



# **Tertiary Education Quality and Standards Agency Amendment Act 2014**

**No. 130, 2014**

***An Act to amend the *Tertiary Education Quality and  
Standards Agency Act 2011*, and for other purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



---

## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
<b>Schedule 1—Amendments</b>		<b>3</b>
Part 2—Delegations		3
	<i>Tertiary Education Quality and Standards Agency Act 2011</i>	3
Part 3—Period of registration or accreditation		5
	<i>Tertiary Education Quality and Standards Agency Act 2011</i>	5
Part 4—Commissioners		8
	<i>Tertiary Education Quality and Standards Agency Act 2011</i>	8
Part 5—Chief Executive Officer etc.		11
	<i>Tertiary Education Quality and Standards Agency Act 2011</i>	11
Part 6—Notifications of decisions etc.		18
	<i>Tertiary Education Quality and Standards Agency Act 2011</i>	18
Part 7—Directions to TEQSA		20
	<i>Tertiary Education Quality and Standards Agency Act 2011</i>	20
Part 8—Fees		21
	<i>Tertiary Education Quality and Standards Agency Act 2011</i>	21





# Tertiary Education Quality and Standards Agency Amendment Act 2014

No. 130, 2014

---

---

## **An Act to amend the *Tertiary Education Quality and Standards Agency Act 2011*, and for other purposes**

[Assented to 12 December 2014]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tertiary Education Quality and Standards Agency Amendment Act 2014*.

---

No. 130, 2014      *Tertiary Education Quality and Standards Agency Amendment Act*      1  
2014

---

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 December 2014
2. Schedule 1, Parts 2 and 3	The day after this Act receives the Royal Assent.	13 December 2014
3. Schedule 1, Part 4	The day after this Act receives the Royal Assent.	13 December 2014
4. Schedule 1, Part 5	The day after this Act receives the Royal Assent.	13 December 2014
5. Schedule 1, Parts 6, 7 and 8	The day after this Act receives the Royal Assent.	13 December 2014

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 2—Delegations**

#### *Tertiary Education Quality and Standards Agency Act 2011*

##### **6 Section 199 (heading)**

Repeal the heading, substitute:

##### **199 Delegation by TEQSA**

##### **6A Paragraph 199(1)(b)**

Omit “classification; or”, substitute “classification.”.

##### **6B Paragraphs 199(1)(c) and (d)**

Repeal the paragraphs.

##### **7 Subsection 199(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

##### **8 Section 200**

Repeal the section.

##### **9 Section 201**

Omit “or 200”.

##### **10 Subsection 202(1) (note)**

Omit “or 200”.

##### **11 Transitional—delegations**

- (1) This item applies to a delegation if:
- (a) the delegate is a Commissioner; and

- (b) the delegation was in force under section 200 of the *Tertiary Education Quality and Standards Agency Act 2011* immediately before the commencement of this item.
- (2) The delegation has effect, after the commencement of this item, as if the delegation had been made under subsection 199(1) of that Act as amended by this Part.

## **12 Transitional—directions to delegates**

- (1) This item applies to a direction to a delegate if:
  - (a) the delegate is a Commissioner; and
  - (b) the direction was in force under section 201 of the *Tertiary Education Quality and Standards Agency Act 2011* immediately before the commencement of this item; and
  - (c) the direction related to a delegation under section 200 of that Act.
- (2) The direction has effect, after the commencement of this item, as if the direction related to a delegation under subsection 199(1) of that Act as amended by this Part.



## **Part 3—Period of registration or accreditation**

### ***Tertiary Education Quality and Standards Agency Act 2011***

#### **13 At the end of subsection 21(6)**

Add:

Note 3: The period of registration may be extended (see section 37A).

#### **14 Subsection 23(2)**

Repeal the subsection, substitute:

- (2) Paragraph (1)(b) has effect subject to the following:
- (a) subsection 36(3) (about renewing registration);
  - (b) section 37A (about extending registration);
  - (c) section 43 (about withdrawing registration);
  - (d) Division 1 of Part 7 (about cancelling registration and other administrative sanctions).

#### **15 Subsection 36(4) (note)**

Omit “Note”, substitute “Note 1”.

#### **16 At the end of subsection 36(4)**

Add:

Note 2: The period of registration may be extended (see section 37A).

#### **17 After Division 3 of Part 3**

Insert:

### **Division 3A—Extension of registration period**

#### **37A Extension of registration period**

- (1) TEQSA may extend the period of a registered higher education provider’s registration, so long as the period has not been previously extended by TEQSA.
- (2) The extended period may exceed 7 years.

