

MEMORANDUM OF UNDERSTANDING

between

**Tertiary Education Quality and
Standards Agency (TEQSA)**

and

Overseas Students Ombudsman

for the sharing of information about
complaints involving higher education
providers

2013 – 2018

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Preamble

- A. TEQSA was established under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) as the national regulator for Australia's higher education sector. TEQSA's functions, which are set out in section 134 of the TEQSA Act, include registering higher education providers, accrediting higher education courses of study and conducting compliance assessments or quality assessments on matters related to registered higher education providers or courses of study. TEQSA is also a designated authority and delegate of the Minister and Secretary under the *Education Services for Overseas Students Act 2000*.
- B. The Overseas Students Ombudsman operates within the Office of the Commonwealth Ombudsman as a statutorily independent, external complaints body for overseas students complaining about the actions or decisions of a private registered education provider.
- The Overseas Students Ombudsman has three clear roles under s 19ZJ of the *Ombudsman Act 1976*:
- investigate individual complaints
 - report on trends and systemic issues in the sector
 - work with providers to promote best practice complaint handling.
- C. The parties have decided to enter into this MOU to assist in the efficient performance of their respective functions.

1 Overview of arrangement

The MOU outlines the basis on which the parties, working within the terms of their respective governing legislation, agree to share information on matters of mutual interest.

While this MOU is not intended to create any legal obligations, both parties undertake to adhere to the provisions of this MOU in good faith, with a commitment to work cooperatively in a spirit of mutual trust and respect.

2 Period of Operation

The period of this MOU is for 5 years from 1 February 2014 to 1 February 2019, unless terminated earlier in accordance with clause 7.

3 Transfer of complaints

Under s 19ZK of the Ombudsman Act, the Overseas Students Ombudsman must transfer a complaint to another statutory office holder if the Overseas Students Ombudsman forms the opinion that the complaint can be more effectively or conveniently dealt with by that statutory office holder. This opinion can be formed either before or after the Ombudsman starts to investigate the complaint.

The transfer requirement applies to complaints that are within the Overseas Students Ombudsman's jurisdiction, i.e. complaints about action taken by a private registered provider in relation to an overseas student, an intending overseas student or an accepted student.

Where the Overseas Students Ombudsman forms the opinion that a complaint about a private registered provider relating to an overseas student would be more effectively or conveniently dealt with by TEQSA, the Overseas Students Ombudsman will transfer this complaint to TEQSA by email to: complaints@teqsa.gov.au.

The Overseas Student Ombudsman will transfer complaints to under s 19ZK where the information will assist TEQSA in undertaking its regulatory functions including risk assessments. This includes complaints regarding a Higher Education provider and Foundation or English language pathway providers.

The Overseas Students Ombudsman may also refer complainants to TEQSA to make a complaint directly to TEQSA where the student is outside the Overseas Students Ombudsman's jurisdiction. This may include, for example, complaints from domestic students about a Higher Education provider or other provider in TEQSA's jurisdiction. In this instance the Overseas Students Ombudsman will use the publically available information on TEQSA's website about making a complaint to direct these students to TEQSA's complaints area.

4 Information sharing

Information to be shared by TEQSA

TEQSA agrees to provide the Overseas Students Ombudsman with the following information:

- a. Number of complaints received (broken down by higher education provider)
- b. Nature of complaints (grouped into pre-defined categories of student services, academic quality, infrastructure, finance, human resources, governance, admission, teaching and learning, WH&S, research, ESOS and other)
- c. Additional information identified by the Overseas Students Ombudsman that will directly assist the Ombudsman in meeting its statutory obligations

This information will be provided to the Overseas Students Ombudsman on a quarterly basis, starting from the commencement of this MOU. The information will be provided in an email with attached data in excel format sent to the MOU Manager.

Information to be shared by Overseas Students Ombudsman

The Overseas Students Ombudsman agrees to provide TEQSA with the following information:

- a. Number of complaints investigated where the provider is listed as having Higher Education as their main CRICOS sector
- b. Details of outcomes and remedies achieved for investigated complaints where the provider is listed as having Higher Education as their main CRICOS sector (without identifying complainant)
- c. Nature of complaints grouped into the attached categories
- d. Number of complaints transferred to TEQSA by OSO under s 19ZK of the Ombudsman Act including complaint category

- e. Any issues relating to higher education investigated through the Overseas Students Ombudsman's own motion powers, not through an individual complaint
- f. Recommendations made to Higher Education providers in general terms without identifying the provider
- g. General analysis on trends in the higher education sector

This information will be provided to TEQSA on a quarterly basis, starting from the commencement of this MOU. The information will be provided in an email with attached data in excel format sent to the MOU Manager.

