



Guidance Note: *Corporate Governance*

What is corporate governance?

Broadly defined, corporate governance is the framework of structures, rules, relationships, systems and processes of an entity through which:

- 4 corporate directions and targets are set
- 4 authority is delegated
- 4 organisational performance is monitored
- 4 risks are identified, managed and controlled
- 4 organisational accountability is maintained, and
- 4 corporate culture is developed and influenced.

The centrepiece of corporate governance is a formally constituted governing body (e.g. a board of governance) that is collectively accountable for the governance and performance of the entity overall, including, in the case of registered higher education providers, meeting and continuing to meet the requirements of the *Higher Education Standards Framework (Threshold Standards) 2015* (HES Framework).

In higher education providers corporate governance is typically part of a governance framework that also includes academic governance. Together these elements of governance guide and monitor the executive and academic functions of the provider.

Relevant Standards in the HES Framework

The principal Standards concerned with corporate governance are in Part A, Sections 6.1 (corporate governance) and 6.2 (corporate monitoring and accountability) of the HES Framework. These in turn have links to other related Standards concerning academic governance (6.3), representation of the entity (7.1), policy frameworks (7.2), information management systems (7.3) and institutional quality assurance (5.1-5.4), which together address a variety of mechanisms that enable and support effective corporate governance. Standards concerning wellbeing and safety (2.3) and student grievances and complaints (2.4) are also indirectly related to the corporate governance, through the oversight responsibilities of the governing body.

Intent of the Standards

The overall intent of the corporate governance Standards is to establish a corporate governing body that has certain specified characteristics, such as the inclusion of independent¹ members (directors), and that is competent to undertake its governance roles. The governing body is accountable for the direction setting and oversight of the provider as a whole. This makes the Standards for corporate governance the highest and most overarching level of the Standards in the HES Framework. The Standards require the governing body to address particular aspects of the governing body's own performance and behaviour, including obtaining advice as needed to make informed decisions and formally delegating authority (e.g. to the provider's executive) as it sees fit. The Standards also encompass a series of specific corporate requirements (e.g. financial sustainability, maintaining the quality of higher education) that the governing body must be able to demonstrate and assure itself about as part of its corporate accountabilities. The governing body is also accountable for periodic independent reviews and improvement of the effectiveness of the provider's governance systems.

The corporate governance Standards are designed to ensure that the matters encompassed by all other Standards in Part A of the HES Framework are intended to have a traceable accountability pathway to the governing body and Standard 6.1, via Standard 6.2. For example, the next layer of overarching Standards (academic governance and institutional quality assurance) requires the provider to generate performance monitoring information from various aspects of its operations and to report that information through its management information systems to the governing body. In this way, the governing body should be well positioned to understand and monitor any aspect of the provider's performance, at least at aggregate level.

Where a provider is a wholly-owned subsidiary of another provider, the governing body of the owner may be designated as the governing body of the subsidiary as well, provided that the governing body of the owner exercises all the responsibilities and meets all the requirements outlined in Sections 6.1 and 6.2.

Risks to Quality

The role of the governing body has a fundamental influence on the operations of a provider. It is involved in setting corporate directions, setting and monitoring performance targets, proactively identifying and mitigating risks, monitoring financial viability and sustainability, and influencing corporate culture. For higher education providers it is also accountable for the quality of education delivered, the validity of qualifications issued, compliance with the HES Framework and the way it represents its offerings to prospective students and others.

Any shortcomings in governance expose a provider to significant risks. The concern of the governance Standards, and of TEQSA, is that higher education providers have a focus of responsible overall monitoring and accountability, which collectively prevents the realisation of significant risks such as not meeting the requirements of the HES Framework, unrealistic or unsustainable resourcing to deliver quality higher education, irresponsible representation of the provider or development of a culture that is inconsistent with quality higher education.

¹ Broadly speaking, an independent member (director) of a governing board is someone who does not have a material personal, financial, business or other interest in the provider. See Appendix A of this guidance note for further details.

