

Memorandum of Understanding

For the sharing of higher education data and information

Tertiary Education Quality and Standards Agency

ABN 50 658 250 012

GPO Box 1672 MELBOURNE VIC 3001

AND

Department of Education and Training

ABN 12 862 898 150

GPO Box 9880 CANBERRA ACT 2601

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1. Preamble

Tertiary Education Quality and Standards Agency

- 1.1. The Tertiary Education Quality and Standards Agency (TEQSA) is established under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) as the national quality assurance and regulatory body for Australia's higher education sector. TEQSA monitors and assures that the Higher Education Standards (Standards) are met in order to safeguard students' interests and the sector's standing. TEQSA is also a designated authority and delegate of the Minister and Secretary under section 7A of the *Education Services for Overseas Students Act 2000* (ESOS) and has been delegated the authority and responsibility for registering, monitoring, and ensuring the compliance of higher education provision on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).
- 1.2. TEQSA's functions, which are set out in section 134 of the TEQSA Act, include registration of higher education providers, renewal of registration, accreditation of higher education courses offered by providers that do not have self-accrediting authority, and renewal of those courses.
- 1.3. TEQSA takes a risk-reflective approach to its functions, promoting effective self-assurance by providers and undertaking targeted monitoring and assessments against the Standards. This includes comprehensive assessments against the Standards for new applicants to the sector; annual risk analysis of key areas for existing providers (including student outcomes and financial position); and periodic renewal of registration and course accreditation assessment processes against the Standards, tailored to reflect provider history and risk.
- 1.4. To support this approach, TEQSA makes an annual request for information from some registered higher education providers, under Section 28 of the TEQSA Act, known as the Provider Information Request (PIR).
- 1.5. Due to the transition of the PIR collection to the Department of Education and Training (Education), the request made under Section 28 of the TEQSA Act will specify that the data should be submitted in the format required by and to Education's HELP IT System (HITS) and Higher Education Information Management System (HEIMS) collections. The Datamart will be enhanced to integrate data from the PIR collections. Education will provide TEQSA with access to PIR information through the department's secure portal, HITS or other data sharing instruments as needed. In combination with data from Education, this information allows TEQSA to carry out its risk-reflective functions, and maintain relevant and current information about all registered providers in the Australian higher education sector.
- 1.6. Sections 189, 190 and 194 of the TEQSA Act provide that TEQSA may disclose higher education information to a Commonwealth authority.

The Department of Education and Training

- 1.7. The Department of Education and Training (Education) is responsible for administering, overseeing and advising on Australian Government policy within its portfolio responsibilities, including higher education. Education works cooperatively with a range of stakeholders, including the States and Territories, to effectively manage impacts that may occur as a result of regulatory decisions.
- 1.8. Education administers the Commonwealth Grant Scheme (CGS) and Higher Education Loan Program (HELP). Education works to mitigate risks associated with these programs by assessing and overseeing higher education providers' and Vocational Education and Training (VET) providers' ability to comply with the Higher Education Support Act 2003 (HESA) and relevant Guidelines. In this context, Education undertakes financial viability assessments of new HELP provider applicants, conducts annual financial viability assessments of approved HELP providers, and facilitates the collection of data from HELP providers.
- 1.9. It undertakes the same assessments and facilitation of information collection for VET providers who are eligible to offer VET FEE-HELP.

- 1.10. HESA requires higher education providers to provide information under sections 19-10 and 19-70 of HESA and VET providers to provide information under sections 15 and 24 of Schedule 1A of HESA. This information is collated and stored in HEIMS and/or HITS. Data collected includes student data (domestic and international in both the higher education and VET sectors) and staff data (collected under the Higher Education Statistics Collection and provider finances). Data collected also includes higher education research data (research income and research publications) collected under the Higher Education Research Data Collection. In addition, Education manages the Provider Registration and International Students Management System (PRISMS).
- 1.11. Section 180-15 of HESA provides that the Secretary of Education may disclose HESA information to TEQSA, or a member of the staff of TEQSA (within the meaning of the TEQSA Act) for the performance of duties or functions, or the exercise of powers, under or for the purposes of that Act.
- 1.12. Further, section 175 of ESOS allows for the Secretary of Education to give information obtained or received for the purposes of the ESOS Act to government agencies (Commonwealth or State) that are responsible for or concerned with immigration or the regulation of providers for various purposes, including assisting with the regulation of providers under section 175(1) of the ESOS Act.

