

## **EXPLANATORY STATEMENT**

### ***Tertiary Education Quality and Standards Agency Determination of Fees Amendment (Updated Fees) Determination 2023***

Issued by the authority of the Tertiary Education Quality and Standards Agency

**Subject:** *Tertiary Education Quality and Standards Agency Determination of Fees Amendment (Updated Fees) Determination 2023*

#### **Authority**

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

The required approval from the Minister for TEQSA to make an instrument under subsection 158(1) was obtained, per the requirement in subsection 158(5) of the Act, on 15 November 2023.

#### **Purpose and operation**

The purpose of this instrument is to amend the *Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020* (Fee Determination), updating TEQSA's application fees so that they better reflect the regulatory effort expended by TEQSA on each regulatory activity.

The amendments made by this instrument to the Fee Determination reflect the fees set out in the updated version of TEQSA's Cost Recovery Implementation Statement (CRIS) published by TEQSA in November 2023. This instrument does not make any major changes to TEQSA's cost recovery model. Rather, it amends the amounts of some of the fees set out in Schedule A to the Fee Determination, clarifies when the discounts to course accreditation fees set out in section 2 to Schedule B are applicable, allows TEQSA to determine that fees can (in some circumstances) be paid by instalments, and makes some small technical amendments. The updates to fees have been made following TEQSA's annual review of the CRIS, which was conducted in accordance with the *Australian Government Cost Recovery Policy* (Cost Recovery Policy).

The amendments to the Fee Determination set out in this instrument continue the process of implementing the Australian Government's 2018-2019 Budget decision for TEQSA to transition to recovering 90 percent of its costs for regulatory and quality assurance services and activity after 1 January 2023. The model for cost

recovery set out in the updated version of the CRIS, which informs the amendments to the Fee Determination, is consistent with the Cost Recovery Policy.

## **Consultation**

TEQSA undertook public consultation on its updated fees between August and September 2023, including by holding briefings for peak bodies and registered higher education providers on 30 and 31 August 2023 respectively.

TEQSA received a total of 17 stakeholder submissions through the consultation process, including from peak bodies and individual higher education providers.

Issues that were raised in the submissions included:

- the need for transparency in the costing process
- whether the costing model should take greater account of the different operational scale of providers, to reflect the significant variance in the size of providers regulated by TEQSA
- procedural and user experience issues, noting these largely went to administrative matters as opposed to those dealt with in the Fee Determination.

Some issues raised by stakeholders were relevant to the charge imposed under the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*, or raise matters where TEQSA's approach is prescribed by the Cost Recovery Policy.

In keeping with the Cost Recovery Policy, TEQSA has considered the submissions in preparing the updated version of the CRIS and will continue to consult closely with the sector on both the substantive and administrative arrangements of cost recovery. The consultations will form the basis for future adjustments to the model and possible subsequent revisions to the fees set out in the Fee Determination.

## **Commencement**

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and will commence on 1 January 2024.

## **Description of the provisions**

### **Preliminary**

#### **Section 1**

This section of the instrument provides that the name of the instrument is the *Tertiary Education Quality and Standards Agency Determination of Fees Amendment (Updated Fees) Determination 2023*.

#### **Section 2**

This section provides that the amendments to the current Fee Determination will commence on 1 January 2024.

### **Section 3**

This section provides that the instrument is made under subsections 158(1) and 158(3) of the Act.

### **Section 4**

This section provides that the instrument amends the Fee Determination as set out in Schedule 1.

#### Schedule 1

##### **Item 1**

Item 1 of the Schedule to the instrument omits the reference to section 159(1) from section 3 to the Fee Determination, substituting in a reference to section 158(1). This amendment is intended to correct a referencing error in the Fee Determination.

##### **Item 2**

Item 2 of the Schedule to the instrument is a technical amendment that omits a reference to the *Tertiary Education Quality and Standards Act 2011* that is not italicised and replaces it with an italicised reference to the Act.

##### **Item 3**

Item 3 of the Schedule to the instrument repeals the existing Table in Schedule A and replaces it with a new table of fees.

#### *Changes to fees*

The new table reflects changes to TEQSA's fees following the annual review of the CRIS. The 2023 review was focused on ensuring the initial assumptions made in the 2022 version of the CRIS remain accurate. The process led TEQSA to conclude that some of fees in the Fee Determination need to be amended to ensure TEQSA's fees accurately and fairly reflect the cost of regulatory activities.

- Where fees have increased, this is to reflect the actual cost currently incurred by TEQSA to deliver the relevant regulatory activity. These costs reflect the level of effort, and indirect costs in terms of enabling systems, associated with the relevant activity.
- Where fees have decreased, this is generally a result of TEQSA improving its efficiency in the assessment of certain applications, resulting in a reduction in costs.
- Some fees have not changed, which is because there has been no change in the costs incurred by TEQSA to deliver those activities.

