



Guidance Note: *Third-Party Arrangements*

Version 2.2 (08 October 2019)

Providers should note that Guidance Notes are intended to provide guidance only. They are not definitive or binding documents. Nor are they prescriptive. The definitive instruments for regulatory purposes remain the TEQSA Act and the Higher Education Standards Framework as amended from time to time.

What do third-party arrangements encompass?

In the *Higher Education Standards Framework (Threshold Standards) 2015* (HES Framework), a 'third-party arrangement' (TPA) is referred to as 'delivery with other parties'. A TPA means an arrangement made by a registered provider with another party (in Australia or overseas) to deliver some or all of a higher education course that leads to the award of an Australian regulated higher education qualification.

Such arrangements include student placements, internships and the like; however, these are covered in a separate guidance note on Work-Integrated Learning. This note may also apply to other types of mobility arrangements that are not necessarily encompassed by Work-Integrated Learning such as short-term study arrangements, study tours, in-country language programs, 'twinning arrangements' etc. This note encompasses both national and transnational education that involves an arrangement between a registered higher education provider and one or more third parties to offer a course of study, whether onshore or overseas, that leads to the award of an Australian higher education qualification.

In the case of twinning arrangements and the like, where a qualification that is offered by an overseas partner is accepted through credit arrangements toward the award of a specific Australian qualification after completion of further study in Australia, this note and the companion Guidance Note on Credit and Recognition of Prior Learning, are both relevant.

Relevant Standards in the HES Framework

Section 26 of the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) requires a registered provider to ensure that any third party delivering a course on its behalf (either wholly or partly) delivers the course consistent with all of the requirements of the HES Framework.

The Standards that specifically refer to TPAs are 5.4.1 and 5.4.2. Sections 7.1 and 7.2 are also relevant to how a TPA might be represented and the information that is provided to students about the arrangement respectively. In so far as 5.4.1 and 5.4.2 require TPAs to be



quality assured, Domain 5 (Institutional Quality Assurance) is relevant in an overarching sense, as is Standard 7.3.3. Many other Standards may be relevant depending on the nature of the TPA, e.g. those in Section 3.3 for the provision of academic support resources. Assurance about tuition safeguards (see Standard 6.2.1i) is also relevant in the event that a TPA cannot be continued. Although the HES Framework does not distinguish between requirements for courses delivered in Australia or overseas, TEQSA acknowledges that providers may need to accommodate particular cultural or legal requirements in overseas jurisdictions that do not necessarily prevail in Australia and that some specifically Australian requirements may not be applicable overseas. Nevertheless, such exceptions should be rare and carefully considered.

Intent of the Standards

The intent of the Standards is that, irrespective of the role of the third party, the primary provider (i.e. the registered provider that offers and confers the award):

- is accountable for the quality of education and any services delivered by another party on behalf of the primary provider where these are related to the issue of an Australian qualification and compliance with the HES Framework
- monitors and quality assures any TPA it establishes
- confirms that the TPA meets and continues to meet the requirements of the HES Framework
- is able to demonstrate that the requirements of the HES Framework are met.

In the event that the third party is also a registered provider with TEQSA in its own right, the primary provider with whom the accreditation of the course of study resides still remains accountable for quality assurance of the course delivered by the third party.

Where an arrangement is for the delivery of a course that is also delivered directly by the primary provider, the outcomes of the course are expected to be substantially the same and materially equivalent, irrespective of where the course is undertaken (i.e. with the primary provider or the third party).

In some circumstances a third party may be involved for the purposes of providing a different student experience that is not available from the primary provider (e.g. an overseas arrangement for students to gain international experience) or a course of study tailored to the needs of particular cohorts of students. In these circumstances, the content and delivery by the third party may differ from the primary provider's content or delivery, but the primary provider remains responsible for assuring itself that the level of study and the learning outcomes are equivalent and consistent with the level of qualification offered.

The requirements for a provider to provide full and accurate information to students (see Section 7) apply equally to courses provided through TPAs. The primary provider remains responsible for ensuring that the information provided complies with these requirements overall, whether provided by the primary provider or the third party.

From the standpoint of students, the expectation underlying the HES Framework is that a TPA will be seamless in its operations. The student experience at a third party should differ from the primary provider only where it is intended to be so, e.g. where the TPA offers a benefit that is unavailable from the primary provider such as a rare or unique educational offering or a superior quality of service that cannot be offered by the primary provider. The student experience at the third party should not be lower.



TEQSA acknowledges that some TPAs may not involve gaining credit for a regulated qualification and thus may not be regulated by TEQSA, except in so far as they may have a direct bearing on the educational experiences of students who are undertaking a regulated qualification as well.

TEQSA acknowledges that cross-cultural differences and practices may make the application of some elements of the HES Framework more challenging than in Australia. This may make a proposed TPA non-viable. Where there is any doubt, this should be discussed with a TEQSA case manager in the first instance on a case-by-case basis.

