



Guide to fitness and propriety under the TEQSA Act



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Overview

In 2017, the *Tertiary Education Quality and Standards Agency Act 2011* (the Act) was amended to include a 'fit and proper person' requirement at provider registration and renewal of registration, and as an ongoing condition of registration as a higher education provider.

This requirement is located in the following provisions of the TEQSA Act:

- Paragraph 21(1)(b) provides that TEQSA may grant an application for registration if it is satisfied that the applicant, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the applicant's affairs, is a fit and proper person.
- Paragraph 36(1)(b) contains an identical provision with respect to renewal of registration.
- Subsection 25A provides that a registered higher education provider, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the provider's affairs, must be a fit and proper person. This is a condition of registration.

In December 2018, the *Tertiary Education Quality and Standards Agency Fit and Proper Person Determination 2018* (the Instrument) came into effect. The purpose of the Instrument is to specify matters that TEQSA may have regard to when determining whether a person is fit and proper under paragraph 21(1)(b), subsection 25A and paragraph 36(1)(b) of the Act.

On 5 April 2025, the Instrument was amended by the *Tertiary Education Quality and Standards Agency Fit and Proper Person Determination 2018 – Amendment No. 1 of 2025*. The amendments allow TEQSA to have regard to the following additional matters when determining whether a person is fit and proper:

- whether a person has been convicted of a foreign offence against a foreign law/s (subsection 6(1A))
- whether a person has previously been found not to be a fit and proper person for the purposes of any other law of the Commonwealth, a State or Territory (subsection 10(1)(i))
- whether the public is unlikely to have confidence in a person's suitability to be a person who makes or participates in making decisions that affect the whole, or a substantial part, of a registered higher education provider's affairs (subsection 10(3A)).

Section 7A of the *Educational Services for Overseas Students Act 2000* (ESOS Act) also specifies matters that TEQSA (as an ESOS agency) must have regard to in deciding whether a provider is fit and proper to be registered for the purposes of the ESOS Act.

This guidance sets out the principles and considerations that TEQSA will have regard to when assessing fitness and propriety for the purposes of the TEQSA Act.



What does it mean to be a ‘Fit and Proper Person’?

‘Fit and proper person’ is not defined for the purposes of the Act. Read in the context of the Act, TEQSA considers that whether a person is fit and proper should be determined by reference to the person’s character and ability, as well as the likelihood that the person will comply with (or reasonably assist compliance with) the obligations imposed by the Act and the *Higher Education Standards Framework (Threshold Standards) 2021* (Threshold Standards). Whether a body corporate is fit and proper should be determined by reference to the persons through whom the body corporate acts, as well as the body corporate’s own history. These considerations are reflected in the Instrument.

The objects of the Act include, among other considerations, the protection and enhancement of Australia’s reputation for quality higher education and training services and to protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education. These considerations underpin TEQSA’s regulatory activities and inform the way in which fitness and propriety is assessed by TEQSA.

What matters does TEQSA consider?

The Instrument sets out matters that TEQSA may have regard to in determining whether a person is a fit and proper person for the purposes of the TEQSA Act.

If one or more of the matters set out in the Instrument arises in relation to a person, TEQSA’s assessment will take into account additional factors such as:

- whether the matter in question is relevant to exercising duties within the higher education sector
- the seriousness of the matter
- the length of time that has lapsed since the event occurred
- any history of past conduct
- any consequences for the applicant or any other person
- the implications of the matter—that is, what it shows about the person
- the person’s attitude towards the matter—such as whether the person has learnt, changed and improved their behaviour and is unlikely to further offend in the future.

The evidence that is relevant to whether a person is fit and proper, and the weight that should be afforded to that evidence, will be considered in the circumstances of each case.

Compliance with the law

In determining whether a person is fit and proper, TEQSA may have regard to matters in relation to the person’s compliance with the law, including whether the person:



- has been convicted of an offence against an Australian or foreign law
- has been ordered to pay a pecuniary penalty (monetary penalty) under an Australian law
- is currently involved in proceedings before a court or tribunal.