#### *Registration fees*

Item 1 of the table provides that the fee for a preliminary assessment of an application under section 19 of the Act is \$13,900.

Item 2 of the table provides that the fee for substantive assessment of an application under section 20 of the Act is \$105,900.

Item 3 of the table provides the fees for an application to renew a provider's registration under section 35 of the Act in circumstances where that application is not combined with an application for self-accrediting authority under section 41 of the Act. Where the approved form for the application requires the provider to address provisions of the Threshold Standards other than Core Standards, the fee will be \$106,700. If the approved form for the application only requires the provider to address the Core Standards, the fee will be \$62,400.

Item 4 of the table provides the fees for an application to renew a provider's registration under section 35 of the Act where that application is combined with an application for self-accrediting authority under section 41 of the Act. Where the approved form for the application requires the provider to address provisions of the Threshold Standards other than Core Standards, the fee will be \$122,000. If the approved form for the application only requires the provider to address the Core Standards, the fee will be \$70,800.

Item 5 of the table provides that the fee of \$48,900 applies to applications for change of provider category made under section 38 of the Act.

Item 6 of the table provides that the fee for applications made to TEQSA as an ESOS Agency, under section 9 of the *Education Services for Overseas Students Act 2000* (ESOS Act), for registration to provide a course(s) to overseas students is \$23,200.

Item 7 of the table provides the fees for applications to TEQSA as an ESOS Agency for renewal of registration made under section 10D of the ESOS Act. If the provider has self-accrediting authority, the fee is \$12,800. Otherwise, the fee is \$26,000.

Item 8 of the table provides the fees for applications made to TEQSA as an ESOS Agency, under section 10H of the ESOS Act, to add one or more courses at one or more additional locations to a provider's registration.

For each location relevant to the application for which the provider is not registered at the time of the application, the provider must pay a fee. Item 8 of the table sets out two categories of fees for locations. If the provider has obtained authority, under section 41 of the Act, to self-accredit courses of study, the fee per location is \$1,800. Otherwise, for providers without self-accrediting authority, the fee is \$9,100 per location.

For each course for which the provider is not registered at any location at the time of the application, the fees are:

- \$4,800 per course to which the ELICOS Standards apply;
- \$4,900 per Foundation Program course; and
- \$500 per course for all other courses.

For example, a provider with self-accrediting authority would pay a single fee of \$1,800 for the registration of a new location if the provider made an application under section 10H of the ESOS Act to:

- add an additional location to the provider's registration; and
- provide three courses at that location that provider was already registered to offer at one of its existing locations.

As a further example, if a provider without self-accrediting authority made an application under section 10H to:

- add two new locations to its registration;
- provide two ELICOS which the provider was not already registered to offer at any of its existing locations; and
- provide one Foundation Program at the new locations that the provider is already registered to offer at one of its existing locations,

the provider would pay a fee of \$9,100 for each new location, a fee of \$4,800 for each of the two courses to which the ELICOS Standards apply and no fee in relation to the Foundation Program course that it is already registered to provide at one of its existing locations.

### *Course accreditation fees*

Item 9 of the table provides the fees for applications to self-accredit one or more courses of study made under section 41 of the Act. For an application by a provider with no existing authority to self-accredit a course or group of courses of study, the fee is \$48,900. For an application by a provider which is authorised under the Act to self-accredit one or more courses of study, the fee is \$34,700.

Item 10 of the table provides that the fee for a preliminary assessment of an application by a prospective provider for the accreditation of a course of study (other than an undergraduate certificate), under section 47 of the Act is \$5,600 per course.

Item 11 of the table provides the fees for a substantive assessment of an application by a prospective provider, for the accreditation of a course of study (other than an undergraduate certificate), under section 48 of the Act. Where an application is for the accreditation of a single course of study or multiple courses of study that do not form a nested set of courses, the fee is \$42,200 per course. Where an application is for the accreditation of a nested set of courses, the fee is \$42,200 for the primary course of study and \$37,700 for each related course of study.

Item 12 of the table provides the fees for the preliminary assessment of an application by a registered provider, for the accreditation of a course of study (other than an undergraduate certificate), under section 47 of the Act. Where an application is for the accreditation of a single course of study or multiple courses of study that do not form a nested set of courses, the fee is \$4,900 per course. Where an application is for the accreditation of a nested set of courses, the fee is \$4,900 for the primary course of study. The fee for each related course of study is \$1,200 per course.

