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Dear Mr McClaran

**RE: Institute of Public Affairs submission to the Tertiary Education Quality Standards Agency's proposed Guidance Note - Diversity and Equity.**

The proposed draft Guidance Note represents a significant threat to freedom of speech and free academic inquiry in Australia's universities. The *Guidance Note* should be withdrawn.

The concerns with the *Guidance Note* are as follows:

1. The prioritisation of 'inclusive language' and teaching 'diversity' above free intellectual inquiry

On Page 3 of the *Guidance Note*, under Intent of the Standards, it is stated:

The Standards necessitate that providers have: an understanding of the concepts of diversity and equity, and have considered the implications for their operations, including the creation of a culture that welcomes diversity (on campus or online) and the use of inclusive language<sup>1</sup>

An understanding of diversity is a laudable goal. However, the implications of this are extremely problematic. By defining diversity as exclusively relating to identity groups (Page 1), and requiring "inclusive language", TEQSA is encouraging the creation of a censorious culture on campus. The existing examples of university "inclusive language" policies range from the overly politically correct, to the anti-intellectual prioritisation of feelings above intellectual debate. For example: the University of New South Wales' Diversity Toolkit, which epitomises the toxic mix of political correctness and the prioritisation of not causing offence above intellectual pursuits and historic reality.<sup>2</sup> Or Federation University, which has an explicit rule against hurting 'feelings'.<sup>3</sup> The best-intentioned concept of "inclusive language," to accommodate identity is,

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1 TEQSA, "Guidance Note: Diversity and Equity" (Tertiary Education Quality Standards Agency, October 21, 2016), 3, [http://www.teqsa.gov.au/sites/default/files/GuidanceNote\\_DiversityandEquity1.0.pdf](http://www.teqsa.gov.au/sites/default/files/GuidanceNote_DiversityandEquity1.0.pdf).

2 Matthew Lesh, "Triggering Censorship," *IPA Review*, 2016.

3 Clarissa Bye, "University Where Sarcasm Is Banned," March 31, 2016, <http://www.dailytelegraph.com.au/news/nsw/pc-gone-mad-on-campus-the-places-where-sportsmanlike-is-a-dirty-rude/news-story/e2f06321b85b-832845245518b4e3cea1>.

in practice, damaging to free intellectual inquiry. It encourages students and academics to not explore ideas, for fear it could hurt feelings or cause offence. This should not be encouraged by the sector's regulator.

This is interlinked to the claim that universities must accommodate diversity by:

building the concept of inclusive education into learning and teaching across all courses, so that diversity is valued and opportunities are fair for all learners<sup>4</sup>

Academics should be free to pursue teaching without concern for vague concepts of inclusiveness. These types of requirements can quickly turn into requests for censorship and the shutting down of free intellectual inquiry – in the name of making students feel comfortable. Inclusiveness becomes censorship of ideas that cause discomfort. For example, Australian universities are now introducing 'trigger warnings'. Such warnings are dangerous to the intellectual climate on campus, as I have previously written:

If students continue to engage, the warning changes the understanding of the content. Trigger warnings skew perceptions by highlighting certain elements. In effect, the warnings tell students what and how to think about a piece of content, rather than allowing them to reach their own conclusions.

If students do not read the material or leave a class because of a trigger they will never be exposed to the ideas. This defeats the entire educational purpose of higher education: to expose young people to a variety of thinking, especially ones they find challenging.<sup>5</sup>

The *Guidance Note*, as it is currently written, may also encourage an unnecessary and illogical box ticking exercise, in which a concept of 'diversity' must be taught in completely irrelevant contexts. It is not apparent how considerations of diversity are relevant to, for example, a chemistry course. Academics should not be required to change the content of their courses or self-censor.