If the person has been convicted of an offence or ordered to pay a pecuniary penalty, TEQSA may have regard to the seriousness of the offence or contravention concerned.

However, TEQSA will not have regard to:

- a conviction that is spent under Part VIIC of the *Crimes Act 1914* (Cth) or a similar State or Territory law (meaning the person is generally no longer required to disclose the conviction and it will not appear on most criminal record checks)
- a conviction that has been quashed, set aside, extinguished, annulled or pardoned.

Financial record

A person's financial record is an important element in determining their fitness and propriety.

When assessing a person's financial record, TEQSA may have regard to matters including whether the person:

- has been insolvent or bankrupt
- has taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors, such as a debt agreement under part IX or a personal insolvency agreement under part X of the *Bankruptcy Act 1966* (Cth)
- has compounded debts with one or more creditors
- has assigned remuneration for the benefit of one or more creditors
- has been under external administration, in relation to a company
- owes outstanding debts to the Commonwealth.

Management history

In determining whether a person is fit and proper, TEQSA may have regard to matters relating to the person's management history in the provision of education and as a company director including:

- whether:
 - the person's registration to provide higher education or vocational education and training
 - the person's registration as a Registered Training Organisation (RTO)
 - the accreditation of a higher education course of study in relation to the person
 - the person's registration under the ESOS Act



- subsidy funding arrangements for the provision of education by the person, such as Commonwealth Supported Places
- have been cancelled, revoked, shortened, not renewed or suspended
- whether the person has:
 - had a condition imposed on one of the types of a registration, approval or arrangement mentioned above
 - breached such a condition
 - been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001 (Cth)*.

Provision of information

TEQSA may also have regard to whether the person has provided false or misleading information to persons or bodies including:

- TEQSA
- the National VET Regulator, i.e. the Australian Skills Quality Authority (ASQA)
- a body of a State or Territory that registers education providers
- a tuition assurance administrator
- a relevant Minister, Department or Secretary - currently the Minister for Education, Department of Education and Secretary of the Department of Education
- an authority of a State or Territory that deals with subsidy funding arrangements for education

in circumstances where it is reasonable to assume that the person knew the information was false or misleading.

Previous conduct and involvements

Finally, in relation to a person's previous conduct and involvements, TEQSA may have regard to matters including:

- whether the person has been found not to be a fit and proper person under other Acts, instruments and arrangements listed at subsection 10(1) of the Instrument
- whether the person has engaged in conduct that reasonably suggests a deliberate pattern of unethical behaviour, or of acting inconsistently with laws of the Commonwealth, a State or Territory, in relation to the provision of education or training
- whether a business providing education would have been a fit and proper person for the purposes of the Act at the time the person was involved with that business
- whether the public is unlikely to have confidence in the person's suitability to be a person who makes or participates in making decisions that affect the whole, or a substantial part, of a registered higher education provider's affairs
- any other matter relevant to the honesty, knowledge or ability of the person.



TEQSA may consider instances of previous conduct that did not result in a conviction but call into question a person's judgement and integrity, for example, if a person has been found to have committed an act of professional or academic misconduct.

TEQSA's processes

A finding by TEQSA that a person is not a fit and proper person is a serious determination. It could result in an application for registration being rejected or a provider's registration being cancelled. In addition, it could also have serious consequences for an individual's reputation and, in some cases, their employment.

Accordingly, when determining whether a person is fit and proper it is important that TEQSA give due regard to relevant considerations including a person's:

- a. compliance with the law and provision of information
- b. previous conduct and management history
- c. financial record.

The above matters can be considered in respect of the person (if an individual), a corporation and any of its officers (if a provider or prospective provider), including its directors, chief executive and managers, or other persons who are involved in making decisions that affect the whole, or a substantial part, of the provider's affairs.

TEQSA affords procedural fairness to those affected by fitness and propriety requirements by affording them an opportunity to address relevant evidence and issues before making an adverse decision.

Next steps

If you have queries about TEQSA's application of the fit and proper person requirements, please contact the TEQSA Enquiries Management team at providerenquiries@teqsa.gov.au for assistance.

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