2. Overview of arrangement

- 2.1. The Parties have agreed to enter into this Memorandum of Understanding (MOU) to support the sharing of higher education data and information to assist in the administration of their respective and joint functions and to reduce the reporting burden on higher education providers.
- 2.2. This MOU outlines the basis on which TEQSA and Education, working within the terms of their respective governing legislation, including those pertaining to confidentiality and privacy, agree to share information including:
 - a) as defined in section 180-5 of HESA, and
 - b) received from existing providers and new applicants in relation to TEQSA's regulatory and quality assurance activities and TEQSA's assessment of that information, including data and supporting documentation.
- 2.3. Other information and assessment of that information, such as complaints information and financial viability assessments, are typically shared under section 180-15 of HESA and subdivision B of the TEQSA Act, where significant risks are identified in relation to a particular provider that may be relevant to the other Party's regulatory decision making and risk management. This is relevant to providers that come under both the TEQSA Act and HESA, and TEQSA registered higher education providers that are seeking access to Commonwealth funding.
- 2.4. Details of the information to be shared are specified at Schedule 1, Schedule 2 and Schedule 3 of this MOU.
- 2.5. Schedules 4 and 5 of this MOU set out agreed communication protocols for handling certain categories of information.
- 2.6. To the extent that the other Party may be affected, the Parties agree to consult with each other if they intend to make changes to data collections or processes covered by the Schedules.

3. Purpose

- 3.1. The purpose of this MOU is to facilitate an efficient and effective risk-informed regulatory and quality assurance approach to monitoring the sector, through the exchange of information and data, and general cooperation between the Parties.

4. Objective

- 4.1. Subject to restrictions imposed by law and other government policy, the Parties agree to cooperate and share information as set out in the Schedules to this MOU.

5. Period of Operation

- 5.1. The MOU comes into effect when signed by both Parties.
5.2. Either Party may bring this MOU to an end in accordance with clauses 13.3 and 13.4 of this MOU.

6. No legal effect

- 6.1. The Parties recognise that this MOU does not create, and is not intended to create, any legal relations between the Parties and is of no legal effect.
6.2. However, the Parties agree to work together, applying their best endeavours, to implement this MOU in good faith.
6.3. Where Parties share information under this MOU, they do so as representatives of their respective organisation.

7. Costs

- 7.1. Each Party agrees to bear its own costs in performing its functions under this MOU.

8. Definitions

- 8.1 In this MOU, unless the context otherwise requires, the following words and expressions shall have the following meanings:

Australian Privacy Principles are in accordance with the provisions of the *Privacy Act 1988*.

Business Day means a day that is not a Saturday, Sunday or a recognised public holiday in any State or Territory.

CRICOS providers mean education providers who are registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

Higher education provider is a body corporate approved under Division 16 of HESA.

Higher Education Datamart is the single point of access to higher education data.

HEIMS means Higher Education Information Management System

HITS means HELP IT System

In-confidence information means information disclosed by, or on behalf of, a Party to this MOU that:

- a) is by its nature in-confidence; or
- b) is designated by the disclosing Party as in-confidence (for example, commercial-in-confidence and legal-in-confidence); or
- c) the receiving Party knows or ought to know is in-confidence.

but does not include:

- d) information which is or becomes public knowledge other than by a breach of this MOU; or
- e) personal information; or
- f) this MOU.

Institution means higher education provider or VET provider as defined under HESA, or a body that seeks approval under HESA to be approved as a higher education provider or a VET provider.

MOU Manager means the nominated contact person responsible for day to day contact on behalf of a Party.

PIR means Provider Information Request

Party means a party to this MOU.

Personal information means information or an opinion, whether true or not and whether recorded in material form or not, about an identified individual or an individual who is reasonably identifiable.

9. Interpretation

9.1. In this MOU:

- a) words in the singular include the plural and words in the plural include the singular;
- b) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form about that word or phrase has a corresponding meaning;
- c) if an example is given of anything (including a right, obligation, or concept), the example does not limit the scope of that thing;
- d) a reference to a Party to this MOU includes a successor-in-title and a permitted substitute of that Party;
- e) a reference to legislation or to a legislative provision includes:
 - i. all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision;
 - ii. any amendments, modifications or re-enactments of that legislation or legislative provision; and
 - iii. any legislation or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- f) the clause headings and table of contents in this MOU are for reference only and do not in any way influence the meaning of this MOU;
- g) a reference to any deed, agreement, document or other instrument (including this MOU) includes a reference to that deed, agreement, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- h) a reference to a right, obligation or concept includes each part of it;
- i) where the day on or by which any act, matter or thing is to be done under or pursuant to this MOU is not a Business Day, the act, matter or thing must be done on the next Business Day; and
- j) references to clauses are references to clauses of this MOU.