Some potentially serious shortcomings in governance that TEQSA will want to see obviated include a governing body:

- 4 having insufficient collective competence to understand and undertake a governance role in a higher education provider
- 4 failing to obtain advice as required to make informed decisions, particularly about the nature and quality of higher education offered
- 4 not being well enough informed, and not diligently making itself sufficiently informed, to identify and address likely risks to the provider's viability, sustainability and educational offerings
 - o this may particularly be a risk in corporate groups where the group board acts as the governing body for multiple entities
- 4 not taking steps to assure itself of compliance with the HES Framework and not demonstrating how it knows the provider is meeting the Standards required
- 4 not delegating authority to achieve effective management and accountability of the executive, and not monitoring that those delegations are effective
- 4 allowing a provider to represent itself or its offerings in an inaccurate or misleading manner with consequent damage to students and Australian higher education, or
- 4 failing to keep adequate records of its activities and decisions.

At worst, failures of corporate governance may lead to major organisational failures that disadvantage students and/or damage the reputation of Australian higher education, including corporate collapse arising from ignorance or mismanagement of preventable risks by the corporate governing body, whether directly or through its delegations of authority.

What TEQSA will look for

This part of the guidance note covers the full extent of the Standards, and corresponding evidence that TEQSA may require, in relation to corporate governance.

For new applicants seeking initial registration and course accreditation, TEQSA will require evidence to be provided in relation to all relevant Standards.

For existing providers, the scope of Standards to be assessed and the evidence required may vary. This is consistent with the regulatory principles in the TEQSA Act, under which TEQSA has discretion to vary the scope of its assessments and the related evidence required. In exercising this discretion, TEQSA will be guided by the provider's regulatory history, its risk profile and its track record in delivering high quality higher education.

TEQSA's case managers will discuss with providers the scope of assessments and evidence required well ahead of the due date for submitting an application.

The evidence required for particular types of application is available from the Application Guides on the TEQSA website.

Higher education providers are legal entities established by one of a number of possible legal avenues of incorporation, e.g. the Corporations Act. TEQSA will need to see the instrument formally establishing the provider and its governing body (see also Standard 7.3.1) such as the constitution. TEQSA will wish to confirm from the provider's constitution or related documentation (e.g. the strategic plan) that: the entity has a primary purpose of higher education, the governing body's accountabilities are specified (e.g. board charter, constitution or equivalent) and the membership of the governing body meets the requirements of the HES Framework. This will include declarations from members of the governing body concerning the independence of at least two members, residency and fit and proper persons.

The background of all of the members of the governing body will need to be available in sufficient detail for TEQSA to form a view of their collective and individual competence and the experience of the members to undertake governance roles (see also Section 7.3) in a higher education provider. TEQSA will wish to confirm that the governing body collectively has (or has ready access to) the range of expertise and governance experience necessary to undertake the overall roles specified by its charter (or equivalent) and the HES Framework (such as financial monitoring, planning, risk management, oversight of the quality of higher education).

In relation to Standard 6.1.3, TEQSA will wish to see the mechanisms that the governing body has adopted to obtain independent advice and academic advice as is necessary to carry out its governance roles diligently and competently. TEQSA will also want to see the governing body's delegations of authority and the mechanisms it adopts to assure itself that such delegations are implemented and are operating effectively. Standard 6.1.3d requires the governing body to undertake periodic independent governance reviews and TEQSA will wish to see (in the evidence submitted for renewal of registration) the results of such reviews (or plans for such reviews in the case of a new provider) and the consequent actions taken.

Section 6.2 outlines a set of key matters that the governing body must assure itself of and be able to demonstrate that they are being attended to responsibly and effectively. A provider is required to keep a true record of the business of the governing body (Standard 6.1.3e). TEQSA will wish to examine the record of the governing body's work (e.g. agendas, meeting minutes, actions arising) for a significant period (at least a year) to confirm the scope and detail of the governance activities involved and that they have been undertaken diligently. TEQSA does not prescribe the format of meeting minutes. However, minutes should record not only the decisions taken, but also the basis on which the decision was made (key documents considered and key points that were taken into consideration by the governing body in making its decision), as well as actions arising. The Good Governance Guide on board minutes available from the Governance Institute of Australia is a useful reference point for good practice. The Governance Institute of Australia has a range of Good Governance Guides on many other topics which may also be useful.

