

Memorandum of understanding between the Australian Charities and Not-for-profits Commission and the Tertiary Education Quality and Standards Agency.

1. Purpose

This memorandum of understanding (MOU) sets out a framework for cooperation between the Australian Charities and Not-for-profits Commission (ACNC) and the Tertiary Education Quality and Standards Agency (TEQSA). The MOU facilitates liaison, cooperation, assistance and the exchange of information and materials to improve the outcomes for both organisations.

The ACNC and TEQSA (the agencies) do not intend for this MOU to create legally binding obligations between them.

2. Australian Charities and Not-for-profits Commission

The ACNC is the Australian Government agency responsible for registering charities and monitoring, regulating and enforcing compliance with the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (the ACNC Act) to:

- maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
- support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
- promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

The ACNC Act achieves these objectives by:

- establishing a national regulatory framework for not-for-profit entities that reflects the unique structures, funding arrangements and goals of such entities; and
- establishing the Commissioner of the Australian Charities and Not-for-profits Commission who will:
 - be responsible for registering entities as not-for-profit entities;
 - administer the national regulatory framework; and
 - assist registered entities in complying with and understanding this Act, by providing guidance and education

The Commissioner of the ACNC is appointed by the Governor General, and has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

The Commissioner is assisted by the staff of the Australian Charities and Not-for-profits Commission.

ACNC registration is a prerequisite for access to certain Commonwealth tax concessions.

ACNC registration may also be a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.

3. TEQSA

TEQSA is the national regulator for Australia's higher education sector and upholds standards for students. The overarching legislation for regulation of higher education is the *Tertiary Education and Quality and Standards Agency Act 2011* (TEQSA Act). TEQSA is also responsible for the regulation of certain Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) higher education providers under the *Education Services for Overseas Students Act 2000* (ESOS Act). The Objects of the TEQSA Act are to:

- provide for national consistency in the regulation of higher education;
- regulate higher education using a standards-based quality framework and principles relating to regulatory necessity, risk and proportionality;
- protect and enhance Australia's reputation for and international competitiveness in higher education, as well as excellence, diversity and innovation in higher education in Australia;
- encourage and promote a higher education system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population;
- protect students undertaking, or proposing to undertake higher education by requiring the provision of quality higher education; and
- ensure that students have access to information relating to higher education in Australia.

TEQSA's functions under section 134 of the TEQSA Act include to:

- register higher education providers;
- accredit courses of study;
- conduct compliance assessments and quality assessments; and
- collect, analyse, interpret and disseminate information relating to:
 - higher education providers; and
 - regulated higher education awards; and
 - quality assurance practice, and quality improvement, in higher education; and
 - the Higher Education Standards Framework.

4. Liaison

The agencies agree that, where appropriate, they will consult each other on matters of mutual interest. This includes exchange of information, referral of matters, statutory activities of each agency, training, information and other services, policy development and implementation, legislative amendments, and research and analysis. The primary focus of consultation will be the exchange of information, particularly financial and corporate information, about entities that are relevant to the jurisdiction of both agencies, with the aim of reducing reporting burden on those entities and creating efficiencies in regulatory activity.

Each agency will appoint a contact officer to liaise, communicate and exchange information, materials, research and resources between the agencies under this MOU. Each agency may change its contact officer as necessary, and will advise the other agency in writing accordingly.

5. Exchange of staff

The agencies agree that, where appropriate, they will facilitate the exchange of staff to assist each other's operations and for staff development purposes.

6. Reduction of red tape

Transitional provisions under Schedule 1 - Part 4 s.10 (1) & (2) of the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (ACNC C&T Act), give the ACNC Commissioner discretion to accept financial reports lodged with other government agencies as meeting the requirements under Subdivisions 60-B, 60-C or 60-D of the ACNC Act 2012 subject to certain conditions. Under Schedule 1 - Part 4 s.10 (4) of the ACNC C&T Act this transitional arrangement is applicable to the financial years up to 2014-2015 and any later financial year prescribed by regulations.

For financial years up to and including 2014-2015 (or approved substituted accounting period) and any later years prescribed by regulations, the Commissioner of the ACNC will accept audited financial reports and Provider Information Request submissions lodged with TEQSA as:

- being the financial reports required of registered entities under Subdivision 60-C of the ACNC Act; and
- satisfying components of the annual information statements required of registered entities under Subdivision 60-C of the ACNC Act.

