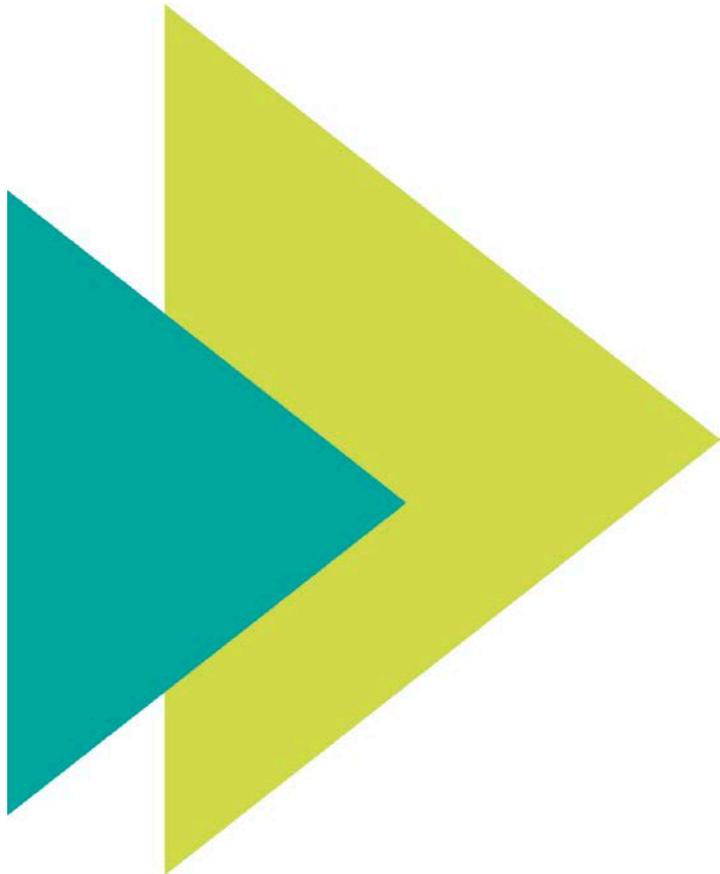




Australian Government  
Tertiary Education Quality and Standards Agency



**TEQSA's approach  
to public reporting  
of regulatory  
decisions—  
Consultation paper  
March 2013**

# 1. Purpose

As part of its commitment to regulatory good practice, TEQSA has decided to make more information about its regulatory processes and decisions available to the public. This accords with the principle of transparency that is good practice in higher education regulation.

This paper outlines possible approaches to reporting and publication methods, type of information, and the timeframes TEQSA could use to publish its regulatory decisions and the main reasons underpinning these, as well as a summary of the process. It has been developed as a basis for consultation with key stakeholders in the higher education sector to ensure that comments and feedback can inform TEQSA's decisions on the form, scope, timing, and processes to be used when publishing its decisions to the public.

# 2. Consultation

The paper is being made available on TEQSA's website ([www.tegsa.gov.au](http://www.tegsa.gov.au)) and has been sent directly to the State and Territory Ministers with responsibility for higher education and to the following sector peak representative bodies:

- Australian Council for Private Education and Training (ACPET)
- Council of Private Higher Education (COPHE)
- Council of Australian Postgraduate Associations Incorporated (CAPA)
- Council of International Students Australia (CISA)
- National Tertiary Education Union (NTEU)
- National Union of Students (NUS)
- TAFE Directors Australia (TDA)
- Universities Australia (UA)

Responses to the questions posed in this paper, and other relevant feedback, are sought by completing the document available at:

<https://www.surveymonkey.com/s/publicreportingconsultation>.

Submissions close at **5.00 pm on Friday, 3 May 2013**.

TEQSA will consider the responses, which will inform its decision on the form, content, and timing of public reports. Full implementation of public reporting of regulatory decisions is expected to apply to regulatory decisions made on or after 1 July 2013. TEQSA will not be publicly reporting its decisions retrospectively.

Please contact [consultation@tegsa.gov.au](mailto:consultation@tegsa.gov.au) with any queries about this consultation paper or clarification of the questions it poses.