Item 13 of the table provides the fees for the substantive assessment of an application by a registered provider, for the accreditation of a course of study (other than an undergraduate certificate), under section 48 of the Act. Where an application is for the accreditation of a single course of study or multiple courses of study that do not form a nested set of courses, the fee is \$18,000 per course. Where an application is for the accreditation of a nested set of courses, the fee is \$18,000 for the primary course of study and \$4,500 for each related course of study.

Item 14 of the table provides that the fee for the preliminary assessment of an application for the accreditation of an undergraduate certificate under section 47 of the Act is \$300 per course.

Item 15 provides of the table that the fee for the substantive assessment of an application for the accreditation of an undergraduate certificate under section 48 of the Act is \$1,200 per course.

Item 16 of the table provides the fees for applications made under section 55 of the Act for renewal of accreditation for a course of study, other than applications relating to an undergraduate certificate or applications made based on teach out. Where an application is for renewal of the accreditation of a single course of study or multiple courses of study that do not form a nested set of courses, the fee is \$23,100 per course. Where an application is for the accreditation of a nested set of courses, the fee is \$23,100 for the primary course of study and \$5,500 for each related course of study.

Item 17 of the table provides the fees for applications made under section 55 of the Act for renewal of accreditation for teach out courses of study, other than an undergraduate certificates. Where an application is for accreditation of a single course of study or multiple courses of study that do not form a nested set of courses, the fee is \$2,900 per course. Where an application is for accreditation of a nested set of courses the fee is \$2,900 for the primary course of study and \$700 for each related course of study.

Each of items 10 – 13, 16 and 17 of the table includes a note providing that, where a provider has an equivalent full-time student load of fewer than 5000 students, the table set out in section 2 of Schedule B, setting out discounts based on student loads, applies to the fees set out in those items.

Item 18 of the table provides that the fee for an application made under section 55 of the Act for renewal of accreditation for an undergraduate certificate is \$1,100 per course.

#### *Conditions fees*

Item 19 of the table provides the fees for applications made under subsections 32(3) or 53(3) of the Act to vary or revoke a condition of registration or accreditation. For an application made under subsection 32(3), in relation to a condition imposed on a provider's registration, the fee is \$3,600 per condition. For an application made under subsection 53(3), in relation to a condition imposed on the accreditation of a course, the fee is \$2,900 per condition.

#### *Review of decisions fees*

Item 20 of the table provides that the fee for an application, made under section 184 of the Act, for internal review of a decision made by a delegate of TEQSA, is \$1,000.

#### **Item 5**

Item 5 to the Schedule to the Instrument repeals and replaces the table set out under subsection 2(1) of Schedule B. This amendment is not intended to change the effect of the table but rather to ensure that the descriptions of a provider's equivalent full-time student load in the left-hand column of the table provide absolute clarity regarding when each discount category is applicable.

The language used in the version of the table set out in the Fee Determination, referencing student loads 'between' two different numbers, could create confusion because some equivalent full time student loads are listed more than once. For

instance, an equivalent full-time student load of 1000 students is set as the top end of the discount range in row 2 and as the lower end of the discount range in row 3 of the table in the Fee Determination. It is therefore difficult to work out which discount category is relevant to a provider with a student load of exactly 1,000 students.

The table in Item 5 of the Schedule to the instrument has been designed to provide greater specificity and, to account for the possibility that a provider's equivalent full-time student load may not be a whole number (e.g. 999.5 students). Though an equivalent full-time student load of 1,000 is mentioned in both rows 2 and 3 of the table in Item 5, it is clear that the discount in row 2 only applies where the student load is a number less than 1,000 and that the discount in row 3 applies where the student load is equal to or more than 1,000 (but less than 1,500). The new table provides absolute clarity regarding which category of discount is relevant where a provider has less than 5,000 equivalent full-time students.

### **Item 6**

Item 6 of the Schedule to the Instrument repeals and replaces the text in subsection 6(2) of the Fee Determination. The amendment is intended to correct a minor typographical errors in the Fee Determination, clarifying that subsection 6(2) applies in the context of subsection 6(1).

### **Item 7**

Item 7 inserts new Part 4 and section 7, concerning the payment of fees by instalments, into Schedule B of the Fee Determination. These provisions allow TEQSA to determine, in certain circumstances, that a registered higher education provider should be allowed to pay a fee prescribed in Schedule A of the Fee Determination via instalments. The provisions allowing for payment by instalment are only relevant to providers who are already registered; entities seeking to become registered higher education providers will not be able to request to pay fees relating to their applications by instalment.

Subsection 7(1) provides that if a registered higher education provider, planning to make an application, makes a request to pay the relevant fee for that application by instalments and, TEQSA determines that the circumstances set out in subsection 7(2) exist, TEQSA may determine that the provider can pay the relevant fee by instalments.

