate the jurisdictions covering many independent higher education providers. Where institutions and their activities fall under the jurisdiction of a state-based anti-corruption or integrity body, this should provide sufficient protection of public funds and so adding the coverage of the Commonwealth Integrity Commission will lead to confusion over the appropriate body's oversight of different activities.

Having duplication in the jurisdiction of anti-corruption and integrity regimes may also lead to undermining of the confidence in the effectiveness of the integrity regimes and in the probity of the sector overall. The aim of constituting a CIC should be to "strengthen public faith in the integrity system as a whole."² Creating confusion over which integrity regime an institution is responsible to does not advance this aim.

After consultation with the Attorney-General's Department, it remains unclear that there is a gap in the current anti-corruption and integrity regimes that the CIC would fill in terms of protection of the public from corruption and corrupt activities undertaken by staff of an independent higher education provider. Without clarity on this point, IHEA cannot support the exposure legislation.

3. Types of Provider

IHEA members are concerned that the CIC, as outlined in the exposure legislation, does not adequately account for the different independent provider types that exist in the Australian higher education sector.

By using the TEQSA Act to define what constitutes a Higher Education Provider all registered providers are included in the jurisdiction of the CIC. It is unclear to IHEA and its members why non-publicly funded entities are included in this exposure legislation.

Some higher education providers are part of bigger entities or owned by a separate company. There are also higher education providers that are part of industry associations, community organisations

¹ Australian Government Attorney-General's Department, Commonwealth Integrity Commission Fact Sheet, November 2020, p. 1

² Griffith University and Transparency International Australia, *A Federal Anti-Corruption Agency for Australia?* Discussion Paper #1, March 2017, p. 33.

or entities with other operations. It is unclear which personnel and operations of these entities will be drawn into the jurisdiction of the CIC and what requirements will be placed on them in terms of reporting obligations.

Section 10 of the exposure legislation uses the TEQSA Act to define a “Higher Education Provider” and the “heads of those providers”. A more precise definition would be required for some providers, including the examples listed above, such as entities that are a subsidiary of a larger company or that are also an industry association or community organisation, to clarify who the responsible person in relation to this legislation actually is. There is a need to clarify the intent of the legislation so that the system can be designed to best achieve its objectives and ensure that only appropriate entities are included in its definitions.

IHEA suggests that it would be more effective to achieve the aims of the legislation through use of the Higher Education Support Act (HESA), which designates and defines different types of Higher Education Provider. In particular, Section 16-15 lists the Table A higher education providers. “Providers listed in Table A of the *Higher Education Support Act 2003* (HESA) are approved for all Australian Government grants under HESA and their students can receive all forms of assistance.”³ Other types of providers are ineligible to receive extensive public funding and government grants.

The inclusion of Table A providers in the jurisdiction of the Commonwealth Anti-corrupt Commission makes sense in the context of including “Public Sector” higher education in the proposed CIC. It would also eliminate the difficulties raised above relating to accounting for different provider types, including institutions that are part of broader entities, industry bodies and community organisations.

Therefore, IHEA recommends replacing the current definition of “Higher Education Provider” in the legislation with the Table A Providers listed in the HESA to determine the providers that would more appropriately be captured by this legislation. Using this definition in the legislation provides a more useful distinction between the entities that were intended to be captured by this legislation and others that should not be.

Independent higher education providers and their operations are governed by several other agencies that protect the consumer against corruption and misuse of funds, such as ASIC and other state-based anti-corruption and integrity bodies. This should provide sufficient assurance to the public about the legality and probity of their operations.

4. Regulatory Burden and Red Tape

IHEA acknowledges that the Attorney-General’s Department is not intending to create an additional reporting burden for higher education providers. However, Australia’s high quality higher education institutions report to their Boards and other stakeholders on their compliance with the regulator’s and other legislative requirements. If included in the jurisdiction of the CIC, providers will need to report against compliance with the requirements of this Act also. This will create an additional burden of administration and red tape.

There are also many very small Higher Education Providers in the Australian system with lean staffing models. If these providers are included in the Bill, there will be onerous administrative burden added to their operations in order to ensure good governance in response to this legislation. Policies and procedures will have to be developed to ensure compliance with the requirements of the CIC and that those requirements are understood by all staff at the organisation. This will require resources to be expended on education and training for staff as well as on the regular reporting requirements.

5. Further Consultation

A change in the definition of a “Higher Education Provider” in the exposure legislation from the TEQSA Act’s definition of a higher education provider with those institutions listed in the Table A category of the Higher Education Support Act (Section 16-15), would resolve many of the challenges outlined above.

Further consultation will be required on further versions of the legislation to ensure that these issues are addressed and to ensure there are not adverse unintended consequences of the legislation for the higher education sector.

³ <https://heimshelp.dese.gov.au/resources/providertype>

IHEA thanks the Attorney-General's Department for the opportunity to provide this submission.

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