## 2. Free intellectual inquiry and diversity of viewpoints

The *Guidance Note* is radically out of step with the legislative requirements. This is particularly apparent in the disregard of the *Higher Education Standards Framework (Threshold Standards) 2015* (HES Framework) obligation that universities have "a commitment to and support for free intellectual inquiry in its academic endeavours." Any discussion of diversity must include a consideration of *diversity of viewpoints*, a key facet that is too often missing at places of higher education. As is becoming increasingly apparent, universities across the Western world are facing a crisis from a lack of diversity of political and social viewpoints.<sup>6</sup> This is detrimental to the

4 TEQSA, "Guidance Note: Diversity and Equity," 3.

5 Matthew Lesh, "WARNING: This Article Contains Ideas That Offend," *The Spectator Australia*, August 20, 2016, <http://www.spectator.co.uk/2016/08/warning-article-contains-ideas-offend/>.

6 Lee Jussim, Jon Haidt, and Chris Martin, "The Problem," *Heterodox Academy*, accessed December 11, 2016, <http://heterodoxacademy.org/problems/>.

purpose of higher education, which, to succeed, requires the constant challenging of claims from different perspectives. Debating ideas is key to intellectual growth.

Sadly, there is a growing censorious atmosphere at Australian universities, evident in formal university policies, as well as actions that have sought to prevent certain viewpoints from being expressed on campus. These issues were highlighted by the IPA's *Free Speech on Campus Audit 2016*. The Audit is the first systematic review of intellectual freedom on Australian campuses using a methodology adapted from American and British assessments of university free speech.<sup>7</sup>

Each Australian university was been assigned a red, amber, or green speech ranking, based upon their policies and past actions. Astonishingly, thirty-three (79 per cent) of Australia's universities received a red ranking for their policies or actions that unambiguously infringe free speech; eight (19 per cent) have an amber ranking due to potential threats; and just one (2 per cent) has a green ranking for no threats to free speech.

I have attached a copy of the Audit to this submission for your consideration. In order to fulfil the TEQSA's core mission, to promote higher education in Australia, it should be promoting free intellectual inquiry and expression. This goes to the very heart of what it means to be a university. As long as TEQSA ignores the HES Framework requirement of "free intellectual inquiry", the Agency is ignoring its core mandate.

### 3. The conflation of equivalent opportunities and equity of outcomes

In the opening page of the *Guidance Note*, the TEQSA states:

Standards in the HES Framework require higher education providers to focus on ensuring equivalent opportunities for academic success, i.e. ***on creating the conditions for equity of outcomes***.<sup>8</sup> (Emphasis original)

The claim that creating equal opportunity for success, a laudable goal, means "***creating the conditions for equity of outcomes***" is in clear contradiction with the plain meaning of opportunity. It is well established that equity of opportunity does not mean equity of outcomes. As defined by the Oxford English Dictionary, opportunity refers to making it "possible to do something", while outcome refers to "the way a thing turns out".<sup>9</sup> All students should have the opportunity for academic success, no matter their background. Moreover, it is equally clear that it is not the role of higher education institutions to ensure outcomes are equalised.

In fact, the opposite is true. Outcomes should be differentiated. This is because universities are, by design, competitive. While most students will complete their degrees, they will be awarded differential marks based upon the quality of their work. There is a clear distinction between those

<sup>7</sup> Matthew Lesh, "Free Speech on Campus Audit 2016" (Melbourne, Vic: Institute of Public Affairs, May 6, 2016), <http://ipa.org.au/publications/2496/free-speech-on-campus-audit-2016>.

<sup>8</sup> TEQSA, "Guidance Note: Diversity and Equity," 1.

<sup>9</sup> Oxford English Dictionary, "Opportunity," 2016, <https://en.oxforddictionaries.com/definition/opportunity>; Oxford English Dictionary, "Outcome," 2016, <https://en.oxforddictionaries.com/definition/outcome>.

who receive higher grades, and are encouraged to complete further study and perhaps a career in academia, and those with lower grades for whom further academic pursuits are not appropriate. This is fundamental to higher education, and should not be ignored in the name of ‘diversity’. It is inappropriate in the extreme for a higher education regulator to pursue any form of equalisation of outcomes.

