Dear Chris

RE: RESPONSE TO 2013 COST RECOVERY IMPACT STATEMENT – EXPOSURE DRAFT

I refer to the “ASQA 2013 COST RECOVERY IMPACT STATEMENT – EXPOSURE DRAFT”, and respond on behalf of TAFE Directors Australia.

TAFE Directors Australia (‘TDA’) is the peak body incorporated to represent the 61 TAFE Institutes in Australia, including the five dual sector universities with TAFE divisions.

SUMMARY

This submission to the ASQA 2013 Cost Recovery proposal questions the criteria adopted within the Impact Statement for fees, primarily based on size and activity.

TDA argues that the original intent of Parliament expressed in Hansard was for ASQA to operate on the basis of improving quality within a proportionality of risk framework. This was a key Object of legislation. The construct of proportionality of risk was a dominant theme in Ministerial consultations, and accordingly this principle should equally apply to cost recovery.

On this basis, ‘TDA’ recognises the referral decision under COAG with support from the Ministerial Council SCOTESE, for cost recovery. Further, these charges were to apply on a phase in basis from July 1, 2012.

BACKGROUND

It is clear that the past practice by many states and territories allowed extraordinary numbers of private and enterprise training organisations to be Registered Training Organisations (RTOs). Indeed, the latest count was some 5,001 RTOs currently operating in Australia (2011-12). And only in 2013 has the work of the National Skills Standards Council (NSSC) proceeded, with the current NSSC Position Paper nominating options for SCOTESE Ministers to upgrade VET regulation –ultimately a ‘next step’ for implementation by ASQA.

ASQA nominated this as a central issue in its submission to the National Review on VET Regulation by NSSC, referring to inadequacies of regulatory standards for the vocational education (VET) sector. In this context, regulatory reform was advocated and supporting strategies were proposed, as ASQA identified nearly 20% of RTO activity as requiring changed behaviour. Further, extensive action has followed with detailed audits of what appeared to be rogue RTOs or those delivering poor quality, with success in de-
registration actions before the Administrative Appeals Tribunal. However, TDA maintains that the original intent of proportionality of risk needs to be sustained under the referral of states and territories’ powers to the Commonwealth, rather than creating new criteria on ‘size and activity’ as the primary basis of ASQA cost recovery.

TDA affirms, however, that the Parliamentary Hansard debates, along with Ministerial announcements are relevant to ASQA’s Cost Recovery Impact Statement. This is on the basis that as the establishment of ASQA was historically an unusual Commonwealth states and territories referral. Indeed, Minister Evans boasted that the ASQA decision was “one of only a handful of times since Federation that successful referral of powers to the Commonwealth has been achieved.” The context of the ASQA mission to focus on proportionality in quality – in other words, cracking down on high risk providers – remains a most relevant issue when considering a framework for Cost Recovery in 2013 for ASQA.

TERMS OF REJECTION OF CRITERION PROPOSED FOR COST RECOVERY

This submission from TDA identifies several issues missing from the context of the full cost recovery proposed under the ASQA fees, due to apply from 1st July 2013.

Specifically:

- **PROPORTIONALITY** – MPs and Senators with joint parties support in Parliament voted in favour of the referral of powers. That the Bill was designed to “clean up” the wide ranging fraudulent activity was frequently specified in ‘Hansard’ This followed extensive media exposure of rorts by private colleges across the vocational education and training sector. The context of proportionality of risk was discussed extensively during consultations with providers and promoted in statements to Education Media. It was clearly stated that ASQA would apply a ‘proportionality’ construct to risk management within operational arrangements and audit activity. Minister Evans acknowledged that this would be equally applied as in the prior context of TEQSA legislation whereby under negotiations between Government, Vice Chancellors and other registered Higher Education Providers, proportionality was a clear component of legislation.

The new proposed ASQA Cost Recovery 2013 fails to accord with this proportionality of risk construct and as such is outside of the operational pledge by Commonwealth authorities.

The ASQA proposed Cost Recovery would substantially impact TAFE Institutes.

- For instance, large and ongoing domestic audits would not only significantly create interruptions to business operations – an issue TDA on balance has supported in the interest of fairness across the VET sector to enforce quality -- but the cost is disproportionate to potentially smaller private ‘for profit’ colleges with wildly different quality regimes, that are subject to lower cost for audit and/or registrations.

- Further, offshore audit costs could massively impact on TAFE Institutes, which have developed a large group of collaborative relationships largely at the invitation of regional governments and their public providers. For instance, TAFE Institutes have widely supported China polytechnics, and recently requested to mentor Indonesia polytechnics.