10. Confidentiality and privacy

- 10.1. Each Party agrees to comply with the obligations of confidentiality and information management imposed by relevant legislation, and with the *Privacy Act 1988*.
- 10.2. The Parties agree not to disclose any in-confidence information of the other Party without the prior written approval of the other Party. In giving written approval to any disclosure of information, a Party may impose conditions of usage and each Party agrees to comply with the conditions

imposed by the other Party.

- 10.3. The Parties agree that the confidentiality obligations do not apply to the disclosure of information:
- a) to the Minister of the responsible portfolio;
 - b) in response to a request by the House of Representatives or Senate Committee of the Parliament of the Commonwealth of Australia;
 - c) that is authorised or required by law; or
 - d) where the information is in the public domain otherwise than by a disclosure from the receiving Party.
- 10.4. However, each Party agrees to consult the other Party, to the extent practicable, where it proposes to disclose in-confidence information in these circumstances.
- 10.5. The Parties agree to notify each other when additional confidentiality constraints arise in relation to previously shared information.

11. Publication

- 11.1. If any information shared under this MOU will result in publication by the receiving Party, then the Party undertaking the publishing process must obtain, within a reasonable timeframe, written agreement from the Party that provided the information, prior to publication.
- 11.2. The Party undertaking the publishing process will provide copies of any draft publications prepared on a confidential basis for review and comment by the other Party.
- 11.3. Where the material created relates to individual higher education providers both Parties will consider appropriate communications with the affected providers about the intention to publish information.
- 11.4. Where the information shared under this MOU is already publicly available, Clauses 11.1 to 11.3 of this MOU do not apply.
- 11.5. Both Parties shall appropriately acknowledge the other Party that contributes to the creation of the material to be published.

12. Dispute resolution

- 12.1. If a dispute arises in relation to the operation of this MOU, the Parties will use their best endeavours to settle the dispute through direct negotiation, acting in a spirit of cooperation. If either Party identifies an issue or dispute concerning a matter within the scope of the MOU requiring resolution, then the agreed process for resolving such matter is as follows:
- a) the MOU Managers will discuss the issue and attempt to resolve the issue within 10 Business Days;
 - b) if the MOU Managers are unable to resolve the issue, the issue will be referred to senior managers not previously involved in the issue, for mutual review and determination within 10 Business Days from the date of the impasse; and
 - c) if the issue remains unresolved, the Parties may refer the issue for external dispute resolution (including mediation or arbitration) on an agreed basis.
- 12.2. Despite the existence of a dispute, each agency will (unless requested in writing by the other agency not to do so) continue to perform its functions under this MOU. The Parties will bear equally the cost of any third person engagement.

13. Review, variation and termination

- 13.1. Either Party may request a review of this MOU or any part thereof. Such requests will be in writing,

specifying the reasons for making the request. Reviews may be either formal or informal, depending on the nature of the issues that require consideration.

13.2. This MOU may be amended or varied in writing, in agreement between the Parties. No agreements or arrangements purporting to vary this agreement are effective unless provided in writing and signed by the Parties.

13.3. The Parties agree that withdrawal from this MOU will be a measure of last resort. A Party that proposes to withdraw from this MOU will notify the other Party in writing of its intention to do so by giving not less than 20 Business Days' notice.

13.4. Either Party may give written notice to the other of its intention to terminate this MOU. The MOU will terminate 30 days after the date the notice was received.

Points of Contact (MOU Managers)

14.1. The Parties will establish efficient channels and coordination points for contact and flow of information.

14.2. In relation to the implementation of this MOU the Parties agree to liaise, in the first instance, through their respective representatives (MOU Managers).