# 3. Background

## 3.1 Legislative provisions

Section 13 of the *Tertiary Education Quality and Standards Agency Act 2011* ('TEQSA Act') sets out three basic principles for regulation which TEQSA must comply with when

exercising a power under the Act in relation to a regulated entity:

1. regulatory necessity
2. reflecting risk
3. proportionate regulation.

There is no specific requirement under the TEQSA Act for TEQSA to publish information on discrete regulatory processes and decisions, beyond the requirement to maintain the National Register of Higher Education Providers ('the National Register') in accordance with section 198 of the Act. This section provides that TEQSA may disclose to the public higher education information that relates to anything done, or omitted to be done, under the Act. 'Higher education information' is defined broadly as information relating to a regulated entity that is obtained by TEQSA, and that relates to TEQSA's functions, and that is not personal information (within the meaning of the *Privacy Act 2008*). Section 134(1)(e) gives TEQSA the function to collect, analyse, interpret and disseminate information relating to: higher education providers; regulated higher education awards; quality assurance practice and quality improvement in higher education; and the Higher Education Standards Framework.

The objects at section 3 of the TEQSA Act include the following:

- protecting students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education
- ensuring that students undertaking, or proposing to undertake, higher education have access to information about providers and the sector
- protecting and enhancing excellence, diversity and innovation in higher education in Australia
- protecting and enhancing Australia's reputation for quality higher education and training services.

Providing clear and transparent information about TEQSA's regulatory processes and decisions to the wider public about higher education operations undertaken by registered higher education providers, in Australia and offshore, would support the objectives of the TEQSA Act, while facilitating sector and stakeholder confidence in TEQSA and in providers.

## **3.2 TEQSA's reporting practice**

TEQSA currently uses the National Register to promulgate information to the public about registered providers. The Register includes key information: legal entity name; trading name/s used for the provider's higher education operations; ABN; provider category in which the provider is registered; registration renewal date; head office address; website for higher education operations; self-accrediting authority status; and the names of each higher education course of study accredited by TEQSA, as well as the accreditation renewal date of each higher education course of study accredited by TEQSA.

The information on the National Register identifies whether a decision-making process has resulted in any changes to the information listed on it, for example by amending a provider's course accreditation or registration period, or by listing a new accredited higher education course of study. In the future it is also intended that conditions imposed by TEQSA will be noted on the Register. Conditions will be removed from the Register once they have been met by the provider, or if they are revoked by TEQSA.

More detailed information is given directly to a provider in relation to each regulatory process with which a provider is involved. TEQSA provides a summary of findings, including any material evidence not submitted by the provider but used in TEQSA's assessment, and/or a

statement of reasons (in instances where an application has been rejected, or where conditions have been imposed).

A provider is given an opportunity to comment on the summary of findings, and also to make a representation to TEQSA relating to a proposed decision to reject an application, approve an application in part only, or where TEQSA intends to impose one or more conditions on the provider's registration or accreditation. These documents may contain commercial in confidence information, and it would not be appropriate to publish these.

### **3.3 Other practices**

The public reporting practices of other regulators and quality assurance agencies in Australia and elsewhere vary from full reporting to very limited reporting. It appears, however, that generally, higher education regulators overseas adopt a transparent approach to reporting.

For example, European Standards and Guidelines approved by the European Ministers of Education require quality assurance bodies in Europe to publish their reports in full. In recent years USA regional accreditors have also moved to fuller public disclosure of their concerns about provider compliance with standards and the imposition of sanctions. The Academic Quality Agency for New Zealand Universities (AQA), the New Zealand Qualifications Authority and the South African Council on Higher Education - like the former Australian Universities Quality Agency (AUQA) – publish detailed public audit reports that provide a high level of transparency about audit and provider processes, and about how provider practices have been interpreted, evaluated and judged.

Reporting approaches of other regulators outside the higher education sector differ. The Australian Energy Regulator, for example, publishes a quarterly report that summarises results of compliance monitoring and enforcement activities during the period. Others such as the Australian Communications and Media Authority and the Australian Skills Quality Authority publish some, but not all, of their regulatory decisions.