- **LEGISLATIVE INTENT** -- The General Outline to the ‘Objects’ of the referral legislation specifically called for robust regulatory framework to apply, “...to improve quality of the VET sector and lead to better training outcomes.”
Under Part 3, Item 12, of the legislation, responsibility was delegated to the Minister for making the legislative instrument to determine the formula for calculating the fees payable. It would appear extraordinary that in this context, the variation to the criteria – moving away from the ASQA policy of proportionality of risk to cost recovery by size or activity – was not signalled publicly by the Commonwealth under Administrative Law fairness rules.

- FINANCE GUIDELINES -- The Impact Statement refers to the Guidelines issued by the Department of Finance. However, the Department of Finances Guidelines indicate that under “design and implementation” of Cost Recovery, two important additional guidelines must be met, IE

- ensuring all aspects of the charging mechanism are consistent with the policy objectives of the agency; and
- designing a charging mechanism that is not inconsistent with other Australian Government policies

In neither case has Commonwealth policy stated under ASQA that ‘size only’ matters. The new proposed 2013 criteria make a significant leap unsupported by the policy context outlined in the original referral arrangements.

Further, the Department of Finance Guidelines refer to “rivalness”, inter alia:

In assessing rivalness, the key question is whether more users of the product will increase the cost of provision.

In this case, for ASQA to move away from proportionality in risk, a key intent of legislation and operational mission of ASQA, to ‘only size matters’ disadvantages TAFE Institutes under the fairness rule of “rivalness”. Accordingly, the ASQA criteria on Cost Recovery does not meet the criteria of the guidelines that it refers to for support.

(Ref: ATTACHMENT A – GUIDELINES FROM DEPARTMENT OF FINANCE)

SUBMISSION BY VICTORIAN TAFE ASSOCIATION (VTA)

Our affiliate organisation, The Victorian TAFE Association, has additionally detailed issues arising under the changed criteria, in particular Cost Recovery 2013 plans would move the agency away from risk and proportionality criteria.

TDA wishes to support the VTA submission, and seeks to incorporate support for their issues under cover of this submission from TDA.

RECOMMENDATIONS

TDA recommends
- That ASQA review their proposed cost recovery schedule to ensure that proportionality of risk becomes a major criterion in determination of fees.
• That ASQA enter into discussions with TDA on behalf of all TAFE institutes (minimal or no risk providers) on matters of delegations in relation to scope of registration changes and course accreditation arrangements to enable proportionality of risk criteria to be better reflected in cost recovery schedules.

• That ASQA review the cost recovery schedule so that it better reflects the requirements of Department of finance guidelines, particularly in relation to rivalrous activities.

I look forward to your consideration, and welcome further discussions on the Cost Recovery.

Yours sincerely,

MARTIN RIORDAN
Chief Executive Officer
TAFE Directors Australia
EXTRACTS FROM COMMONWEALTH DEPARTMENT OF FINANCE

COST RECOVERY GUIDELINES

Stage 2: Design and Implementation Charges can be collected in a variety of ways and based on different measures of costs. Agencies should choose the appropriate approach for a particular product/service by:

- linking the charge or charges as closely as possible to the activity or product to be cost recovered;
- designing a system that is cost effective to calculate, collect and enforce;
- designing a system where the compliance costs of paying the charges are not excessive;
- balancing certainty with the flexibility to modify the approach to cost recovery if ongoing monitoring (Stage 4) indicates that this is desirable;
- ensuring all aspects of the charging mechanism are consistent with the policy objectives of the agency; and
- designing a charging mechanism that is not inconsistent with other Australian Government policies.

(Ref Department of Finance Cost Recovery Guidelines (p40)

Figure 5, Question 1

Are there public good characteristics? The assessment of whether a group of products has public good characteristics is not clear-cut. Agencies need to judge whether, on balance, the public good characteristics are significant enough to make it undesirable to charge for those products.

Judgments about public goods typically consider two characteristics of the product: its level of rivalness and its level of excludability.

Is the product rivalrous? A product is non-rivalrous when one person using the product has no impact on others’ ability to use that product. The number of users can be increased at virtually zero cost. Most general information fits into this category.

Agencies produce a range of products, some of which will be rivalrous and others non-rivalrous. Once information is collected and compiled, many people can use it without affecting the costs of collection or compilation. Such information, distributed via the media, is non-rivalrous. Many people can listen to the radio without affecting others’ ability to use the information. The rivalness of information distributed by other methods, such as the Internet, will depend on the level of capacity in the system and the level of demand (Appendix B). A publication, however, may be rivalrous, because several people cannot use the same publication
In assessing rivalness, the key question is whether more users of the product will increase the cost of provision.

Yes: If the product is rivalrous, then it is not a public good and the assessment should consider spillover benefits.

Go to Question 3.

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