

EXPLANATORY STATEMENT

Tertiary Education Quality and Standards Agency (Register) Guidelines 2017

Issued by the authority of the Tertiary Education Quality and Standards Agency (TEQSA)

Subject: *Tertiary Education Quality and Standards Agency
(Register) Guidelines 2017*

Authority

Section 204 of the *Tertiary Education Quality and Standards Agency Act 2011* (the Act) allows TEQSA to make, by legislative instrument, Register Guidelines that set out the information that TEQSA must include on the National Register of Higher Education Providers (National Register). Subsection 204(b) gives TEQSA the authority to include matters necessary or convenient for maintaining and establishing the National Register in the Register Guidelines.

Purpose and operation

Subsection 198(1) of the Act requires TEQSA to establish and maintain a register of higher education providers, known as the National Register of Higher Education Providers (National Register). The purpose of the instrument is to set out the information that TEQSA must enter on the National Register in respect of each registered higher education provider.

This instrument revokes the *Tertiary Education Quality and Standards Agency (Register) Guidelines 2016* (Register Guidelines 2016), and includes the following changes:

- a. Requires TEQSA to publish details of decision to reject initial course accreditation applications of registered higher education providers.
- b. Requires TEQSA to publish details of any available review rights for regulatory decisions.
- c. Requires TEQSA to publish the details of reviewable regulatory decisions made by delegates of TEQSA, either at the end of the period within which an application may be made for the internal review of the decision or at the end of the internal review process, whichever is the later.
- d. Requires TEQSA to publish details of TEQSA's initial decision, where the decision is later varied or substituted with another decision on review.

Description of the provisions

Section 4 of the instrument states the details TEQSA will enter on the National Register for each higher education provider registered by TEQSA.

Section 5 sets out the information TEQSA will enter on the National Register for each previously registered higher education provider whose registration has expired, been withdrawn, or been cancelled

Section 6 contains a statement that TEQSA will enter on the National Register for each higher education provider with self-accrediting authority. The statement explains that courses accredited pursuant to a higher education provider's own self-accrediting authority will not be included on the National Register.

Section 7 states the details that TEQSA will enter on the National Register for each course of study accredited by TEQSA.

Section 8 states the details that TEQSA will enter on the National Register for each course of study previously accredited by TEQSA where the accreditation has expired or been cancelled.

Section 9 states the details that TEQSA will enter on the National Register for certain regulatory decisions.

Consultation

The *Tertiary Education Quality and Standards Agency (Register) Guidelines 2012* (Register Guidelines 2012) were the first Register Guidelines made by TEQSA. Details of the consultation process undertaken for the Register Guidelines 2012 can be found in the Explanatory Statement of that instrument.

In relation to this instrument, on 9 February 2017 TEQSA sent a link via email to a consultation paper seeking feedback about TEQSA's approach to publishing decisions to the following bodies: Australian Council for Private Education and Training, Council of Private Higher Education, Universities Australia, TAFE Directors Australia, International Education Association of Australia, English Australia, Regional Universities Network, Innovative Research Universities, Group of Eight, Australian Technology Network, Council for International Education, National Union of Students, Council of International Students Australia, Australian Medical Students' Association, NSW/Territories Committee of Chairs of Academic Boards and Senates on behalf of the Chairs of Academic Boards and Senates, Chairs of Academic Boards Forum and University Chancellors Council.

The consultation paper was also posted on the TEQSA website on 14 February 2017 asking for submissions by 14 March 2017. A total of 25 submissions were received. Issues raised in the submissions included the importance of affording procedural fairness as part of any changes, the need for any proposals to be consistent with the basic principles in part 2 of the Act, and the need to ensure that the benefit of any review right is preserved.

TEQSA conducted further targeted consultations to discuss the submissions with peak bodies. On 2 November 2017, a draft of the Register Guidelines 2017 and a draft *Policy of public reporting of TEQSA's decisions* were sent to the following groups for comment: Australian Council for Private Education and Training, Council of Private Higher Education, Group of Eight, TAFE Directors Australia, Innovative Research Universities and Universities Australia.

In light of the consultations, TEQSA decided not to provide for the publication of decisions subject to internal review in the Register Guidelines 2017. TEQSA otherwise decided to proceed with the proposals, having regard to the support from most of the peak bodies consulted by TEQSA and the general public interest in the transparency of TEQSA's activities.

Commencement

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and will commence on 1 January 2018.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Tertiary Education Quality and Standards Agency

(Register) Guidelines 2017

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Subsection 198(1) of the *Tertiary Education Quality and Standards Agency Act 2011* requires the Tertiary Education Quality and Standards Agency (TEQSA) to establish and maintain a register of higher education providers, known as the National Register of Higher Education Providers (National Register). The purpose of the instrument is to set out the information that TEQSA must enter on the National Register in respect of each registered higher education provider.

Human rights implications

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, this instrument has an effect on the provision of education services by higher education providers.

To the extent that the right to education is engaged, this right is promoted by the Legislative Instrument, as it promotes the accessibility of higher education by providing prospective students with clearer information about higher education providers in Australia.

Conclusion

This Instrument is compatible with human rights because it advances the protection of human rights.

Professor Nicholas Saunders AO
Chief Commissioner

Professor Cliff Walsh
Commissioner

Mr Anthony McClaran
Acting Commissioner