Ad hoc requests for information

Each party may, from time to time, contact the other party to request particular information relevant to their functions. The parties agree that where such a request is made:

- a. The request will be made by the MOU Manager of the requesting party to the MOU Manager of the receiving party; and
- b. The request will be made in writing and will include details of the information sought, the relevance of the information to the functions of the requesting party and the time in which the information is sought.

Where the party to whom a request is made considers that it is unable to provide some or all of the information requested, that party will provide the requesting party with reasons for that position.

5 Costs

Each party agrees to bear its own costs in performing its functions under this MOU.

6 Confidentiality and privacy

Each party acknowledges that any obligations contained in this MOU are subject to the obligations of confidentiality imposed by their respective governing legislation, and with the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

The parties agree not to disclose any Confidential Information of the other party without the prior written approval of that party. In giving written approval to any disclosure of information, a party may impose conditions of usage and each party agree to comply with the conditions imposed by the other party.

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

- to the Minister;
- 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 party agrees to consult the other party, 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 party making it available as confidential or (c) the receiving party knows or ought to know is confidential.

7 Dispute Resolution

The MOU Managers will use their best endeavours to resolve any differences or difficulties in a pragmatic manner to achieve agreed objectives. If either Party identifies an issue or dispute concerning a matter within the scope of the MOU requiring resolution, then the agreed process for resolving such matter is as follows:

- a. the MOU Managers will discuss the issue and attempt to resolve the issue within 10 business days;
- b. if the MOU Managers are unable to resolve the issue, the issue will be referred to senior managers not previously involved in the issue, for mutual review and determination within 10 business days; and
- c. if the issue remains unresolved, the Parties may refer the issue for external dispute resolution (including mediation or arbitration) on an agreed basis.

Despite the existence of a dispute, each agency will (unless requested in writing by the other agency not to do so) continue to perform its functions under this MOU. The parties will bear equally the cost of any third person engaged under clause 6.c.

8 Review, amendment and termination

The parties agree that the MOU Managers will meet to review the operation of this MOU at annual intervals from the commencement of this MOU. The review meetings will consider matters including, but not limited to, the extent to which the terms of this MOU reflect the needs of both parties.

Where either party wishes to amend any aspect of this MOU, that party shall notify the other party in writing of the proposed amendments, and the MOU Managers shall negotiate in good faith on whether, and the extent to which, amendments should be made to the MOU.

In the case of a machinery of government change involving either party, the parties agree to meet as soon as practicable after the machinery of government change to discuss whether, and the extent to which, the MOU should be amended.

Where the parties agree on amendments to be made, the amendments will apply from the date on which a revised written version of this MOU is agreed in writing between the parties.

Either party may terminate this MOU in whole or in part with the provision of one months written notice. Where a party provides a notice of termination in accordance with this clause 7, the parties agree to work together in good faith to make suitable transition arrangements in relation to the termination of the MOU (or for that part of the MOU which is the subject of the notice).

9 MOU Managers

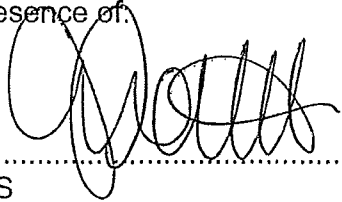
The following MOU Managers are nominated as the appropriate points of contact for any matters arising under this MOU.

TEQSA: Mr Andrew Webster, Director, Governance and Accountability Tel: (03) 8306 2505, email: andrew.webster@teqsa.gov.au

Overseas Students Ombudsman: Dr Geoff Airo-Farulla, Director, Overseas Students Ombudsman Tel: (07) 3228 9909, email: Geoff.airo-farulla@ombudsman.gov.au

IN WITNESS WHEREOF the parties have executed this MOU.

SIGNED for and on behalf of
TEQSA
by Dr Carol Nicoll
Chief Commissioner and Chief Executive
Officer
of the Tertiary Education Quality
and Standards Agency
In the Presence of:



Signature

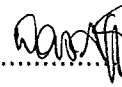
17 January 2014

Date

.....
WITNESS

ANA MICKONSKI, EXECUTIVE ASSISTANT
.....
Full name and position of witness (Please print)

SIGNED for and on behalf of
Overseas Students Ombudsman
by Doris Gibb
Senior Assistant Ombudsman
within the Office of the Commonwealth
Ombudsman's office
In the Presence of:



Signature

17 January 2014

Date

.....
WITNESS

Melita Hoskin, Assistant Director
.....
Full name and occupation or profession of witness (Please print)