14.3. The Parties agree to nominate MOU Manager's roles as primary contact officers for both agencies.

Education

Position: Director, System Design and Quality, Higher Education Group

Address: Department of Education and Training Governance,
Quality and Access Branch

50 Marcus Clarke Street CANBERRA ACT 2601

Phone: 1300 566 046

TEQSA

Position: Director, Corporate

Address: Tertiary Education Quality and Standards Agency Director,
Corporate Level 14, 530 Collins Street MELBOURNE VIC 3000

Phone: 1300 739 585 Email: enquires@teqsa.gov.au

15. Execution

Executed as an Memorandum of Understanding
For and on and behalf of the
Tertiary Education Quality and Standards Agency
by its authorised signatory
ABN 50 658 250 012

by



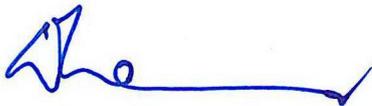
(Anthony McCLARAN)

Chief Executive Officer TEQSA

Date: 14. 10. 16

For and on and behalf of the
Department of Education and Training
by its authorised signatory
ABN 12 862 898 150

by



(David Learmonth)

Deputy Secretary
Department of Education and Training

Date: 28/10/16

Schedule 1: Sharing of data and information between the Parties

1. This Schedule sets out the nature of data and information that Education and TEQSA agree to share excluding data obtained through the Provider Information Request (PIR) and data obtained through the Higher Education Information Management System (HEIMS), which are dealt with in detail in Schedules 2 and 3.

Information shared on a reciprocal basis

2. Compliance information
 - 2.1. Information about potential and actual provider breaches of compliance, including complaints from stakeholders.
3. Financial information
 - 3.1. Financial viability assessments.
 - 3.2. Other financial information, for example, financial statements and other information showing provider income and expenditure.
4. Information about provider operations
 - 4.1. Provider profiles.
 - 4.2. Material changes to a higher education provider's operations that may impact on its compliance with HESA or the TEQSA Act.
 - 4.3. Market intelligence about individual providers: i.e. changes in ownership, brokers' actions, survey results, and affiliations.
5. Risk assessments
 - 5.1. Information relevant to assessment of 'fit and proper' person requirements for providers.
 - 5.2. Risk assessments of providers, including risk ratings and accompanying explanations of methodology and indicators as required.

Information that Education will share with TEQSA

6. Financial and program information
 - 6.1. HELP and Commonwealth Grants Scheme (CGS) funding amounts for providers.
 - 6.2. Providers' single equity report to the Government.
7. Information about provider operations
 - 7.1. Current or historical applications.
 - 7.2. Education's final decisions on applications for HELP provider status approval.
8. Regulatory action
 - 8.1. Notice of recommendation or decision to not approve a higher education provider application or revoke approval.
 - 8.2. Notice of recommendation not to approve an application under HESA where the provider is applying to be approved as a higher education provider under HESA.
 - 8.3. Changes which may affect a provider's HELP approval status.

Information that TEQSA will share with Education

9. Information about provider operations
 - 9.1. Sharing of market intelligence about providers derived from financial assessments.
 - 9.2. Information on all registered providers and registered course details as listed on the National Register, including monthly sharing with Education HITS team
 - 9.3. Notification of providers being renewed or added to CRICOS.
 - 9.4.
10. Regulatory action
 - 10.1. Notice of recommendation not to approve an application for registration or renewal of registration under the ESOS Act where the provider is applying for CRICOS registration. That is, provide early notification on re-registration or any events requiring sanctions (conditions or limitations) that would limit or restrict the operation of approved providers and the reasons for those sanctions.
 - 10.2. Recommendations to impose conditions or take other enforcement action (such as suspension or cancellation of registration) relating to TEQSA registration or course accreditation, or CRICOS registration.
 - 10.3. Notices of decisions in relation to 10.1 and 10.2.
 - 10.4. Changes to National Register, which may affect a provider's CRICOS provider status.
 - 10.5. Final decisions on applications for TEQSA registration or renewal of registration, or CRICOS provider status.

Schedule 2: Provision of Provider Information Request data to TEQSA

1. This Schedule outlines the provision of data collected by the Department for TEQSA as part of the Provider Information Request (PIR) using the powers under Section 28 of the TEQSA Act.
2. The PIR collection, while having its legislative basis in the TEQSA Act, forms part of the HEIMS and HITS data collections undertaken by Education.
3. The request made under section 28 of the TEQSA Act will specify the manner that the data is to be submitted in, that being the format required by Education's HITS and HEIMS collections. PIR data will be shared between TEQSA and Education after each annual collection, once data has been system validated.
4. It is important that the data be accessible by TEQSA in a timely manner, so that TEQSA meets its ongoing reporting obligations (including, but not limited to, the annual Risk Assessment Process and *Statistics Report on TEQSA Registered Higher Education Providers*). Finance and other data will be made available in the timeframe and format discussed and agreed between the MOU Managers.
5. In the event that TEQSA has concerns about validation of the data and/or the quality of the output files provided to TEQSA, the Parties will liaise to understand and resolve the issues identified.
6. Compliance activity with regard to reporting requirements for non-HELP providers will remain the responsibility of TEQSA.
7. Data to be provided will include access to all raw PIR data across the reported data sets:
 - a) Student data;
 - b) Staff data;
 - c) Finance data including:
 - i. audited financial statements; and
 - ii. standardised financial information (Profit and Loss, Balance Sheet and Cashflow Statement).
8. Education will provide supporting documentation that enables the interpretation of the data. This will include, but is not limited to:
 - a) extraction code;
 - b) business rules;
 - c) a summary of any known data quality issues.