In particular, TEQSA will need to be satisfied that the governing body's work encompasses all of the requirements of its charter, that the relevant Standards have been met, and that the governing body is able to demonstrate how it knows that they have been met.

If the evidence that is used and relied on to give assurance to the governing body is not already incorporated in the governing body's records, TEQSA will wish to see that evidence. This may include:

- 4 internal audit reports or the like, showing that the entity is meeting its obligations for legislative compliance (Standard 6.2.1a)
- 4 performance reports that demonstrate that the provider is meeting its planning targets as set out in its strategic plan (or equivalent) (Standard 6.2.1b)
- 4 financial reports and audited statements, internal audit reports and reports from the audit committee (or equivalent) that show that the provider's financial position and projection are sustainable and controls are in place (Standards 6.2.1c, d)
- 4 risk management plans showing that risks have been identified tenably and credible mitigation strategies have been implemented (Standard 6.2.1e)
- 4 academic governance reports demonstrating that the provider's higher education operations are operating as planned at the level of quality intended (Standard 6.2.1f)
- 4 equity/diversity reports that are relevant to the provider's operations (Standard 6.2.1g)
- 4 evidence that effective controls for the secure issue of qualifications are in place (Standard 6.2.1h)
- 4 evidence that tenable contingency plans are available to deal with unexpected events (Standard 6.2.1j)
- 4 records of incidents and complaints that are maintained and used to inform risk management and prevent recurrences (Standard 6.2.1j, see also Standard 7.3.3)
- 4 evidence that mechanisms for identifying and managing lapses in meeting the requirements of the HES Framework are effective (Standard 6.2.1k, see also Standard 7.3.3).

TEQSA will need to be satisfied that the governing body's mechanisms to assure itself that the requirements of the HES Framework are continuing to be met are both credible and effective.

Scope of assessments

If, as a result of looking in detail at the governing body's activities, TEQSA is satisfied that the governing body is:

- 4 competent, diligent and effective in attending to the breadth of its governance responsibilities as required by the HES Framework, and
- 4 able to demonstrate that it is well informed about the provider's operations, risks and sustainability through its internal assurance mechanisms,

this will build TEQSA's level of confidence in the provider overall.

This confidence may allow TEQSA to reduce its evidence requirements for other Standards or for subsequent regulatory activities. On the other hand, if concerns are raised in relation to the provider's capabilities in corporate governance or its internal assurance mechanisms, this may require TEQSA to probe other areas of the provider's operations in more detail where the provider is not already doing so effectively as part of its own routine governance and monitoring work.

Resources and references

ASX Corporate Governance Council (2014), *Corporate Governance Principles and Recommendations*, 3rd edition.

Committee of University Chairs, Higher Education Funding Council for England (2009), *Guide for Members of Higher Education Governing Bodies in the UK*.

Governance Institute of Australia (2015), *Board minutes: what to record, the business judgement rule*, (Good Governance Guide).

Hénard, F. and Mitterle, A. (2010), *Governance and quality guidelines in Higher Education: A review of governance arrangements and quality assurance guidelines*, OECD.

OECD (2015), *G20/OECD Principles of Corporate Governance*.

Quality Assurance Agency (2014), *UK Quality Code for Higher Education*, <<http://www.qaa.ac.uk/AssuringStandardsAndQuality/quality-code/Pages/default.aspx>>.

TEQSA (2016), *Explanations of terms in Part A of the HES Framework 2015*, <<http://www.teqsa.gov.au/explanations-hes-framework-terms>>.

