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Secretary  
Senate Education and Employment Legislation Committee  
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Canberra ACT 2600

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23 October 2020

Dear Secretary,

Please find attached the submission of the Queensland University of Technology (QUT) to the Committee's inquiry on the *Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020*.

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I trust QUT's comments will be of assistance to the Committee in its deliberations.

Best regards,

Professor Nic Smith  
Acting Vice-Chancellor & President



**Queensland University of Technology**

**Submission to the  
Senate Education and Employment Legislation Committee  
inquiry on the  
*Higher Education Legislation Amendment  
(Provider Category Standards and Other Measures) Bill 2020***

QUT welcomes the opportunity to provide the institution's views to the Committee on the measures proposed in the *Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020*.

QUT is broadly supportive of the substance of the measures as they affect regulation of various aspects of the conduct of institutions across the higher education sector. To a significant extent the Bill's manifest purpose is to harmonise and update a range of important but relatively benign regulatory settings in light of recent advice to Government and changes to related settings.

However QUT does harbour serious concerns about the means by which the Bill proposes to effect these changes, namely by way of legislative instrument instead of through primary legislation. Should the Bill pass in this form, it will provide a future government with the means to make radical changes entirely at odds to the stated intention of the present Bill, and certainly contrary to the 'nothing to see here' tone of the Explanatory Memorandum, with its calm assurance of an orderly incremental progression of regulatory rigour. This weakness in the Bill contains the conditions of its own subversion, as it would permit a more malign deployment of this latent capacity to work against the stated intention of the present legislation, and with nothing the Senate could do about it.

One current case in point is the Government's intention to give itself room to implement by legislative instrument within the Provider Category Standards a more variegated use of the provider category 'Australian University College.'<sup>1</sup> This expanded usage would be contrary to the advice of its own review, conducted by Emeritus Professor Peter Coaldrake AO,<sup>2</sup> which considered this titling for such uses but rejected it in favour of the title 'National Institute of Higher Education.' Professor Coaldrake's recommendation had the support of the university sector, both in the course of his review and afterwards when the Higher Education Standards Panel undertook a consultation<sup>3</sup> on the implementation of the Government's response<sup>4</sup> to the Coaldrake Review. The Government's desire for latitude for novel application of

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<sup>1</sup> For where this category fits in the scheme of things see the Bills Digest No.14, 2020-21, p.6

<sup>2</sup> *Final Report – Review of the Higher Education Provider Category Standards*  
<https://docs.education.gov.au/node/53071>

<sup>3</sup> *Amending the Higher Education Standards Framework: Provider Category Standards*  
<https://docs.education.gov.au/documents/amending-higher-education-standards-framework-provider-category-standards-hesp>

<sup>4</sup> *Australian Government response for the Review of the Higher Education Provider Category Standards Review* <https://docs.education.gov.au/node/53191>

the title is clearly revealed in the line of questioning in the Higher Education Standards Panel's consultation paper. QUT's own view, which broadly reflects views across the university sector, is that novel uses of the term 'University College' (which has a long-established and quite different meaning in Australia) are not appropriate and that 'National Institute of Higher Education,' a variant of it, or another suitable alternative should be used instead.

Without going into the detail of our objection here,<sup>5</sup> we would simply make the point that the university sector has sound reasons for objecting to the use of the term 'University College' for the proposed purpose, and is of the view that this decision of Government could harm the Australian higher education sector's standing both domestically and abroad. We recognise that some non-university higher education providers hold a contrary view, and likely feel that their own reasons for supporting the change are equally sound. We also recognise that the situation of Avondale University College, the one current occupant of the category (as of 28 August 2019), needs to be given special consideration. The point is that it is surely the Senate's prerogative to consider all sides of a complex argument and exercise its legislative authority, when a significant regulatory change is on the table that has the very real potential to be materially consequential to the management and perception of the Australian tertiary sector as a whole. Yet this Bill does not afford the Senate that opportunity.

The Government's contested proposal to utilise the provider categories for new purposes ought surely to be included substantively in this primary legislation, so the Senate can consider the matter and make its own determination on the merits of the arguments. Instead, the present Bill would simply delegate that decision, and future decisions of a similar kind and import, to the Minister of the day (Schedule 1, item 14). It is QUT's view that the Senate would be better placed to make decisions itself that are of such structural significance to the sector, after due consideration in Committee and open debate in the Chamber.

The same objection applies to the use of delegated legislation to determine the standard of research quality required to meet the Threshold Standards – effectively to maintain the right to use of the protected term 'University' (Schedule 1, item 15). There is no apparent reason that a factor as significant – and long-lived – as the means by which research quality is to be determined and the standards it must meet should be delegated to the Minister of the day. Arguably specific determinations based on an institution's performance against those standards using those prescribed means could be made by Ministers, but the means and standards themselves should be determined by the Parliament.

