

EXPLANATORY STATEMENT

Issued by the authority of The Hon Alan Tudge MP, Minister for Education and Youth

Higher Education Support Act 2003

Tertiary Education Quality and Standards Agency (Words or Expressions with the Same or Similar Meaning to University) Determination 2021

AUTHORITY

Subsection 204A(3) of the *Tertiary Education Quality and Standards Agency Act 2011* (the Act) provides that the Minister may determine, by legislative instrument, words or expressions for the purposes of subparagraph 204A(1)(a)(ii) of the Act.

PURPOSE AND OPERATION

The *Tertiary Education Quality and Standards Agency Act (Words or Expressions with the Same or Similar Meaning to University) Determination 2021* ('Determination') lists words or expressions with the same or similar meaning to the word 'university' for the purposes of section 204A of the Act.

Ensuring that the word 'university' is used appropriately in Australian domain names is a longstanding element of Australia's higher education quality arrangements.

Restricting use of 'university' and words of same or similar meaning will ensure that any domain names that include these words are not used in a way that might mislead prospective students, education providers, other education stakeholders or members of the public, about the relationship between the website or email address and either a specific university, or Australian higher education providers in general.

REGULATORY IMPACT

Regulatory impact was addressed during the development of the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020.

COMMENCEMENT

The Instrument will commence the day after the Instrument is registered on the Federal Register of Legislation.

AVAILABILITY OF MERITS REVIEW

Section 183 of the Act specifies the types of decisions made under the Act that are reviewable decisions. This is an exhaustive list. Decisions to list words or expressions with the same or similar meaning under subsection 204A(3) are not listed in section 183. The Instrument does not provide the Minister with the power to establish a new review mechanism in addition to the review process available under the Act.

CONSULTATION

The Department of Education, Skills and Employment has consulted extensively with auDA and the Department of Communications (which endorses auDA as the .au domain name administrator) throughout the development of the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020 and this instrument. This instrument was developed in response to auDA's concerns and the department made other concessions in finalising the Bill and this instrument. IP Australia has also been consulted in the development of this policy and are supportive.

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 (Words or Expressions with the Same or Similar Meaning to University) Determination 2021

The *Tertiary Education Quality and Standards Agency Act (words or expressions with the same or similar meaning to university) Determination 2021* (the Determination) 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 Instrument

The Determination specifies words or expressions with the same or similar meaning as university, for the purposes of subparagraph 204A(1)(a)(ii).

Ensuring that the word ‘university’, its derivatives ‘uni’ and ‘universities’, and the word as expressed in languages other than English, are used appropriately in Australian domain names is a longstanding element of Australia’s higher education quality arrangements.

Restricting use of these words in line with section 204A of the TEQSA Act will ensure that any domain name that includes the word ‘university’ is not used in a way that might mislead prospective students, education providers, other education stakeholders or members of the public, about the relationship between the website or email address and either a specific university or Australian higher education providers in general.

Human rights implications

Right to freedom of expression

The right to freedom of expression is set out in the International Covenant on Civil and Political Rights (Article 19).

This instrument will, in effect, limit the capacity of individuals to choose domain names in some circumstances where those domain names include the words listed in the instrument – for example ‘uni’. This restriction mirrors similar requirements on the issuing of company and business names containing the word ‘university’ or derivatives of that term.

The policy intent underpinning this instrument is to protect the reputation of Australian higher education institutions by preventing misleading, or deceptive use of words or expressions with the same or similar meaning as university in company names, business names and domain names in ways that could undermine the standing or reputation of individual institutions or the higher education sector as a whole. This ensures that employers and students can be confident that any institution with the word ‘university’ in its internet domain name meets the relevant quality requirements. It also acts as a consumer protection measure to limit the opportunity for individuals to be misled about the nature and standing of a business or service that claims to have a connection to one or more universities.

The requirement to seek approval for use of domain names with the words listed in the instrument is a reasonable, necessary and proportionate response to the need to maintain the integrity and reputation of Australia's higher education system. This is because the words listed in the instrument may be used to create a misleading connection to a legitimate university.

There is no restriction on the use of a domain name once it has been licensed. As is the case in relation to company and business names, the restriction effectively applies to those responsible for issuing domain name licences, rather than on individuals who have been issued a licence.

The instrument is compatible with the right to freedom of expression as the limitation will be prescribed by law, pursue a legitimate objective that is rationally connected to the limitation and is a proportionate means of doing so.

Conclusion

The Determination is compatible with human rights because it promotes the protection of human rights.

Minister for Education and Youth, the Hon Alan Tudge MP

**TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY (WORDS OR EXPRESSIONS
WITH THE SAME OR SIMILAR MEANING TO THE WORD UNIVERSITY) DETERMINATION
2021**

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section states the name of the instrument, the *Tertiary Education Quality and Standards Agency (Words or Expressions with the Same or Similar Meaning to the Word University) Determination 2021* (the Determination).

Section 2: Commencement

2. This section provides that the instrument commences the day after the instrument is registered.

Section 3: Authority

3. This section states that the Instrument is made under subsection 204A(3) of the *Tertiary Education Quality and Standards Agency Act 2011* (Act).

Section 4: Definition

4. This section provides that in the Determination, Act means the *Tertiary Education Quality and Standards Agency Act 2011*.

Section 5: Words or expressions with the same or similar meaning to university

5. Section 5 specifies the following as words or expressions with the same or similar meaning to university. These words or expressions are:
 - Universities;
 - Uni, but not where those letters are used as part of a longer word, which is not university (such as community or junior); and
 - A word in a foreign language that has the same meaning as the word university.

A note provides examples of words in a foreign language that have the same meaning as university. It is not an exhaustive list covering all world languages.