



Australian Government

Tertiary Education Quality and Standards Agency

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Summary Report of the Consultation Process

TEQSA's approach to public
reporting of regulatory decisions

June 2013

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1. Introduction

As part of its commitment to adopt regulatory good practice, the Tertiary Education Quality and Standards Agency (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.

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 objects of the TEQSA Act, while facilitating sector and stakeholder (including current and prospective students, government and the wider public) confidence in providers and in TEQSA. The objects 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; and
- ▶ protecting and enhancing Australia's reputation for quality higher education and training services.

In March 2013, TEQSA released a Consultation Paper to seek feedback from the higher education sector on TEQSA's proposed approach to public reporting of regulatory decisions made on or after 1 July 2013. The Consultation Paper outlined possible approaches to reporting and publication methods, type of information, timeframes, and a summary of the reporting process. It posed 11 questions relating to proposed policy principles; format of reports; scope of reporting and timing of reports.

Information about the Consultation Paper was sent to:

- ▶ each registered Higher Education Provider
- ▶ eight sector peak representative bodies: Universities Australia (UA), Council of Private Higher Education (COPHE), Australian Council for Private Education and Training (ACPET); TAFE Directors Australia (TDA); National Tertiary Education Union (NTEU); National Union of Students (NUS); Council of Australian Postgraduate Associations Incorporated (CAPA); and Council of International Students Australia (CISA); and
- ▶ Commonwealth and State and Territory Ministers with responsibility for higher education.

A total of 28 submissions were received.

2. Purpose

This report provides an overview of key views expressed through the consultation process and TEQSA's response to the feedback received.

This report does not attempt to detail all feedback received by TEQSA during the consultation but, rather, highlights feedback commonly raised and how this feedback will be reflected in TEQSA's approach to public reporting. TEQSA would like to acknowledge the time and effort spent as well as the very constructive feedback provided through this process, and to thank all the providers and individuals involved for their contributions.

3. Overview

Overall, respondents expressed support for TEQSA's proposed policy principles to guide its decisions about the extent of regulatory information to report publicly, as set out in section 4 of the Consultation Paper. A number of questions were raised about the relationship between TEQSA's basic regulatory principles (at section 13 of the TEQSA Act) on the one hand and the policy principles proposed for public reporting on the other.

There was unanimous support for TEQSA's decision not to publish its regulatory decisions under the ESOS Act on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) at this point in time. In relation to the format of reports, the majority of respondents considered that no further information should be included beyond the outline proposed in section 5 of the Consultation Paper¹. Respondents raised a number of questions about the criteria that TEQSA would use to determine what information would be deemed to be in the public interest, and sought clarification of the information that might be included in an 'other observations' section within a public report. There was consensus that TEQSA should protect information that could be deemed commercial in confidence or that is of a private nature.

A number of respondents expressed the view that non-current reports should not remain accessible on the TEQSA website, so that there is no risk of prejudice to providers arising from outdated findings, or from matters requiring attention that had since been addressed.

The following section provides a more detailed report on the submitted comments.

¹ The report outline in section 5 included: brief background to TEQSA; provider name and website link; purpose of the report; regulatory process; relevant section/s of the Act relating to the regulatory decision; summary of steps followed by TEQSA; decision reached; whether the decision is reviewable; other observations.

4. Key themes

TEQSA has carefully considered all feedback received. TEQSA has drawn together feedback into five themes, using the section headings within the Consultation Paper as a basis. TEQSA's responses to the comments received follow in section 5 below.

4.1 Policy principles

There was broad agreement that the principles listed at section 4 of the Consultation Paper were appropriate for TEQSA to take 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. The principles identified were:

- ▶ 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.

Additional principles suggested by respondents for TEQSA to take into account were:

- ▶ TEQSA should demonstrate procedural fairness in reporting
- ▶ TEQSA should ensure that timing of publication of regulatory decisions does not prejudice relevant legal review processes
- ▶ Information published should be limited to that relating to a provider's compliance with the Threshold Standards, and

- ▶ Reporting practices should be regularly monitored, evaluated and revised to maintain currency and good practice.

Some respondents considered that the proposed policy principles should be placed within a framework of TEQSA's three basic regulatory principles (section 13 of the TEQSA Act). The view was expressed that TEQSA's intention to apply a 'consistent approach to reporting across providers, irrespective of the provider category in which a provider is registered or the particular circumstances of a provider' could be in conflict with the basic regulatory principles.