- (3) This section has effect subject to the following:
- (a) subsection 36(3) (about renewing registration);
  - (b) section 43 (about withdrawing registration);
  - (c) Division 1 of Part 7 (about cancelling registration and other administrative sanctions).

**18 At the end of subsection 49(6)**

Add:

Note 4: The period of accreditation may be extended (see section 57A).

**19 After paragraph 51(2)(b)**

Insert:

- (ba) section 57A (about extending accreditation);

**20 At the end of Part 4**

Add:

**Division 5—Extension of accreditation period**

**57A Extension of accreditation period**

- (1) TEQSA may extend the period of the accreditation of a course of study, so long as the period has not been previously extended by TEQSA.
- (2) The extended period may exceed 7 years.
- (3) This section has effect subject to the following:
  - (a) the accreditation ends immediately if the provider ceases to be registered as a registered higher education provider;
  - (b) subsection 56(3) (about renewing accreditation);
  - (c) Division 1 of Part 7 (about cancelling accreditation and other administrative sanctions).

**21 Section 183 (after the table item dealing with a decision under section 36)**

Insert:

---

A decision under section 37A to extend the period of a registered higher education provider's registration

A decision under section 37A not to extend the period of a registered higher education provider's registration

**22 Section 183 (after the table item dealing with a decision under section 56)**

Insert:

A decision under section 57A to extend the period of the accreditation of a course of study

A decision under section 57A not to extend the period of the accreditation of a course of study

## Part 4—Commissioners

### *Tertiary Education Quality and Standards Agency Act 2011*

#### **23 Section 5 (definition of *full-time Commissioner*)**

Repeal the definition, substitute:

*full-time Commissioner* means a Commissioner appointed on a full-time basis.

#### **24 Section 5 (definition of *part-time Commissioner*)**

Omit “of TEQSA”.

#### **25 Paragraph 133(b)**

Repeal the paragraph, substitute:

(b) at least one, but not more than 4, other Commissioners.

#### **26 Section 133 (note 1)**

Omit “1”.

#### **27 Section 133 (note 2)**

Repeal the note.

#### **28 Subsections 138(1), (2) and (3)**

Repeal the subsections, substitute:

- (1) Each Commissioner is to be appointed by the Minister by written instrument.
- (2) A Commissioner may hold office on either a full-time or a part-time basis.

#### **29 Subsection 138(4)**

Omit “the Chief Commissioner, or as a Commissioner,”, substitute “a Commissioner”.

**30 Subsection 141(3)**

After “part-time Commissioner”, insert “(other than the Chief Commissioner)”.

**31 At the end of section 141**

Add:

- (4) If the Chief Commissioner is a part-time Commissioner, the Minister may grant leave of absence to the Chief Commissioner on the terms and conditions that the Minister determines.

**32 Paragraphs 146(1)(a) to (f)**

Repeal the paragraphs, substitute:

- (a) for misbehaviour; or  
(b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.

**33 After subsection 146(1)**

Insert:

- (1A) The Minister may terminate the appointment of a Commissioner if:
- (a) the Commissioner:
- (i) becomes bankrupt; or  
(ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or  
(iii) compounds with one or more of his or her creditors; or  
(iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
- (b) the Commissioner is a full-time Commissioner and is absent, except on leave of absence, for 14 consecutive days or for 30 days in any 12 months; or
- (c) the Commissioner is a part-time Commissioner and is absent, except on leave of absence, from 3 consecutive TEQSA meetings; or
- (d) the Commissioner engages in paid employment contrary to section 142; or
- (e) the Commissioner fails, without reasonable excuse, to comply with section 143 or 150.

**34 Subsection 149(2)**

Omit “full-time”.

**35 Subsection 149(3)**

Omit “3 Commissioners”, substitute “2 Commissioners”.

**36 Transitional—Commissioners’ appointments**

*Scope*

- (1) This item applies if a person held office as a Commissioner immediately before the commencement of this item.

*Continuity of appointment*

- (2) The person’s instrument of appointment has effect, after the commencement of this item, as if it were an instrument of appointment:
- (a) made under subsection 138(1) of the *Tertiary Education Quality and Standards Agency Act 2011* (as amended by this Part); and
  - (b) for the balance of the person’s term of appointment that remained immediately before the commencement of this item.

## **Part 5—Chief Executive Officer etc.**

### *Tertiary Education Quality and Standards Agency Act 2011*

#### **37 Subsection 145(2) (note)**

Repeal the note.

#### **38 Before section 153**

Insert:

#### **Subdivision A—Office and functions of the Chief Executive Officer**

#### **39 Subsection 153(1)**

Omit “(1)”.

