



# TEQSA Policy: Public disclosure

## 1. Purpose

This policy sets out TEQSA's approach to public disclosures about TEQSA's regulatory activities. This policy does not deal with disclosures which are made to particular persons or bodies rather than to the general public.

## 2. Principles

TEQSA has regard to matters including the following when determining the nature and extent of public comments on TEQSA's regulatory activities:

Public statements by TEQSA are an important way of informing regulated entities and the general community about TEQSA's regulatory activities and, in so doing, maintaining confidence that TEQSA performs its functions fairly, effectively and independently. This is reflected in the objects of the *Tertiary Education Quality and Standards Act 2011* (the TEQSA Act), which include the object "to ensure students undertaking, or proposing to undertake, higher education, have access to information relating to higher education in Australia".

Public disclosures may also be an important regulatory tool in promoting the TEQSA Act and the *Education Services for Overseas Students Act 2000* and ensuring awareness of the consequences of a failure to meet the requirements of those Acts.

Equally, the general public interest in disclosure needs to be balanced against various other considerations. These may include, depending on the circumstances of a particular matter:

- ▶ the need to maintain confidentiality to effectively investigate an issue;
- ▶ the need to afford procedural fairness, including a right to a fair hearing;
- ▶ the need to preserve the effectiveness of TEQSA's regulatory procedures;
- ▶ the need to protect an individual's right to privacy;
- ▶ the need to protect commercially sensitive information provided to TEQSA on a confidential basis.

TEQSA will have regard to privacy issues, TEQSA's confidentiality obligations, TEQSA's objects, functions and powers, the law of defamation and principles of administrative law when determining the nature and extent of any public comments by TEQSA. In particular, Division 2 of Part 10 of the TEQSA Act restricts TEQSA's capacity to disclose "higher education information" as defined in the TEQSA Act.

## 3. Inquiries and investigations

TEQSA will consider various factors when determining whether it is in the public interest to comment publicly on whether TEQSA is undertaking inquiries or an investigation into a particular matter. These include the matters set out at Part 2 of this policy.

In particular, TEQSA will carefully consider the extent to which any public comment would prejudice TEQSA's ability to investigate a matter or the right of a person or body to a fair hearing on the matters the subject of the investigation. In some cases, this may mean that TEQSA will not comment until it has had an opportunity to establish relevant facts or consider the application of those facts to the relevant legislative provisions.

Comments by TEQSA about inquiries or investigations will generally be confined to a confirmation that TEQSA is undertaking inquiries or an investigation. Where TEQSA does confirm that it is undertaking inquiries or an investigation, TEQSA will make clear that this confirmation does not mean that a higher education provider or other person or body will necessarily be the subject of any legal or other proceedings.

## **4. Enforcement action**

Enforcement action includes prosecutions, civil proceedings and administrative actions.

TEQSA will usually only comment on enforcement action when the enforcement action has begun – that is, at the time court or tribunal proceedings have been commenced or at the time an administrative decision has been made. Where TEQSA comments on the commencement of court or tribunal proceedings TEQSA will confine these comments to a description of the nature of the proceedings TEQSA will not discuss the arguments or evidence to be used in the proceedings and may refer, where appropriate, to statements made by the other party to the proceedings.

TEQSA will generally not comment on whether a matter has been referred to the Commonwealth Director of Public Prosecutions (CDPP). TEQSA will consult with the CDPP where TEQSA proposes to make public comment about a matter that has been referred to the CDPP.

Where TEQSA has commented on the commencement of court or tribunal proceedings TEQSA will generally publicise the outcome of those proceedings and the outcome of any appeal.

## **5. Confidentiality**

As noted above, TEQSA is subject to various legislative obligations of confidentiality. However as a regulator TEQSA is accountable to the Parliament and to the public.

For this reason, while TEQSA will comply with any legal obligations of confidentiality, and while TEQSA will carefully consider the extent to which public comments are in the public interest, TEQSA will not agree to keep the outcomes of enforcement action confidential.

TEQSA may, in appropriate cases, give advance notice of a public statement about the outcomes of enforcement action to an interested party and provide that party with an opportunity to make representations about the nature and extent of any appropriate public comment. However the final form of any public comment by TEQSA will be determined by TEQSA, having regard to the matters in this policy.