Batten down for TEQSA

13 Dec 10 by Annette Blackwell

Second lock-up under way to tease out complex issues raised by universities

DEEWR is holding a second lock-up on the proposed TEQSA legislation today, Monday, December 13.

The stakeholders, including representatives from universities, the NTEU and student representatives, are meeting government officials and Interim TEQSA officials in Canberra to tease out issues raised at the first consultation on November 9.

In last week’s Campus Review we reported that the Group of Eight (Go8) had raised doubts about the legality of the government’s use of corporations law to give TEQSA the power to register and deregister universities (see: http://www.campusreview.com.au/pages/section/article.php?s=News&amp;idArticle=19510).

A spokesman for Minister for Tertiary Education Chris Evans confirmed TEQSA was being established by commonwealth legislation using a range of constitutional powers, including the corporations power.

“The Government is confident that there are no constitutional barriers to the establishment of TEQSA, the legislation for which is on track to be introduced in the autumn sittings of Parliament next year,” he said.

Speaking in advance of today’s meeting interim, chairwoman Denise Bradley said those involved were now in a “process of discussion and debate about the fine detail of the legislation before it goes into the parliament”.

On the Go8 concerns, she said the universities were involved through Universities Australia (UA). “I think that the discussions between UA and government have been fruitful. The issues raised by UA representatives at the earlier meeting have been addressed as far as I can see.”

She added that UA chairman Peter Coaldrake had done a “magnificent job” in involving a wide range of expertise in the sector, including several senior staff from the universities in the Go8.

She described the draft policy backgrounder from the Go8 as “unhelpful”. Go8 executive director Mike Gallagher said he would await the results of today’s meeting before commenting.

The spokesman for Evans said “the government has valued the substantial input that representatives of universities have provided to date in the development of the legislation:.

Much of that feedback has been directed at ensuring that the government’s objective that TEQSA’s regulatory approach should be both risk-based and proportionate and that this is brought to life in its establishing legislation, he said.

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“Some of the feedback has been quite detailed and has gone to matters that were not anticipated early on. The consultation process has been an opportunity to work through those issues with a view to getting the details right.”

Last week we reported that the Go8 was lobbying hard politically to stop the legislation until there was full public disclosure and discussion on the scope of powers that will be bundled into TEQSA when it becomes a legal entity.
In the draft there are queries around the constitutionality of the government’s relying on corporations power to override the power of the states and the whole paper runs arguments against the changes TEQSA would have on the legal and regulatory environment for universities.

The authors of the draft document say there were some strictly legal problems with what has been proposed.

“There is some doubt that the corporations power enables the Commonwealth to register and deregister universities, as this would have the effect of invalidating state acts establishing universities. This may be unconstitutional”, it is argued in the draft paper.

Gallagher told Campus Review the draft document had input from all eight universities’ legal departments.