4.2 Format of reports

The majority of respondents considered that public reports should contain no further information beyond that proposed in the list at section 5 of the Consultation Paper². A suggestion was made that public reports include a section about TEQSA's approach and processes relating to Freedom of Information and another suggestion was made that the reports include details of any experts who provided advice to TEQSA throughout a regulatory assessment process.

A number of questions were raised about the approach TEQSA would take in determining what other information would be deemed by TEQSA to be in the public interest, and sought clarification of the information that might be included as 'other observations' within a public report. Suggestions were made for TEQSA to develop a 'public interest test', risk indicators, or agreed criteria in order to ensure transparency of its approach in judging what information would be deemed to be in the public interest; and also under what circumstances information may be withheld in the public interest. Some respondents considered that TEQSA should publish a provider's response alongside the public report to ensure a right of reply. A query was raised as to whether the release of a public report would always be accompanied by a TEQSA media release.

There was consensus that TEQSA should protect information that could be deemed commercial in confidence or that is of a private nature.

Some respondents considered that they would better understand the proposed outline and content of a public report by having access to an example.

4.3 Scope of reporting

There was broad agreement with the scope of reporting outlined at section 6 of the Consultation Paper, and unanimous support for TEQSA's decision not to publish its regulatory decisions under the ESOS Act on CRICOS at this point in time.

A concern was raised about the public benefit from publishing decisions to reject applications for initial registration and new course accreditations.

4.4 Timing of reports

There was general support for TEQSA's proposed approach not to release a public report about its decisions until the expiry of the application period for review (28 days), or at the completion of an Administrative Appeals Tribunal (AAT) review processes, in cases where an application for review is made.

² The report outline in section 5 included: brief background to TEQSA; provider name and website link; purpose of the report; regulatory process; relevant section/s of the Act relating to the regulatory decision; summary of steps followed by TEQSA; decision reached; whether the decision is reviewable; other observations.

Some respondents sought further clarification about the 'exceptional circumstances' that would cause TEQSA to publish a report prior to expiration of a period for applying for review of the decision that is the subject of the report, and/or the decision to include the report on the National Register.

Further clarification was also sought as to the stages and timeframes throughout each main regulatory process at which providers will receive reports/communication from TEQSA.

4.5 Archiving reports

Some respondents considered that non-current public reports should not remain accessible via an archive on the TEQSA website, noting the risk for a provider's reputation and ability to operate in the market to be prejudiced by out of date findings, or matters requiring attention that have since been addressed. A suggestion was made that reports be removed from the public domain after seven years, in line with the maximum provider registration period.

5. TEQSA response to key issues raised

Following consideration of feedback received on the Consultation Paper, TEQSA will take the following actions in implementing public reporting of its decisions and processes.

5.1 Policy principles

1. TEQSA will formally adopt the following policy principles in addition to those proposed at section 4 of the Consultation Paper to guide its decisions about the extent of regulatory information that it will report publicly, and how this information will be reported:
 - a) TEQSA will ensure that timing of publication of regulatory decisions does not prejudice relevant legal review processes
 - b) as is the case for other TEQSA processes, TEQSA will demonstrate procedural fairness in its reporting by allowing a provider a reasonable opportunity to comment on a draft public report (ordinarily 28 days unless this is not practicable), and by taking account of a provider's response in determining the final content of a public report³
 - c) information published will relate to the outcomes of an assessment about a provider's compliance with the Threshold Standards, including risks of future non-compliance; and
 - d) reporting practices will be regularly monitored, evaluated and revised to maintain currency and good practice, in line with TEQSA's commitment to continuous improvement generally.
2. TEQSA will uphold its intention to publish reports on all its regulatory decisions, irrespective of the provider category in which a provider is registered or the particular circumstances of a provider, with the exception of decisions relating to an application for initial registration from an aspiring provider. To be selective in publishing reports would compromise transparency and be inconsistent with TEQSA's objectives because it would deny prospective students, current students and the wider public access to information about providers and the sector.
3. The decision to publish all reports should be seen in the light of TEQSA's application of the three regulatory principles. TEQSA will apply the regulatory principles as set out in section 13 of the TEQSA Act to its regulatory decision making processes and therefore to the decisions that will be publicly reported. The principles will also be taken into account in determining the content of information to be published.

5.2 Format of reports

1. The format of a public report will be structured to ensure that it is able to be read as a stand-alone document, and therefore there will be some information about TEQSA and its processes provided in each report. Where possible, web links will be used in order to keep each report to around 2-3 pages in length. A public report will include the following information:

³ Note that as part of each regulatory process, a provider is given an opportunity to make representations to TEQSA about any proposed negative decision, prior to TEQSA making a final decision.

