

EXPLANATORY STATEMENT

Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020

Purpose and Authority

Subsection 158(1) of the *Tertiary Education Quality and Standards Agency Act 2011* (the TEQSA Act) allows TEQSA to determine, by legislative instrument, fees that TEQSA may charge for things done in the performance of its functions. Subsection 158(3) of the TEQSA Act specifies that TEQSA may, in the determination under subsection (1), determine other matters relating to the payment of fees.

Among other things, subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make an instrument of a legislative character (such as under subsections 158(1) and 158(3) of the TEQSA Act) includes a power to revoke such an instrument.

The purpose of the *Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020* (the Determination) is to revoke *Tertiary Education Quality and Standards Agency Act 2011 - Determination of Fees No. 3 of 2013* (2013 Determination) and to make a new instrument which determines the fees payable for applications made to TEQSA under the TEQSA Act and the *Education Services for Overseas Students Act 2000* (ESOS Act).

In summary, the Determination implements Government policy with respect to the refunding and waiver of fees charged to registered providers by the Tertiary Education Quality and Standards Agency (TEQSA), by:

- ensuring that TEQSA has capacity to refund fees paid under the TEQSA Act and the *Education Services for Overseas Students Act 2000* in special or unusual circumstances that cause the fee to be unreasonable or inequitable, including in circumstances related to the COVID-19 pandemic event
- ensuring that the existing discretionary capacity of TEQSA to waive fees payable under the TEQSA Act and the *Education Services for Overseas Students Act 2000* extends to the capacity to waive those fees in special or unusual circumstances, including in circumstances related to the COVID-19 pandemic event.

In combination with other financial assistance measures announced by Government relating to the COVID-19 pandemic event, these measures help ensure the ongoing sustainability and viability of the higher education sector, and help reduce the financial burden for that sector.

Commencement

The instrument commences on the day after it is registered.

Consultation

The measures in the Determination are in response to stakeholder feedback in relation to the impacts of the COVID-19 pandemic on the higher education sector.

TEQSA consulted the Department of Education and the Australian Skills Quality Authority on the Determination. Consistent with the requirement in subsection 158(5) of the TEQSA Act, the Minister for Education gave written approval to the making of the instrument.

As the changes from the 2013 Determination to this instrument are not substantial, those changes are beneficial (enabling fee refund and waiver and removing fees for another category of application), and the Government's decision that TEQSA will move to full cost recovery from 2021-22 means that a new instrument will need to be made by 30 June 2021, TEQSA did not consult further on the instrument. TEQSA will consult the sector later in 2020 as part of the process of the development of a new instrument to give effect to the new cost recovery arrangements.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has confirmed that the Higher Education Relief Package¹, which includes the measures in the Amendment Determination, does not require a Regulation Impact Statement (RIS). OBPR reference: 26451.

Further to this, the Prime Minister has granted an exemption from the need to complete regulatory impact analysis in the form of RISs for all urgent and unforeseen Government measures made in response to the COVID-19 pandemic event². The measures in the Amendment Determination are considered unforeseen and have been made in response to the COVID-19 pandemic event.

Description of the provisions

Sections 1 to 3 of the Amendment Determination are formal provisions providing for the name, commencement and authority of the instrument.

Section 1 states the name of the instrument as the *Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020*.

Section 2 provides for the Determination to commence on the day after it is registered.

Section 3 states that the Amendment Determination is made under subsections 158(1) and 158(3) of the TEQSA Act.

Section 4 defines terms as they are used throughout the instrument.

The instrument has two schedules.

Schedule A specifies the fees payable for things done by TEQSA in the performance of its functions. This Schedule includes fees that are specifically referred to in the TEQSA

¹ <https://www.dese.gov.au/covid-19/higher-education/higher-education-faq>

² <https://ris.pmc.gov.au/2020/03/18/prime-ministers-exemption---covid-19-related-measures>

Act, such as fees to accompany particular applications – for example, applications for renewal of registration as a higher education provider – see subsection 35(2) of the TEQSA Act.

It also includes other fees for services provided by TEQSA in performing its functions. TEQSA's functions are listed in section 134 of the TEQSA Act and include functions that are conferred on TEQSA by or under the *Education Services for Overseas Students Act 2000* (the ESOS Act) or any other law of the Commonwealth. TEQSA is an ESOS Agency for the purposes of the ESOS Act, and the Determination sets out fees payable for services provided by TEQSA as an ESOS Agency.

These fees have been determined on the basis that the Australian Government previously decided that TEQSA was to function on a partial cost recovery basis, and having regard to TEQSA's estimate of the costs associated with particular activities, such as staff time, travel and associated costs, and considering historic comparative data and modelling of future costs. TEQSA also considered the fees charged by other agencies, including the state and territory accrediting authorities and the former Australian Universities Quality Agency, as well as the fees charged by ASQA and the Administrative Appeals Tribunal.

The Australian Government has decided that TEQSA will move to full cost recovery for its regulatory functions from 2021-22. Accordingly, while TEQSA's initial estimates are that the costs of performing many of the services are higher than the fees in the Determination, the fees in this instrument have not changed, on the basis that TEQSA will review the fees in this Determination as part of the process for making a new determination of fees by 30 June 2021. TEQSA will begin consultations on the process for its revised cost recovery arrangements in the second half of 2020.

Schedule B determines other matters relating to the payment of fees.

Section 1 of Schedule B provides TEQSA with a discretion to waive fees in particular circumstances. These include:

- When an applicant was approved as a higher education provider by a government accreditation authority at 29 January 2012 but was not yet offering or conferring a course of study.
- Where an application for renewal of accreditation of a course of study is made on the basis that no new enrolments are permitted in the course and the provider ceases to provide the course at the conclusion of the first teaching period that commences after the date on which the provider's current accreditation for the course is to end.
- Where a registered higher education provider's higher education operations are transferred to another person or body including a body politic or a body corporate, and the person or body to which the operations are transferred applies for registration as a higher education provider.

Sections 2, 3 and 4 are designed to give effect to the Australian Government's higher education fee relief measure. Section 2 provides TEQSA with the discretionary capacity to refund fees paid under the TEQSA Act and the ESOS Act, in special or unusual circumstances that cause the fee to be unreasonable or inequitable. Section 3 allows TEQSA to waive fees in the same circumstances. Section 4 is inserted for avoidance of

doubt purposes, in order to provide certainty to the higher education sector that the fee waiver and refund capacity provided by sections 2 and 3 of TEQSA includes circumstances related to the COVID-19 pandemic event.

Statement of Compatibility with Human Rights

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

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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

The purpose of the *Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020* (the Determination) is to revoke *Tertiary Education Quality and Standards Agency Act 2011 - Determination of Fees No. 3 of 2013* (2013 Determination) and to make a new instrument which determines the fees payable for applications made to Tertiary Education Quality and Standards Agency (TEQSA) under the *Tertiary Education Quality and Standards Agency Act 2011* and the *Education Services for Overseas Students Act 2000*.

In summary, the Determination implements Government policy with respect to the refunding and waiver of fees charged to registered providers by TEQSA.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Professor Nicholas Saunders AO
Chief Commissioner

Professor Joan Cooper
Commissioner

Professor Cliff Walsh
Commissioner

Tertiary Education Quality and Standards Agency