Universities Australia (2011), *Voluntary Code of Best Practice for the Governance of Australian Universities*, <<https://www.universitiesaustralia.edu.au/efficiency-and-governance/legislation-and-governance/University-Governance>>.

Version #	Date	Key changes
1.0	April 2015	
2.0	13 April 2016	Updated for the HESF 2015 and made available as beta version for consultation.
2.1	19 August 2016	Incorporated feedback from consultation, including elaboration on meeting minutes and governing body ownership, and revisions to appendices A and B.
2.2	5 April 2017	Updated with references to the Governance Institute of Australia as well as clarification that all references to links with 'the provider' below also apply to links with associated entities.

Appendix A

Characteristics of an independent member

An independent member of a governing body is a person who is independent from management and who does not have (or intend to have) any material or significant dealings with the provider (or an associated entity) that could interfere with the exercise of independent judgement as a director. Where members of governing bodies are paid fees for undertaking their responsibilities, TEQSA does not consider this to compromise their independence. However, payment for other roles, e.g. transactions with related parties, may compromise independence.

The following points encompass a selection of characteristics that are seen to be indicative of the 'independence' of a director. TEQSA will have regard to any constraints where there is an Act of Parliament that determines the composition of the governing body. All references below to links with 'the provider' also apply to links with associated entities.

The director:

- 4 has not had an employment relationship with the provider within the last three years
- 4 has not had a business relationship or other material contractual relationship with the provider within the last three years
- 4 does not have a direct or indirect material financial interest with the provider
- 4 is not involved in the day-to-day management functions of the provider and not allied with the interests of management
- 4 is sufficiently impartial and disconnected from provider's operations, such that they are in position to hold management to account and act in the organisation's best interests
- 4 does not have a material personal interest (i.e. doesn't stand to gain, benefit or suffer a loss) in the outcome of a Board meeting
- 4 is free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, their capacity to exercise independent judgement
- 4 has not been a director with the provider for such a period (e.g. ten years) that their independence may have been compromised.

Elected staff or executive directors can be members of governing boards, but would not be classed as 'independent' members as they are employed by the provider. Students would not normally be considered independent either.

References

ASX Corporate Governance Council (2014), *Corporate governance principles and recommendations*, 3rd edition.

Appendix B

Governance review guidelines

Standard 6.1.3(d) requires the corporate governing body to undertake 'periodic' (at least every seven years) independent reviews of the effectiveness of the governing body and academic governance processes, to ensure that the findings of such reviews are considered by a competent body or officer(s), and that agreed actions are implemented. Reviews undertaken in the second half of a registration period will be the most useful as evidence for renewal of registration.

Because the skills and qualifications required to undertake reviews of corporate governance and reviews of academic governance processes may be quite different, TEQSA will accept the appointment of different reviewers for each area, and therefore the provider may submit two reports (refer to the note at the end of this Appendix for guidance on when a reviewer can be considered 'independent').

Alternatively, a panel could be engaged, which might include peer reviewers (especially in the case of the review of academic governance). There would also be many advantages for a provider in conducting a broad and thorough self-review of governance in the first instance, and then inviting a suitable review to validate the findings of the self-review.

The review reports will form the major part of the core evidence for renewal of registration purposes.

The prime focus of the independent review is to obtain evidence of the effectiveness of the provider's own capacity to review and quality assure its own educational operations, such as through internal review reports and performance reporting to the corporate governing body and the academic governing body (governing bodies), and the governing bodies' response to these.

The scope of the governance review should include the extent to which the governing bodies fulfil the range of responsibilities outlined for them in Standards 6.1.3, 6.2 and 6.3.

Domain 6 of the HES Framework encompasses overarching processes for overseeing and monitoring the achievement of all of the other Standards. In particular, the outputs of the system of Institutional Quality Assurance required in Domain 5 will be sent to the governing bodies through cycles of reporting and review.