- a) provider name and website link (provider responses to TEQA's decisions could be made available through the provider website)
 - b) relevant legislative provisions relating to the decision or decisions being reported
 - c) report purpose (including relevant objects of the TEQSA Act)
 - d) brief information about TEQSA's role (including reference to the regulatory principles and links to the TEQSA Act and Threshold Standards)
 - e) the regulatory process to which the report relates, and a web link to a document describing the main stages of the process
 - f) decision reached (including, as applicable, period of registration, provider category, period of accreditation, and any conditions imposed); and
 - g) observations (as applicable, a summary of any concerns that TEQSA may have regarding the provider's ability to continue to meet the Threshold Standards into the future).
2. TEQSA will use its website to announce the release of public reports. It will not issue a media release each time a public report is released.
 3. TEQSA will continue to give providers information about Freedom of Information (FOI) legislation at relevant points of a regulatory process. Details of TEQSA's FOI processes are available at: <http://teqsa.gov.au/about/freedom-information>.
 4. TEQSA will consider the nature of other information to be included in the public interest by reference to the three regulatory principles outlined at section 13 of the TEQSA Act and to the principles outlined in TEQSA's Public Disclosure Policy, available at: <http://teqsa.gov.au/sites/default/files/TEQSAPublicDisclosurePolicy.pdf>. These principles are the need to:
 - ▶ maintain confidentiality to effectively investigate an issue;
 - ▶ afford procedural fairness, including a right to a fair hearing;
 - ▶ preserve the effectiveness of TEQSA's regulatory procedures;
 - ▶ protect an individual's right to privacy; and
 - ▶ protect commercially sensitive information provided to TEQSA on a confidential basis.

TEQSA will also have regard to the objects of the TEQSA Act, such as the need to protect and enhance excellence, diversity and innovation in higher education in Australia, and the need to ensure that current or prospective students have access to information relating to higher education in Australia.
 5. Details of any experts who have provided advice to TEQSA throughout a regulatory process will continue to be given to a provider but will not be included in a public report. There is opportunity in TEQSA's regulatory processes for a provider to identify any potential conflict of interest before experts are chosen. Further, any evidence used by TEQSA to reach a decision but not previously seen by the provider is sent to the provider prior to a final decision being made. Such evidence would include reports from experts.

6. In order to clarify the process stages and timeframes for reporting to providers throughout TEQSA's main regulatory processes, a web link to a document describing the main stages of the relevant regulatory process will be made available in each public report.

5.3 Scope of reporting

1. In response to feedback, TEQSA has decided not to publish a report about a decision to reject an application for initial registration from an aspiring provider. Reports about all decisions relating to a registered provider will be published. Registrations which are cancelled will be listed on the National Register in accordance with section 198 of the TEQSA Act.
2. To supplement public reports, a quarterly statistical report containing the number and type of all regulatory decisions made by TEQSA will be made available on the TEQSA website. These reports will be consolidated each year and included in TEQSA's annual report. The reports will not include applicant or provider names.

5.4 Timing of reports

1. TEQSA will not publish, apart from in exceptional circumstances, a public report on the National Register until the period for applying for review of the decision that is the subject of a report has expired, or in cases where a review application is made, until the review is completed.
2. TEQSA will consider whether exceptional circumstances exist having regard to the three regulatory principles, and to the principles in TEQSA's Public Disclosure Policy listed at section 7 above and available at:
<http://teqsa.gov.au/sites/default/files/TEQSAPublicDisclosurePolicy.pdf>.
3. TEQSA will note a decision on the National Register after the provider has been notified of the decision. Where a decision is reviewable, TEQSA will not include the details of the decision on the National Register until after the period for applying for review has expired or after the review is completed. Amendments will be made to the *Tertiary Education Quality and Standards Agency (Register) Guidelines 2012* accordingly.

5.5 Archiving reports

1. TEQSA will develop guidelines for managing and archiving public reports, which will include:
 - a) removing reference to conditions from the National Register when TEQSA has satisfactory evidence that such conditions have been met in full by a provider and/or TEQSA has revoked the condition; and
 - b) removing public reports relating to registration or accreditation decisions from the TEQSA website at the commencement of a provider's next registration period or next course accreditation period.

6. Next steps

- ▶ TEQSA will amend the *Tertiary Education Quality and Standards Agency (Register) Guidelines 2012* to indicate that TEQSA will include information on the National Register in accordance with the approaches outlined in this document.
- ▶ TEQSA will commence public reporting of regulatory decisions made on or after 1 July 2013. An opportunity will be given to providers who have undergone a renewal of registration process to elect to have a public report recording the decision to be published.