



Australian Government

Tertiary Education Quality and Standards Agency

Proposed Fit and Proper Person Considerations

TEQSA Consultation Paper, October 2017

Responding to this paper

TEQSA requests that responses to the consultation questions posed in this paper, along with any other relevant feedback, be submitted via email to consultation@teqsa.gov.au.

Submissions close at **5.00pm on 1 December 2017**.

Interested parties can also email consultation@teqsa.gov.au with queries about this paper, or to seek clarification of the consultation questions.

Please note that TEQSA intends to publish a summary of submissions received. If you do not wish for your submission (or part of your submission) to be published, please indicate this in your response. TEQSA may alter the format or content of submissions before they are published, or decline to publish particular submissions, having regard to the requirements for Australian Government websites.

TEQSA

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Background

The *Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017* received Royal Assent on 16 August 2017. One of the amendments this act made to the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) enables TEQSA, under section 7A, to specify by legislative instrument, matters that the Agency may have regard to in deciding whether a person is a fit and proper person for the purposes of the TEQSA Act.

Relevant provisions

Under subsection 21(1) of the TEQSA Act, the Agency can grant the application for registration if it is satisfied that:

- a. the applicant meets the Threshold Standards; and
- b. the applicant, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the applicant's affairs, is a fit and proper person.

Under section 25A of the TEQSA Act it is a condition of all higher education providers' registrations that: 'a registered higher education provider, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the provider's affairs, must be a fit and proper person.'

Consultation

We are now seeking your comments on the matters that the Agency may have regard to in deciding whether a person or provider is fit and proper.

Proposed considerations

TEQSA is proposing to include the following text in the legislative instrument made under subsection 7A(2) of the Act that will set out the matters the Agency may take into account when determining whether a person is a fit and proper person under the Act:

- (a) whether the person has been convicted of an offence against a law of the Commonwealth or of a State or Territory or a law of a foreign country, and if so, the seriousness of the offence;
- (b) whether the person has ever been a member of a corporate governing body (however described), or a person who made or participated in making decisions that affect the whole, or a substantial part, of the affairs of an education provider that has:
 - (i) breached an offence or civil penalty provision in the Act;
 - (ii) had its registration cancelled or not renewed;
 - (iii) had the accreditation of a course of study cancelled or not renewed;
 - (iv) had a condition imposed on its registration;
 - (v) not complied with a condition on its registration or course accreditation;

- (vi) had its registration shortened;
 - (vii) been the subject of a compliance assessment by TEQSA;
 - (viii) been the subject of sanctions by ASQA or the equivalent State or Territory body;
 - (ix) had its ESOS Act registration cancelled, or a condition imposed on its ESOS Act registration;
 - (x) been issued an infringement notice under the ESOS Act; or
 - (xi) committed an offence under the ESOS Act.
- (c) whether the person has ever provided false or misleading information to a Commonwealth, State or Territory authority, in circumstances where it is reasonable to assume that the person knew that the information was false or misleading;
- (d) whether the person has ever been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
- (e) whether the person has ever become bankrupt, applied to take the benefit of a law for the benefit of bankrupt or insolvent debtors, compounded with his or her creditors or assigned his or her remuneration for the benefit of creditors;
- (f) whether the person has ever been found not to be a fit and proper person for the purposes of the:
- (i) Act;
 - (ii) *ESOS Act*;
 - (iii) *National Vocational Education and Training Regulator Act 2011*, or the equivalent State or Territory legislation;
 - (iv) *VET Student Loans Act 2016*;
 - (v) *Australian Education Act 2013*;
 - (vi) *Higher Education Support Act 2003*; or
 - (vii) any other Commonwealth, State or Territory authority
- (g) whether the public is likely to have confidence in the person's suitability to be involved in an organisation that provides higher education; and
- (h) any other relevant matter.

Reasoning behind proposal

Specifying matters in an instrument that TEQSA may have regard to when determining whether a person or provider is fit and proper, will allow the Agency to adjust fit and proper person requirements as needed, in response to emerging issues in the sector.

The instrument does not require the Agency to consider every item when assessing whether someone is a fit and proper person under the TEQSA Act, but gives guidance to the Agency and the public of matters that are likely to be relevant in some instances.

Items (g) and (h) in the list are relatively broad. As it isn't possible to codify matters that will be relevant in every potential scenario, item (g) in particular gives a principle of how the Agency will assess individuals in some circumstances. For

example, if a CEO of an applicant received a qualification from a diploma mill, item (g) is likely to be a relevant consideration.

When drafting the proposed determination the Agency considered other instruments and acts that deal with fit and proper person requirements, including the *Fit and Proper Person Requirements 2011*, made under the *National Vocational Education and Training Regulator Act 2011* and the *Fit and Proper Person Specified Matters 2012*, made under the *Higher Education Support Act 2003*.

Questions for consultation

Consultation questions

- ▶ **Question 1:** Do you agree with the proposed fit and proper person considerations?
- ▶ **Question 2:** Are there any other matters you think should be included in the fit and proper person considerations?

Consultation process

This paper is being made available on TEQSA's website (www.teqsa.gov.au) and has been sent directly to peak bodies for providers regulated by TEQSA under the TEQSA Act.

Responses to the questions posed in this paper and other relevant feedback can be provided through the following email address consultation@teqsa.gov.au.

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