#### **40 Subsection 153(2)**

Repeal the subsection.

#### **41 After section 154**

Insert:

#### **Subdivision B—Appointment of the Chief Executive Officer**

#### **154A Appointment of the Chief Executive Officer**

- (1) The Chief Executive Officer is to be appointed by the Minister by written instrument.
- (2) A person may only be appointed as the Chief Executive Officer if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.
- (3) The Chief Executive Officer may hold office on either a full-time or a part-time basis.

### **154B Period of appointment for the Chief Executive Officer**

The Chief Executive Officer holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Chief Executive Officer may be reappointed: see the *Acts Interpretation Act 1901*.

### **154C Acting appointments**

- (1) The Minister may appoint a person to act as the Chief Executive Officer:
  - (a) during a vacancy in the office of the Chief Executive Officer (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chief Executive Officer:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (2) A person may only be appointed to act as the Chief Executive Officer if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

### **Subdivision C—Terms and conditions for the Chief Executive Officer**

#### **154D Remuneration and allowances**

- (1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is determined, in writing, by the Minister.
- (2) The Chief Executive Officer is to be paid the allowances that are determined, in writing, by the Minister.



- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **154E Leave of absence**

- (1) The Chief Executive Officer has the recreation leave entitlements that are determined by the Remuneration Tribunal. If no determination of those entitlements by the Tribunal is in operation, the Chief Executive Officer is to have the recreation leave entitlements that are determined, in writing, by the Minister.
- (2) The Minister may grant the Chief Executive Officer leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

#### **154F Outside employment**

The Chief Executive Officer must not engage in paid employment outside the duties of his or her office without the Minister's approval.

#### **154G Disclosure of interests to the Minister**

The Chief Executive Officer must give written notice to the Minister of all interests, pecuniary or otherwise, that the Chief Executive Officer has or acquires and that conflict or could conflict with the proper performance of the Chief Executive Officer's functions.

#### **154H Resignation**

- (1) The Chief Executive Officer may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

#### **154J Termination of appointment**

- (1) The Minister may terminate the appointment of the Chief Executive Officer:
-

- (a) for misbehaviour; or
  - (b) if the Chief Executive Officer is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Chief Executive Officer if:
- (a) the Chief Executive Officer:
    - (i) becomes bankrupt; or
    - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with one or more of his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  - (b) the Chief Executive Officer is absent, except on leave of absence, for 14 consecutive days or for 30 days in any 12 months; or
  - (c) the Chief Executive Officer engages in paid employment contrary to section 154F; or
  - (d) the Chief Executive Officer fails, without reasonable excuse, to comply with section 154G.

#### **154K Other terms and conditions**

The Chief Executive Officer holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

#### **Subdivision D—Delegation**

##### **154L Delegation by the Chief Executive Officer**

- (1) The Chief Executive Officer may, by writing, delegate any or all of his or her functions and powers under this Act to a member of the staff of TEQSA who holds:
  - (a) the classification of APS Executive Level 1 or higher; or
  - (b) an equivalent classification.
- (2) A delegate must comply with any written directions of the Chief Executive Officer.

## **Subdivision E—Directions by Minister**

### **42 At the end of subsection 155(1) (before the note)**

Add “and the exercise of his or her powers”.

### **42A Subsection 155(1) (note)**

Repeal the note, substitute:

Note: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction (see section 54 of that Act).

### **42B After subsection 155(1)**

Insert:

(1A) Section 44 of the *Legislative Instruments Act 2003* does not apply in relation to a direction under subsection (1) of this section.

Note: This means that section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to the direction.

### **43 At the end of Division 4 of Part 8**

Add:

## **Subdivision F—Other matters**

### **155A Chief Executive Officer not subject to direction by TEQSA on certain matters**

To avoid doubt, the Chief Executive Officer is not subject to direction by TEQSA in relation to the Chief Executive Officer’s performance of functions, or exercise of powers, under:

(a) the *Financial Management and Accountability Act 1997*; or

(b) the *Public Service Act 1999*;

in relation to TEQSA.

### **44 Transitional—Ministerial directions**

The amendments of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part do not affect the continuity of a direction that:

(a) was given under subsection 155(1) of that Act; and

- (b) was in force immediately before the commencement of this item.

#### **45 Transitional—Chief Executive Officer**

##### *Scope*

- (1) This item applies if a person (the *substantive appointee*) held office as the Chief Commissioner immediately before the commencement of this item.

