



# **Tertiary Education Quality and Standards Agency Fit and Proper Person Determination 2018**

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The Tertiary Education Quality and Standards Agency hereby makes the following Determination.

Dated: 6 December 2018

Signed

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Professor Nicholas Saunders AO  
Chief Commissioner

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Professor Cliff Walsh  
Commissioner

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Dr Linley Martin  
Commissioner

## **Part 1 - Preliminary**

### **1 Name of Determination**

This Determination is the *Tertiary Education Quality and Standards Agency Fit and Proper Person Determination 2018*.

### **2 Commencement**

This Determination commences on the day after it is registered.

### **3 Authority**

This Determination is made under subsection 7A(2) of the *Tertiary Education Quality and Standards Agency Act 2011*.

### **4 Interpretation**

In this Determination:

*Act* means the *Tertiary Education Quality and Standards Agency Act 2011*.

*National VET Regulator* means the National Vocational Education and Training Regulator established by the *National Vocational Education and Training Regulator Act 2011*.

*Registered higher education provider* has the same meaning as it has in the Act.

*Tertiary Education Quality and Standards Agency* or *TEQSA* has the same meaning as in the Act.

## Part 2 – Fit and proper person

### 5 Fit and Proper Person Considerations

TEQSA may, in determining whether a person is a fit and proper person for the purposes of the Act, have regard to the matters specified in this Part.

### 6 Compliance with the law

- (1) TEQSA may have regard to whether the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, a law of the Commonwealth or a State or Territory.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (2) If the person has been so convicted or ordered, TEQSA may have regard to the seriousness of the offence or contravention concerned.
- (3) TEQSA may have regard to whether the person is currently involved in proceedings before a court or tribunal.

### 7 Financial record

TEQSA may have regard to whether the person:

- (a) has been insolvent or bankrupt; or
- (b) has taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) has compounded with one or more creditors; or
- (d) has assigned remuneration for the benefit of one or more creditors; or
- (e) has been under external administration (within the meaning of subsection 600H(2) of the *Corporations Act 2001*); or
- (f) has outstanding debts to the Commonwealth.

### 8 Management history

- (1) TEQSA may have regard to whether one or more of the following has been cancelled, revoked, shortened, restricted, not renewed or suspended:
  - (a) the person's registration to provide higher education courses, or to offer or confer higher education awards, under the Act or under a State or Territory law;
  - (b) the person's registration as a registered training organisation;
  - (c) the accreditation of a higher education course of study in relation to the person;
  - (d) the person's registration under the *Education Services for Overseas Students Act 2000*;

- (e) the person's approval as:
    - (i) an approved course provider (within the meaning of the *VET Student Loans Act 2016*),
    - (ii) a VET provider (within the meaning of the *Higher Education Support Act 2003*);
    - (iii) a higher education provider (within the meaning of the *Higher Education Support Act 2003*);
  - (f) subsidy funding arrangements with a State or Territory for the provision of education by the person.
- (2) TEQSA may have regard to whether the person has:
- (a) had a condition imposed on a registration, approval or arrangement mentioned in subsection (1); or
  - (b) breached such a condition.
- (3) TEQSA may have regard to whether the person has been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*.

## 9 Provision of information

TEQSA may have regard to whether the person provided false or misleading information to any of the following in circumstances where it is reasonable to assume that the person knew that the information was false or misleading:

- (a) a body of a State or Territory that registers educational providers;
- (b) the National VET Regulator;
- (c) TEQSA;
- (d) a tuition assurance administrator (within the meaning of the *Higher Education Provider Guidelines 2012*);
- (e) the Minister, the Department or the Secretary;
- (f) an authority of a State or Territory that deals with subsidy funding arrangements for education.

## 10 Previous conduct and involvements

- (1) TEQSA may have regard to whether the person has previously been found not to be a fit and proper person for the purposes of one or more of the following:
- (a) the Act;
  - (b) the *Australian Education Act 2013*;
  - (c) the *Education Services for Overseas Students Act 2000*;
  - (d) the *Higher Education Support Act 2003*;
  - (e) the *National Vocational Education and Training Regulator Act 2011*;
  - (f) the *VET Student Loans Act 2016*;
  - (g) the *Higher Education Standards Framework (Threshold Standards) 2015*;

- (h) subsidy funding arrangements with a State or Territory for the provision of education.
- (2) TEQSA may have regard to whether the person, or any person engaged to act for or on behalf of the person, has engaged in conduct that reasonably suggests a deliberate pattern of unethical behaviour, or of acting inconsistently with laws of the Commonwealth, a State or a Territory, in relation to the provision of education or training.
- (3) TEQSA may have regard to:
  - (a) whether the person has previously been involved in a business that provided education; and
  - (b) whether, at the time of that involvement, the business would have been a fit and proper person for the purposes of the Act.
- (4) TEQSA may have regard to any other matter relevant to the honesty, knowledge or ability of the person.