Subsection 7(2) provides that TEQSA may make a determination under subsection 7(1) where TEQSA is satisfied that:

- special or unusual circumstances exist; and
- these circumstances would cause a requirement to pay the fee in a single instalment to be unreasonable or inequitable.

The requirement for there to be 'special or unusual circumstances' is consistent with generalised waiver provision for fees set out in section 5 of the Fee Determination and the generalised waiver provision for the registered higher education provider charge set out in subsection 6(1) of the [Tertiary Education Quality and Standards Agency \(Registered Higher Education Provider Charge\) Guidelines 2022](#).

Subsection 7(3) provides that, in deciding whether to allow for the payment of a fee by instalments, TEQSA must also have regard to the objective of recovering the costs associated with its regulatory activities.

Subsection 7(4) provides that TEQSA must, within 30 days of making a decision under subsection 7(1), notify the provider in writing of the decision and the reasons for the decision.

Subsection 7(5) provides that, where TEQSA allows a provider to pay a fee by instalments, TEQSA must set out the terms and conditions relating to paying by instalment when notifying the provider of its decision in accordance with subsection 7(4). Subsection 7(5) also provides that any terms and conditions for payment by instalments set by TEQSA must:

- provide for payment of the full amount of the fee within 4 instalments or less;
- provide the dates on which each instalment will be due and provide for payment of the full fee amount within 12 months of application being made;
- be aimed at ensuring TEQSA recovers the full fee amount as soon as reasonably practical taking into account the providers circumstances; and,
- (where the fee is for an application to accredit a course of study) be aimed at ensuring TEQSA recovers the full fee amount before TEQSA is required to make a decision regarding the application.

Subsection 7(6) deals with situations where the Act provides that an application is only made if accompanied by the relevant fee or, that the application can only be continued if the relevant fee is paid. In those circumstances and where TEQSA has allowed a provider to pay a fee by instalments, subsection 7(6) deems that those requirements are met once the first instalment has been paid.

### **Items 8 to 15**

Items 8 – 15 are all consequential amendments to the numbering of existing Parts and sections in the Fee Determination that need to be made once new Part 4 and new section 7 are added. These items do not make any substantive changes to the Fee Determination.



## 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 Fees Amendment (Updated Fees) Determination 2023***

The Tertiary Education Quality and Standards Agency Fees Amendment (Updated Fees) Determination 2023 (Amending 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 Amending Instrument is to amend the Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020 (Fee Determination), which determines the fees the Tertiary Education Quality and Standards Agency (TEQSA) may charge for things done in the performance of its functions.

The Amending Instrument makes changes to TEQSA's fees following the annual review of TEQSA's Cost Recovery Implementation Statement (CRIS), and reflects the updated fees set out in the updated version of the CRIS published by TEQSA in November 2023. The Amending Instrument also makes some technical amendments Schedule B of the Fee Determination; for example the amendments ensure there is clarity regarding which discounts apply to the application fees for accreditation applications received from registered higher education providers with fewer than 5,000 equivalent full-time students. The Amending Instrument also allows TEQSA to determine, in some circumstances, that fees can be paid in instalments.

In addition to the Fee Determination, TEQSA also recovers its costs through the registered higher education provider charge, imposed by the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*.

#### **Human rights implications**

##### Right to education

The Amending Instrument engages the right to education which is set out in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*. The right to education recognises the important personal, societal, economic and intellectual benefits of education, and provides that secondary education in its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

Payment of the fees in the Fee Determination by registered higher education providers contributes to the Australian Government's consolidated revenue fund. The contributions to this fund will ensure the Australian Government can fund TEQSA to carry out its regulatory and quality assurance roles in the higher education sector.

There are more than 1.6 million students currently studying higher education in Australia the annual economic benefit to Australia from higher education as an export was estimated to be over \$13 billion in financial year 2021-2022. The Amending Instrument engages and promotes the right to education by ensuring that the costs incurred by TEQSA to deliver regulatory services continue to be accurately reflected in the Fee Determination, and that TEQSA can administer its cost recovery framework effectively. This supports TEQSA's work, including its ability to register providers and accrediting courses of study, which in turn promotes the objective of making quality education available and accessible to students both in Australia and who come from overseas to study.

The Amending Instrument is compatible with the right to education.

**Conclusion**

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

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Professor Peter Coaldrake  
Chief Commissioner

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Professor Joan Cooper  
Commissioner

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Adrienne Nieuwenhuis  
Commissioner

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Stephen Somogyi  
Commissioner

Tertiary Education Quality and Standards Agency