#### 4. The redefinition of social responsibility to potentially include social justice

In Page 2 of the *Guidance Note*, which focuses on parts of the HES Framework other than the Diversity and Equity, Part A, Section 2.2, it is claimed:

Part B1, on provider categories, sets out requirements for use of the title ‘university’. Any provider seeking to use the title ‘university’ must demonstrate a commitment to social responsibility in its activities. Demonstrating such a commitment, which means a concern for the well-being of society generally, is likely to involve the valuing of diversity and equity, and may include considerations of social justice.

This is an extraordinary assertion completely outside the HES Framework and the remit of the TEQSA. The concept that universities have ‘social responsibility’ is not new. Universities serve society through their research and teaching, providing a plethora of positive externalities. However, it is ridiculous to conflate ‘social responsibility’, as is correctly stated, supporting the “well-being of society generally”, with “considerations of social justice”.<sup>10</sup>

The concept of social justice is a heavily contested social, economic and political concept that aligns to a particular ideological agenda. A United Nations Forum defines social justice as “the fair and compassionate distribution of the fruits of economic growth”, which is “not possible without strong and coherent redistributive policies”.<sup>11</sup> This concept of social justice has, rightfully, been heavily criticised, on the basis that it sets an arbitrary idea of what is socially unjust, and accordingly lacks any coherence.<sup>12</sup> It is absurd for the TEQSA to claim that in order to have the title of ‘university’ an institution may have to include concepts of social justice. It would be akin to claiming that the social responsibility of universities is to advocate for lower taxes, as this could be helpful to society.<sup>13</sup> No contested principle should be mandated a priori. Universities should be places where different ideas are debated and considered, not exist to further an ideological agenda.

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<sup>10</sup> TEQSA, “Guidance Note: Diversity and Equity,” 2.

<sup>11</sup> United Nations, “Social Justice in an Open World: The Role of the United Nations” (New York, N.Y., United States: The International Forum for Social Development, 2006), <http://www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf>.

<sup>12</sup> F. A. Hayek, *Law, Legislation and Liberty, Volume 2: The Mirage of Social Justice* (Chicago, Ill.: University of Chicago Press, 1978).

<sup>13</sup> Arthur B. Laffer, Stephen Moore, and Jonathan Williams, *Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index*, 3rd edition (Washington, D.C.: American Legislative Exchange Council, 2010).

## 5. The necessity of the *Guidance Note*

In addition, it is questionable whether the *Guidance Note* is necessary in the first place. Australia's universities already have a wide range services and support available for students from all backgrounds. For example, mental health and support services, Indigenous support units, learning resources, orientation support, information for perspective students, and student organisations that support students from a wide range of backgrounds. Universities already have strong considerations for diversity and inclusion in their activities, and there are existing governance structures typically address these issues. Universities exist within the context of Australian society that takes these issues very seriously, and are already required to address various legal requirements. It is therefore not apparent why it is necessary for TEQSA to foist upon universities an arbitrary *Guidance Note* of this nature. In practice the *Guidance Note* is chasing a problem that does not exist, and creating unnecessary and costly red tape, bureaucracy and monitoring.

## 6. Conclusion

The proposed *Guidance Note* reflects an extremist interpretation of the governing Statute, one which disregards the fundamental purpose of higher education. The *Guidance Note* should be withdrawn. It is vital that any guidance about diversity highlight the importance of *diversity of viewpoint* and free intellectual inquiry. This is not a secondary facet of higher education; it is fundamental to its very purpose.

I would more than pleased to discuss this submission and elaborate upon the points contained therein. You can reach me in the first instance via [mlesh@ipa.org.au](mailto:mlesh@ipa.org.au)

Best Regards,



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Institute of Public Affairs

**CC:**

Senator the Hon. Simon Birmingham  
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