The Commissioner of the ACNC and the Chief Commissioner of TEQSA will enter into other information sharing arrangements to minimise regulatory duplication wherever possible.

TEQSA's Information Guidelines provide for the sharing of higher education information with bodies specified in the Information Guidelines in accordance with sections 189 and 194 of the TEQSA Act. The ACNC is included at item 65 of Schedule A of the Information Guidelines.

7. Exchange of information

TEQSA and the ACNC will keep each other advised, in a timely manner, of matters relevant to each other's jurisdiction. Subject to legislative restrictions on disclosure, TEQSA and the ACNC may:

- request from each other information about a specific entity that is relevant to the jurisdiction of both agencies, such as information about its regulatory history and standing.
- share information about significant corporate or financial regulatory risks that have been identified with a specific entity that is relevant to the jurisdiction of both agencies.

- provide advice about significant adverse regulatory findings on a specific entity that is within the jurisdiction of both agencies, including a decision to cancel the registration of an entity.
- share other information obtained during the normal course of their duties that is likely to be relevant, such as complaints about an entity that is relevant to the jurisdiction of one or both agencies.
- share intelligence identifying emerging risks, themes and opportunities where appropriate.

Each agency will use its best endeavours to provide relevant information in a timely manner in response to requests for information from the other agency, subject to any relevant legal and operational considerations and any caveats that the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege and the confidentiality arrangements set out at clause 9 of the MOU. The agencies must be satisfied that compliance with the request will not adversely affect the operation of the complying agency.

Both agencies will provide material to each other without charge or for reasonable actual costs as may be agreed from time to time.

Schedule A to this MOU details provisions of the ACNC and the TEQSA Act (not intended to be exhaustive) that are most relevant to the exchange of information between the ACNC and TEQSA under this MOU.

Schedule B to this MOU details relevant ACNC and TEQSA contact officers for this MOU.

8. Referral of matters

The agencies recognise that once a complaint is received or an initial investigation has been conducted by an agency, it may become apparent that the matter more appropriately falls within the jurisdiction of the other agency.

Both agencies therefore agree that in these instances, the enforcement objectives of each agency will be enhanced if, after consultation, the matter is formally referred to and continued by that other agency. The referrals should be made as soon as practicable after the principal contravention is identified.

The agencies acknowledge that there may be circumstances where matters relevant to their functions will also be referred to other relevant federal, state and/or territory regulatory agencies. In those circumstances, each agency may consult the other before a referral to a third agency where the referral involves information exchanged under this MOU.

9. Confidentiality

When an agency receives confidential information from the other agency in accordance with this MOU, it will:

- not disclose it without the prior written approval of the agency. In giving written approval to any disclosure of confidential information, an agency may impose conditions of usage and each agency agrees to comply with the conditions imposed by the other agency.
- observe and comply with any other express conditions placed upon the use or disclosure of confidential information by the other agency;
- without limiting the generality of clause 7 of this agreement, each agency agrees to comply with the obligations of confidentiality imposed by their respective governing legislation and with the *Privacy Act 1988*.

The parties agree that these confidentiality obligations do not apply to any disclosure of information:

- to their respective Ministers;
- in response to a request by a house or a committee of the Parliament of the Commonwealth of Australia;
- that is authorised or required by law; or
- where the information is in the public domain otherwise than by a disclosure from the receiving agency.

However each agency agrees to consult the other agency, to the extent practicable, where it proposes to disclose confidential information in these circumstances.

Confidential Information, for the purposes of this MOU, is information that (a) is by its nature confidential; (b) is designated by the agency making it available as confidential or (c) the receiving agency knows or ought to know is confidential.

10. Review of this MOU

Each agency will keep the operation of this MOU under regular review, at least annually from the date of execution, and will consult with the other to improve its operation and resolve any matters, which may arise.

11. Termination of this MOU

Either agency 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.

12. Publication of this MOU

The agencies may make this MOU (other than Schedules B and C) publicly available.

DATED this 13th day of November 2013



Susan Pascoe

Commissioner, Australian Charities and Not-for-profits Commission



Carol Nicoll

Chief Commissioner, Tertiary Education Quality and Standards Agency Act