Australian Government
Tertiary Education Quality and Standards Agency

TEQSA

Lawful disruption of access to online services policy

Purpose

This document sets out TEQSA's policy regarding requests by TEQSA for the lawful disruption of access to online locations under s313(3) of the *Telecommunications Act 1997* (Telecommunications Act) that appear to show content that amounts to, or involves, contraventions of relevant serious offence or civil penalty provisions in the *Tertiary Education Quality Standards Agency Act 2011* (Cth) (TEQSA Act).

TEQSA's role and responsibilities

Please refer to TEQSA's website (https://www.teqsa.gov.au) for information about TEQSA's role and responsibilities.

In particular, TEQSA will apply this policy as part of its efforts to protect academic integrity. For more information about TEQSA's efforts in this regard, please refer to the relevant page on TEQSA's website (https://teqsa.gov.au/protecting-academic-integrity).

The power to disrupt online locations

Section 313(3) of the Telecommunications Act requires that carriage service providers, in connection with their operation of telecommunications networks and facilities or the supply of carriage services, give officers and authorities of the Commonwealth, states and territories any help reasonably necessary to, amongst other things, enforce the criminal law and laws imposing pecuniary penalties.

It enables government agencies to request internet service providers (ISPs), as carriage service providers, to provide such assistance as is reasonably necessary to disrupt the operation of online services by blocking access to online services and locations (including websites).

In line with the Commonwealth's relevant guidelines[i], the following serious offence or civil penalty provisions in the TEQSA Act may form the basis of a request by TEQSA under s313(3) of the Telecommunications Act:

(a) offence provisions that impose a maximum prison term of at least two years
(b) civil penalty of at least 120 Commonwealth penalty units.

Principles

When considering whether to make a disruption request, TEQSA will take into account relevant factors and follow certain processes (see below) to:

a. determine whether a disruption is warranted and necessary

b. obtain the necessary approval at TEQSA
c. once the disruption request is made and implemented, monitor, evaluate and report on the outcome of the disruption.

When making a disruption request, TEQSA will take steps to ensure that the request is as targeted as possible (by reference to the relevant offence or civil penalty provision in the TEQSA Act), effective and executed appropriately.

Factors for TEQSA to consider

Before making a disruption request, TEQSA will consider a range of factors to determine whether the request is warranted and necessary, including:

a) whether TEQSA or any other agency is conducting an investigation into a possible breach of an offence or civil penalty provision in the TEQSA Act covered by this policy
b) the availability of other enforcement tools, such as injunctions (and the legal costs and time involved in using those tools by reference to the benefit(s) TEQSA would secure by using them)
c) the range of services on the site that may be the subject of a disruption request, including whether there is a risk that the disruption request would affect services made available on the site that do not involve contraventions of a relevant offence or civil penalty provision in the TEQSA Act
d) the harm being done by the online location
e) the likely effectiveness of the proposed disruption
f) the view(s) of the relevant internet service provider(s) who TEQSA intends to send the request(s) to
g) technical feasibility and costs involved in the proposed disruption
h) potential consequences for, or damage to, the work of other Commonwealth or State government agencies or institutions in their pursuit of their respective objectives
i) potential consequences or damage to a higher education provider
j) the nature and seriousness of the offence or contravention
k) whether there is a public interest in disrupting access.

Consultation

TEQSA will consult with the relevant ISPs, as carriage service providers, at an early stage about the proposed disruption, unless there is a material risk that doing so will compromise any relevant investigation. TEQSA will consult to obtain their views on the proposed disruption, the best means of complying with requests for assistance and the management of associated costs in respect of ISPs' compliance with requests.

Complaints or concerns about the disruption of access to an online location

The owner of an affected online location can complain about the disruption by following the instructions here: Protect yourself from illegal commercial cheating services | Tertiary Education Quality and Standards Agency (teqsa.gov.au) (under the heading "Complain or raise concerns about the blocking of a website"). Concerns about the disruption that impact upon any person other than the owner of the affected online location can be raised in the same way.

If TEQSA receives a complaint about a disruption, it will initially determine whether the disruption should remain in place and respond to the complaint accordingly, including by informing the complainant of the outcome of its determination (if the complainant provided contact details when lodging the complaint). Any concerns raised with TEQSA will be dealt with by reference to the concerns raised.

TEQSA may use any information it receives from any person who contacts it about the disruption of access to an online location in taking enforcement action (including in the pursuit of civil penalty or criminal penalty proceedings pursuant to sections 114A and 114B of the Tertiary Education Quality and Standards Act 2011), either independently or in conjunction with other agencies.

Review and monitoring following request

TEQSA will monitor and evaluate each disruption request. If TEQSA becomes aware that a disruption is inappropriate (or no longer appropriate) or has unintended consequences, then TEQSA will consider taking appropriate remedial action.

TEQSA will note contact from any person regarding any disruption.

TEQSA may use any information it receives from any person who contacts it about the disruption of access to an online location in taking enforcement action (including in the pursuit of civil penalty or criminal penalty proceedings pursuant to sections 114A and 114B of the Tertiary Education Quality and Standards Act 2011), either independently or in conjunction with other agencies.

Informing the public about requests

TEQSA will take reasonable steps to notify the owner of an online location covered by a request under s313(3) of the Telecommunications Act, unless doing so could compromise an investigation either TEQSA or any other agency is conducting.

The Commonwealth's relevant guidelines state that agencies should publish each disruption request and include why the request has been made to promote transparency and public awareness about requests made under s313(3) of the Telecommunications Act. The guidelines, however, also state that agencies are not required to publish requests if the report may jeopardise ongoing or planned investigations, interfere with operational activities, or give rise to other law enforcement or national security concerns.

Wherever practical and reasonable in the circumstances, TEQSA will inform the public each time it makes a disruption request by:

a) publishing a notice on the disrupted website advising that access to a particular site has been stopped (a 'stop page'). The stop page will advise that TEQSA has requested the disruption and the reason(s)
b) notifying the public of the fact that the power has been used and why on TEQSA's website.

The stop page will include details of how adversely affected parties may complain to TEQSA if they feel aggrieved by the disruption.

In accordance with the guidelines, TEQSA will report annually to the Australian Communications and Media Authority (ACMA) on the number of disruption requests the agency has made during the year: see p. 6 of the guidelines.

ACMA is responsible for reporting annually to Parliament on all requests made by government agencies during the year. Further, TEQSA will provide information about the number of requests for assistance we made each year in TEQSA's annual report.

Contact

Any enquiries about TEQSA's approach to the lawful disruption of access to online locations can be directed to: enquiries@teqsa.gov.au

[i] See Guidelines for the use of section 313(3) of the Telecommunications Act 1997 by government agencies for the lawful disruption of access to online services | Department of Infrastructure, Transport, Regional Development and Communications ('the guidelines')