Schedule 3: Provision of Education, HEIMS, Finance Collection data to TEQSA

1. This Schedule outlines the HESA information (under section 180-15 of HESA and clause 1.9 of the MOU) data and supporting documentation that Education will share with TEQSA. This includes Education's Higher Education student collections, higher education staff collection and finance collection, as well as, but not limited to, the HELP IT System (HITS).
2. Data collected in the HEIMS will be made available to TEQSA after each annual collection, once data has been system validated. Data collected in HITS for non-FEE-HELP approved providers will be made available to TEQSA on a real time basis.
3. The data will be provided in the format discussed and agreed between the MOU Managers and will include the following broad areas :
 - a) Student data;
 - b) Staff data; and
 - c) Finance data including:
 - i. audited financial statements; and
 - ii. standardised financial information (Profit and Loss, Balance Sheet and Cash Flow statement).
5. In relation to finance data, this includes financial information for universities not already in the public domain (e.g. Table B and C providers under HESA) and finance and other data collected from FEE-HELP higher education providers captured through HITS.
6. Education will provide nominated TEQSA staff(s) with access to all financial information in HITS by providing a specific TEQSA user role for HITS access.
7. In conjunction with the provision of data, or as requested by TEQSA, Education will provide supporting documentation that enables the interpretation of the data. This will include, but is not limited to:
 - a) extraction code;
 - b) business rules;
 - c) methodology;
 - d) data model; and
 - e) a summary of any known data quality issues.

Schedule 4: Communication Protocol (International Education)

1. This Schedule sets out the communication protocol that will govern arrangements for sharing International Education related data and information. .

Significant regulatory decisions

2. TEQSA will provide advice in writing and include the nature of the regulatory decision.
3. TEQSA will provide Education with advice if it intends to take action against CRICOS providers or other institutions under TEQSA's jurisdiction, where TEQSA considers there is a potential effect on provider's ability to fulfil its commitments to overseas students.
 - a) Timeframes in which TEQSA will inform Education of regulatory actions affecting CRICOS registered providers/courses and other institutions under TEQSA's jurisdiction where TEQSA considers there is a potential impact on provider's ability to fulfil its commitment to overseas students are outlined in Schedule 1.
 - b) Education will handle complaints about providers that have not met their obligations to place a student in a suitable alternative course or pay them a refund of their unspent tuition fees (in the event of provider default).

International Education

4. Each Party agrees to establish efficient channels and coordination for information flow in regard to International Education. This includes:
 - a) Information relating to strategic level activities that:
 - i. support Australian institutions to work offshore, student mobility, and facilitate employability of graduates and qualifications recognition;
 - ii. communicating the value and quality of Australian higher education; and
 - iii. establish relationships with countries primarily where Australian education institutions are operating.
 - b) Relevant information relating to legislation changes, fees and charges regimes.
 - c) Establishment of a mechanism to monitor information in other countries and organisations, for example, through Education International functions in the Department of Education and Training, Austrade and the Asian Development Bank.
 - d) Development of an international information exchange policy.
 - e) Development of an international communication strategy, including communicating the value and quality of Australian higher education.
 - f) Cooperation in relation to the Australian Qualifications Framework (AQF) standards and offshore provisions (transnational education), including the regulation of offshore provision.
 - g) Sharing of information regarding engagement with professional accreditation bodies.
 - h) Sharing of information regarding institutions, compliance and other related activities.

Schedule 5: Communication Protocol (Complaints)

1. This Schedule sets out protocols for handling complaints received that fall within the jurisdiction of the other Party.
2. Where a Party receives a complaint about a matter that is within the other Party's jurisdiction, it will be referred to the other Party's MOU manager within five business days.
3. The first Party will let the complainant know the complaint has been received and that it has been referred to the other Party for consideration. The complainant will be provided with appropriate contact details for the other Party.
4. The first Party will retain a record to ensure continuity in responding to the complaint.
5. The responsible Party will deal with the complaint according to its own policy.