## **4. Policy principles**

TEQSA has identified a range of factors that it considers should be taken into account to guide its policy decisions about the extent of regulatory information it should be reporting publicly, and how this information should be reported. These include:

- The balance between:
  - public, provider and stakeholder interests, and the protection of these interests from the perspective of the consumer
  - transparency and integrity of TEQSA's processes; and
  - legitimate privacy and confidentiality concerns of regulated entities.
- How reporting will help meet the objectives of the TEQSA Act, including:
  - enhancing the reputation and competitiveness of Australian higher education
  - ensuring that students undertaking, or proposing to undertake, higher education have access to information about providers and the sector (taking into account information already available from other sources such as the *MyUniversity* and provider websites); and
  - providing quality higher education.

- The need for TEQSA to be consistent in its approach to reporting across providers, irrespective of the provider category in which a provider is registered or the particular circumstances of a provider.
- The need for TEQSA to avoid the publication of information that may unnecessarily prejudice a provider's ability to operate in the market.
- The information already contained in the National Register, and the benefits of adding or linking any additional reporting to the National Register.
- The need to maintain confidentiality to effectively investigate an issue, and whether any public comment might prejudice TEQSA's ability to investigate a matter or the right of a person or body to a fair hearing.
- The need for TEQSA to give each provider an opportunity to comment on a draft public report pertaining to its higher education operations prior to publication.

#### **4.1 Consultation questions**

1. Are there any principles listed above that should not be applied by TEQSA? If so, please provide a rationale.
2. Are there other principles that TEQSA should take into account?

### **5. Format of reports**

TEQSA has considered a range of approaches to public reporting which might be adopted, and has developed a reporting format that would be clear, succinct, short and able to be readily understood by the wider public. The report will focus on TEQSA's assessment of the provider's compliance with the Threshold Standards. It would include the following information:

- TEQSA's decisions (for example, to impose conditions, or to approve or reject an application) and the main reasons for the decision
- a summary of the steps used by TEQSA to reach the decision or decisions made
- a summary of any conditions imposed and the timeframes within which these need to be met; and
- other information that may be in the public interest to be recorded, such as key areas that may require attention by the provider.

Such a report might be structured to be typically between one and two pages in length and include the following content:

- brief background to TEQSA (primary aim of the Agency; legislative basis; link to Threshold Standards; and basic principles for regulation)
- provider name and website link
- purpose of the report (reference to relevant objects of the TEQSA Act and contribution of the report to meeting the objects by making regulatory decisions public)

- regulatory process and principal sources of evidence held by TEQSA to which the report relates (such as renewal of registration, or renewal of course accreditation)
- relevant sections of the TEQSA Act relating to the regulatory decision/s
- summary of steps followed by TEQSA - for example, in the case of a renewal of registration decision, submission of application and required fee; preliminary assessment; substantive assessment; proposed decision; consideration of any representations; final decision; notification to provider about the decision; and updating the National Register.
- decisions reached (such as the registration period approved, up to 7 years); rejection of an accreditation or registration application; or approval of accreditation or registration with conditions, including details of conditions and dates by which conditions must be met)
- whether the decisions are reviewable according to section 183 of the TEQSA Act; and
- other observations (where deemed to be in the public interest to be recorded), for example , relating to key areas of the Threshold Standards that may require attention by the provider.

TEQSA proposes to use the National Register to publish public reports by providing a link to the report on the relevant provider's page on the Register. It is also proposed that a draft public report be sent to a provider for comment at the time of sending them notification of TEQSA's final decision and, if applicable, statement of reasons.

A decision to include additional information on the National Register is a reviewable decision under section 183 of the TEQSA Act. TEQSA will not publish, apart from in exceptional circumstances, a public report on the National Register until the period for applying for review of either: i) the decision that is the subject of a report; and/or ii) the decision to include the report on the register has expired.

TEQSA proposes to amend the *Tertiary Education Quality and Standards Agency (Register) Guidelines 2012* to indicate that TEQSA will include information on the Register specifying a decision made (where within the scope of decisions on which TEQSA will report) and, where relevant, the date on which the review period expires or the status of any application for review.

While conditions published on the Register will remain on the register until such time as TEQSA has made a determination to revoke them, TEQSA will archive any non-current public reports on the TEQSA website. These reports would remain accessible to the public via a link on the TEQSA website.

## 5.1 Consultation questions

3. Are there any disadvantages with the proposed format for public reports as outlined above?
4. Is there other information that should be included?
5. Are there particular sensitivities that should be taken into account in publishing the information proposed?