QUT therefore appeals to the Senate not to abdicate its authority, and instead maintains oversight and legislative control of major decisions of regulatory structure and reputational significance. To do this, QUT recommends that the Government redrafts the present Bill to capture in the primary legislation its intended major changes to the provider categories and its proposed regulatory tools and standards, for the proper scrutiny of the Parliament, reserving delegated legislation for specific determinations.

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<sup>5</sup> An extract of the relevant portion of QUT's response to the Higher Education Standards Panel's question on this matter is appended to this submission, for the interest of Senators.

## Appendix

### **Extract from QUT's response of 14 April 2020 to the Higher Education Standards Panel Consultation Paper *Amending the Higher Education Standards Framework: Provider Category Standards.***

#### **Question 2: Do you foresee any implementation issues in creating the new 'University College' category?**

The use of the term 'University College' for this category, as recommended by the Australian Government Response, is not sufficiently clear, distinct or appropriate for its assigned category. The Higher Education Standards Panel should revert to the category name 'National Institute of Higher Education' proposed by Emeritus Professor Peter Coaldrake AO in his final report on the Review of the Higher Education Provider Category Standards.

The word 'University' has a clear, long-standing and widely understood meaning in Australia, and its use as a qualifier in a subordinate category that is not related to existing universities will confuse the understanding of both the 'University' and 'University College' categories, and dilute the special sense associated with the protected term 'University'.

As articulated in our response to the Review (attached), the current Provider Category Standards definitions, characteristics and entitlement to use the title 'University' should be preserved and not expanded; nor should the criteria be diluted to include institutions which do not meet the settled Australian conceptualisation of universities as places for both teaching and research (of a certain quality and a certain quantum). This includes the use of the word 'University' as a qualifier within the name of a transitional or aspirational category, *unless* the institution is operated under the auspices of an existing university.

This proviso accords with the settled meaning of the term 'University College', referring to a tertiary institution operating as a distinct entity but under the purview of an existing university. Historically, such status often served as a precursor towards autonomy and full university status, such as for James Cook University, originally established as a University College of the University of Queensland in 1961, or the University of Wollongong, constituted as a University College of the University of New South Wales, also in 1961. The fact that this title is not currently designated does not render it available for reuse with a substantially different sense than its long-established meaning: and if there are infelicities associated with its use, as asserted in the Australian Government Response, then let those be examined and addressed, rather than exploited as an excuse to repurpose the title. (If this objection is dismissed on the grounds that the historical term is not presently in use, we observe that the title 'College of Advanced Education', also not in current use, nor subject to the disadvantages of 'University College' that we outline below.)

The chief risk of proceeding with the Government's proposal is that institutions without an association with a university will be encouraged to use that title as part of their designations, creating a false impression in the public domain of the nature of those institutions and their academic governance arrangements, with the very real likelihood that people will make different decisions based on the presence of the word 'University' in the title 'University College' than they might otherwise have done had the title 'National Institutes of Higher Education' been retained.

Another significant risk is that providers acceding to the title 'University College' may assume a sense of inevitability about their ultimate prospects of progressing to the status of a fully-fledged 'University'. Encouraged by those sentiments, and with the reserved meaning of the word 'University' being diluted through the proposed use, it is highly likely that advocacy will ensue towards advancing a degree of 'mission creep' in the prospects of these institutions, not on the basis of their own achievements and quality assurance arrangements but on the basis of the slippage in meaning within the category titling. This would increase the chances of sub-optimal public policy decisions being made on the conferral of the reserved title 'University'.

The key distinction here is that the term 'University College' in its historical and current use does not describe just any higher education institution aspiring to attain the standing of 'University': it very specifically describes such an institution that is an entity within and subordinate to an established

university, wherein its practices, academic governance and quality assurance arrangements all conform to those of the parent university. This is a wholly different proposition to allowing the term to be used by a greenfield start-up institution or transitional private provider with little or no knowledge of or obligation to conform to the detailed, well-established practices and standards of an existing university. What is lost when changing the meaning of 'University College' from the former to the latter use are precisely the experience, apparatus, policy and procedures that protect students, employers and the public – precisely those reputation-critical aspects that TEQSA and the Standards regime were established to safeguard.

For these reasons, QUT argues strongly that the proposed use of the title 'University College' is unsound and unsafe. A higher education institution should not feature the word 'University' anywhere in its title except where the institution has an explicit academic governance relationship with an existing university.

Another consideration is the potential confusion that accompanies the word 'College' which is already burdened with a vast array of meanings in use: in Australia, it can mean a hall of residence, a secondary school, a private training provider or a professional society; in the United States it can also signify an undergraduate-only institution, the generic experience of higher education; and (within the term 'Community College') a 2-year associate degree-issuing institution somewhat like our VET sector. This added confusion also militates against the deployment of the word 'College' for this purpose.

The title 'National Institute of Higher Education' recommended by Professor Coaldrake avoids all of these pitfalls, and QUT strongly advises the adoption of that title.