An independent reviewer should form a judgement on the extent to which internal reports submitted to the governing bodies as part of ordinary business provide a firm basis for those bodies to satisfy themselves that the requirements of the related Standards in Domains of: Learning Environment, Teaching, Student Participation and Attainment, and Research and Research Training (where applicable) are being met.

A reviewer should draw on a range of methods including:

- 4 surveying and/or interviewing members of governing bodies and senior management, and
- 4 reviewing:
 - 4 the terms of reference of the governing bodies
 - 4 minutes of the meetings of the governing bodies

- 4 the policy framework governing the oversight of the provider's operations and achievement of academic quality and academic outcomes, and evidence of implementation
- 4 the suitability of reports to the governing bodies as a basis for ensuring that the requirements of the HES Framework are being met, including periodic reports arising from the interim monitoring of courses and sample reports of recent external or internal reviews of:
 - academic units (such as faculties, schools or departments) in the case of a larger provider
 - courses
 - assessment
 - academic integrity
 - the performance of agents
 - student outcomes (including completion and attrition)
 - research performance
 - the effectiveness of the framework for student grievances and complaints, and
 - the risk management framework and the effectiveness of controls for the major strategic risks.

The provider will also submit to the reviewer action plans arising from the sample of reviews, and progress reports against those action plans.

Where review reports are not available, or are not a satisfactory basis for ensuring that requirements are met, the reviewer should seek other evidence that the relevant requirements are being met.

Where the provider undertakes a self-review of its own governance in the first instance, the same range of evidence is relevant to the self-review.

In submitting its application for renewal of registration to TEQSA, the provider will be required to provide:

- 4 the report(s) of the external independent reviewer(s)
- 4 an action plan arising from the recommendations of the review(s), and
- 4 the latest report of progress against the action plan.

Wherever the governance review report(s) cover the full scope of the HES Framework requirements for corporate governance, corporate monitoring and accountability and academic governance, TEQSA will not need to seek additional evidence on these areas. Conversely, if some of these areas are *not* covered in the external reviewer's report, TEQSA will need to seek additional information and evidence.

What will TEQSA look for in assessing review reports?

TEQSA will look for the following characteristics:

- 4 reviewers have an independent perspective (see comments on independence below)
- 4 reviewers are competent to undertake the review including:
 - 4 having relevant qualifications and/or experience in the aspect of governance under review (including personal experience of academic governance roles in the case of academic governance reviews)
 - 4 having demonstrated expertise in conducting such reviews (of organisations with a comparable scale to the one being reviewed)
- 4 reports:
 - 4 focus on the requirements of the governance standards of the HES Framework
 - 4 are based on sufficient scope and quality of evidence
 - 4 take an evaluative approach, addressing strengths, opportunities for improvement and key risks, and
- 4 where practicable, an opinion on the provider's improvement plans, capacity and progress is provided.

In determining whether a review can be regarded as 'independent', TEQSA will have regard to similar considerations that apply to the independence of members of the governing body.

The following points are indicative of the 'independence' of a reviewer. The reviewer is a person who is independent from the provider and does not have (or intend to have) any material or significant dealings with the provider (or an associated entity) that could interfere with the exercise of independent judgement as a reviewer. More specifically, the reviewer:

- 4 has provided a declaration of independence to the satisfaction of TEQSA
- 4 has not had an employment relationship with the provider (other than in the course of engagement as an independent reviewer and related matters)
- 4 has not had a business relationship or other material contractual relationship with the provider within the last five years (other than in the course of engagement as an independent reviewer)
- 4 is not a current student of the provider
- 4 is not a substantial security holder with the provider
- 4 is not involved in the day-to-day management functions of the provider and not allied with the interests of management
- 4 is sufficiently impartial and disconnected from the provider's operations, such that he/she is in a position to make a detached assessment of its governance

- 4 does not have a material personal interest (i.e. does not stand to gain, benefit or suffer a loss) in the provider's operations (other than fees or other compensation arising from the conduct of the review)
- 4 is free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, their capacity to exercise independent judgement, and
- 4 has not been a member of the provider's governing body or academic governing body.