6. TEQSA proposes to amend the *Tertiary Education Quality and Standards Agency (Register) Guidelines 2012* to indicate that TEQSA will include information on the Register specifying a decision made (where within the scope of decisions on which TEQSA will report) and, where relevant, the date on which the review period expires or the status of any application for review. Are there other considerations that TEQSA should take into account in amending these Guidelines?

## 6. Scope of reporting

TEQSA's regulatory decisions result from:

- (a) an assessment of an application made by an existing or aspiring higher education provider
- (b) a compliance assessment in accordance with section 59 of the TEQSA Act to review or examine any aspect of an entity's operations in order to assess whether a higher education provider continues to meet the Threshold Standards. This includes reviewing the operations of an entity that provides part of a course of study that leads to a regulated higher education award (as defined in the TEQSA Act) offered or conferred by a registered higher education provider; or
- (c) an accreditation assessment in accordance with section 61 of the TEQSA Act to assess whether the course continues to meet the Provider Course Accreditation Standards.

Application processes include those relating to: initial registration; renewal of registration; initial accreditation of a course of study; renewal of accreditation of a course of study; self-accrediting authority; and changing a provider category in which a provider is currently registered. TEQSA may decide, following assessment, to: approve the application in full; approve part of an application; reject the application; or approve an application with conditions imposed on the provider's accreditation; on the provider's registration; or both.

TEQSA may undertake a compliance or accreditation assessment for a range of reasons. For example, as an outcome of a risk assessment; or information provided through a material change notification; or information provided as a result of a request for information under section 28 of the TEQSA Act.

A range of decisions may result from a compliance assessment. These include, but are not limited to: imposing conditions on a provider's registration or accreditation (including conditions to restrict or remove self-accrediting authority); shortening or cancelling accreditation of a course of study; or shortening or cancelling a provider's registration.

Decisions resulting from an accreditation assessment include: imposing conditions on a provider's accreditation (including conditions to restrict or remove self-accrediting authority); or shortening or cancelling accreditation of a course of study.

TEQSA proposes that these regulatory decisions, and the underlying reasons for them, be publicly reported.

Information about providers relating to their CRICOS registration is well covered by the CRICOS Register (at: <http://cricos.deewr.gov.au>). Information on the CRICOS Register includes: institution name and trading name; institution type; total capacity; website; postal address; Principal Executive Officer name, title and contact details; list of courses; and

individual course details (name, CRICOS code, Field of Education, course level, whether it is a foundation program, whether it has any work component, language of instruction, duration, estimated total course cost, and course location/s.)

Given this practice, it is proposed that, at this point in time, any public reporting of TEQSA's regulatory decisions *not* include decisions relating to CRICOS.

## 6.1 Consultation question

7. TEQSA proposes to introduce public reporting on all its regulatory decisions, apart from those relating to CRICOS registration at this point in time. Are there any other decisions that you believe should not be published? If so, why?
8. Do you support TEQSA's proposal not to publish its regulatory decisions relating to CRICOS at this point in time? If not, please provide reasons.

## 7. Timing of reports

TEQSA's decisions may be reviewable in accordance with Division 1, Part 10 of the TEQSA Act by the Administrative Appeals Tribunal (AAT). In order to avoid potential prejudice to review processes, it is proposed that TEQSA only release a public report about its decisions:

- at the expiry of the application period for review (that is, 28 days), or
- at completion of an AAT review process, in cases where an application is made for review.

A web link to each AAT report of decisions resulting from a review process will be included on the National Register so that the public is aware of the outcome of any review of a TEQSA decision.

### 7.1 Consultation question

9. TEQSA proposes to release public reports about its decisions at the expiry of an application period for review to the AAT (28 days) or at completion of an AAT review process. Are there any disadvantages to this approach? If so, what are they?
10. Are there other considerations that TEQSA should take into account in determining a timeframe for releasing public reports? If so, what are they?

## 8. Other comments

11. Are there any other comments that you would like to make about TEQSA's proposed approach to public reporting?

Thank you for taking the time to provide feedback to TEQSA on this important matter. Your comments will be used to inform TEQSA's decisions about its approach to public reporting. A summary of the comments received through the consultation process will be published on the TEQSA website in June 2013.