##### *Continuity of substantive appointee's role as Chief Executive Officer*

- (2) The substantive appointee is the Chief Executive Officer throughout the period (the *transition period*):
- (a) starting at the commencement of this item; and
  - (b) ending when the substantive appointee ceases to hold office as the Chief Commissioner.

##### *Acting Chief Commissioner*

- (3) If a person (the *acting appointee*) is acting as the Chief Commissioner at any time during the transition period, then, while the acting appointee is so acting:
- (a) the acting appointee has and may exercise all the powers, and must perform all the functions and duties, of the Chief Executive Officer; and
  - (b) the *Tertiary Education Quality and Standards Agency Act 2011* (as amended by this Part), and any other law of the Commonwealth, applies in relation to the acting appointee as if the acting appointee were the Chief Executive Officer.

##### *Other matters*

- (4) Sections 154A to 154K of the *Tertiary Education Quality and Standards Agency Act 2011* (as amended by this Part) have no effect during the transition period.
- (5) However, subitem (4) does not prevent the making of an appointment during the transition period under section 154A of the *Tertiary Education Quality and Standards Agency Act 2011* (as amended by this
-

Part) if the appointment takes effect after the end of the transition period.

## **Part 6—Notifications of decisions etc.**

### ***Tertiary Education Quality and Standards Agency Act 2011***

#### **46 Subparagraph 22(b)(i)**

Omit “, and the reasons for deciding on that category”.

#### **47 After subparagraph 22(b)(i)**

Insert:

- (ia) if the provider category is not the provider category that the applicant applied for under subsection 18(1)—the reasons for deciding on that category;

#### **48 Section 34**

Before “TEQSA must”, insert “(1)”.

#### **49 At the end of section 34**

Add:

- (2) Paragraph (1)(b) does not apply if:
  - (a) the decision is made under subsection 32(3) in response to an application made by a registered higher education provider; and
  - (b) the decision is in accordance with the application.

#### **50 At the end of Subdivision A of Division 1 of Part 7**

Add:

#### **101A TEQSA to notify provider of decision to impose sanction**

TEQSA must, within 30 days after making a decision under section 99, 100 or 101, notify the provider, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision.

**51 Application—section 22 of the *Tertiary Education Quality and Standards Agency Act 2011***

The amendments of section 22 of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part apply to a decision made after the commencement of this item.

**52 Application—section 34 of the *Tertiary Education Quality and Standards Agency Act 2011***

The amendments of section 34 of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part apply to a decision made after the commencement of this item.

**53 Application—section 101A of the *Tertiary Education Quality and Standards Agency Act 2011***

Section 101A of the *Tertiary Education Quality and Standards Agency Act 2011* as amended by this Part applies to a decision made after the commencement of this item.

## Part 7—Directions to TEQSA

### *Tertiary Education Quality and Standards Agency Act 2011*

#### **54 Subsection 136(1)**

Omit “a direction to TEQSA if the Minister considers that the direction is necessary to protect the integrity of the higher education sector”, substitute “directions to TEQSA in relation to the performance of its functions and the exercise of its powers”.

#### **54A Subsection 136(1) (note)**

Repeal the note, substitute:

Note: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction (see section 54 of that Act).

#### **55 Subsection 136(2)**

Repeal the subsection, substitute:

(2) A direction under subsection (1) must be of a general nature only.

(2A) Subsection (2) does not apply to a direction that relates to the power conferred by subsection 158(1).

Note: Subsection 158(1) confers a power to determine fees.

(2B) Section 44 of the *Legislative Instruments Act 2003* does not apply in relation to a direction under subsection (1) of this section.

Note: This means that section 42 (disallowance) of the *Legislative Instruments Act 2003* applies to the direction.

#### **56 Transitional—Ministerial directions**

The amendments made by this Part do not affect the continuity of a direction that:

- (a) was given under subsection 136(1) of the *Tertiary Education Quality and Standards Agency Act 2011*; and
- (b) was in force immediately before the commencement of this item.



## **Part 8—Fees**

### ***Tertiary Education Quality and Standards Agency Act 2011***

#### **57 At the end of section 158**

Add:

*Ministerial approval*

- (5) TEQSA must not make an instrument under subsection (1) unless the Minister has given written approval to the making of the instrument.
- (6) TEQSA must give the Minister such information as the Minister reasonably requires for the purposes of making a decision under subsection (5).

#### **58 Application—section 158 of the *Tertiary Education Quality and Standards Agency Act 2011***

The amendment of section 158 of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part applies to an instrument made after the commencement of this item.

---

[*Minister's second reading speech made in—  
House of Representatives on 27 February 2014  
Senate on 5 March 2014*]

(14/14)

---