

Introduction to Higher Education and the Law

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Australia has a strong, vibrant and inclusive system of higher education. Over the past decades, while growing in size and stature, it has been subject to huge change, precipitated often by economic and political imperatives. Those who manage, govern, research and teach in universities have been required to be both proactive and reactive in the face of the shifting sands, all the while maintaining and growing a sector which has earned a considerable global reputation. It is impossible to overestimate the extent to which law and policy drive and govern these changes and their impact on the sector.

From the establishment in 1850 of Australia's first university, the University of Sydney, to the incorporation in 2013 of Australia's newest private university, the sector has owed its existence to legislation, both State and federal, which govern matters such as funding, management, governance and accountability. The statutory provision for the first universities in Australia was largely modelled on the UK system, in common with their policies, practices and in many cases, their physical environment.

The sector has grown exponentially, and while there are still vestiges of its UK legacy, it has developed a strong and unique character. Historically, the sector has been established, funded and regulated by a combination of State and federal legislation, recent decades however have seen increasing federal control. There are now 37 public universities and three private universities in Australia that dominate a higher education sector that includes a large number of private providers and a few overseas universities who operate campuses within Australia. All of these public and private providers are known as self-accrediting institutions and are registered and regulated according to law by the federal Tertiary Education Quality and Standards Agency or TEQSA. There are also a large number of non-self-accrediting providers (known as private providers) which may also be incorporated under the *Corporations Act 2001* (Cth). These are not only regulated but must be first be accredited by TEQSA in order to legally carry out operations.

The law plays a central role. It provides for many often complex external relationships, particularly between universities and governments and controls the operation, governance and management, funding and regulation of universities and their activities. It governs, to a large extent, the relationship between universities and its members – staff and students. A large and increasing body of general law impacts upon all a university's relationships and much of its operations.

This is a preview. Not all pages are shown.