Risks to Quality

There are many examples of successful TPAs. They are however vulnerable to a variety of risks, including the following:

- failure of the third party to deliver as expected, which (aside from wilful failure) may reflect confused or unclear expectations and/or a lack of performance monitoring by the primary provider
- unreasonable or impracticable expectations, such as offering library resources from inaccessible or unreasonably remote locations
- cultural, linguistic or technological barriers to effective participation by students in the arrangement
- confusion of critical responsibilities among providers, e.g. statutory responsibilities for international students studying in Australia under the *Education Services for Overseas Students Act 2000* (ESOS Act)
- students being unclear or confused about who is responsible for issues of concern to them, i.e. the primary provider or the third party
- students or staff being, or feeling, isolated from and unsupported by the primary provider
- irreconcilable conflicts between the educational and academic goals of the TPA
- unexpected major changes to the operations of a third party
- insufficient oversight of a TPA by the primary provider
- lack of sufficient quality controls or monitoring
- difficulties arising in transitioning to another country/culture.

The likely outcomes of such failures, all of which are unacceptable to TEQSA, are:

- diminished student experiences and/or wellbeing
- difficulty in achieving expected learning outcomes
- damage to the reputation of Australian higher education.

Such adverse outcomes may jeopardise the registration of a provider (as a higher education provider and/or on CRICOS) and TEQSA accreditation of a course(s) of study, with consequent financial and reputational risk to the provider and its students.



Because of the variety of possible TPAs and associated risks, providers are advised to consult with a case manager at TEQSA when contemplating such arrangements and/or notify TEQSA when an agreement has been signed, as a material change.

What TEQSA will look for

This part of the guidance note covers the full extent of the Standards, and corresponding evidence that TEQSA may require, in relation to delivery with other parties.

For new applicants seeking initial registration and course accreditation, TEQSA will require evidence to be provided in relation to all relevant Standards.

For existing providers, the scope of Standards to be assessed and the evidence required may vary. This is consistent with the regulatory principles in the TEQSA Act, under which TEQSA has discretion to vary the scope of its assessments and the related evidence required. In exercising this discretion, TEQSA will be guided by the provider's regulatory history, its risk profile and its track record in delivering high quality higher education.

TEQSA's case managers will discuss with providers the scope of assessments and evidence required well ahead of the due date for submitting an application.

The evidence required for particular types of application is available from the Application Guides on the TEQSA website.

Providers are required to comply with the Standards at all times, not just at the time of application, and TEQSA may seek evidence of compliance at other times if a risk of non-compliance is identified.

Governance and management

Accountability for ensuring that the requirements of the HES Framework are met rests with the governing body (see Standards 6.1.1, 6.2.1k) of the primary provider. TEQSA will expect the governing body to put in place approved policies and procedures that govern all aspects of third-party provision, especially in relation to quality assurance of the arrangement and compliance with the HES Framework and to review these periodically. TEQSA does not prescribe how this is done, but there must be reason to believe that the provider's approach is likely to be effective. Providers could develop policies and procedures specifically dedicated to third-party provision, or the relevant controls could be integrated within generic policies and procedures (for example moderation of assessment over different sites could be integrated into a general policy on assessment).

Once the relevant policy framework is in place, TEQSA will wish to see evidence that the framework is being implemented (e.g. by assessing evidence relating to one or more sample TPAs) and that there are clear lines of accountability and reporting back to senior managers and (if only by exception) to the governing body. Monitoring of material issues and risks would be expected to be evident in the minutes of the corporate governing body and/or the academic governing body meetings.

Due diligence

TEQSA would expect a provider to undertake a credible and rigorous due diligence process before reaching agreement with each third-party partner, in accordance with an approved policy and procedure and robust criteria for partner selection. The ability to select a reliable



partner is a critical success factor that will reduce the risk of failures in quality. The due diligence process would be expected to be evidence-based and would consider a range of issues about the potential partner, such as its:

- ability to deliver on the responsibilities outlined in Appendix A
- track-record in the provision of higher education, including regulatory status and history
- ownership and governance structures
- track-record of probity
- emergency plans, risk framework and risk management.

A registered provider would be expected to reach a formal agreement with each third party before the arrangement commences.

TEQSA will wish to see contingency plans that will be implemented in the event of a failure of a TPA (Standard 6.2.1i).

Formalising a TPA and clarifying terms and expectations

TEQSA will expect to see a binding instrument that formalises each TPA, such as a contract or equivalent, which sets out the specific goals of the arrangement and the terms and expectations of the parties involved in a form commensurate with the nature, scale and purpose of the arrangement. The contract must include effective controls on the educational quality of delivery. Examples of the matters that could be addressed and should be considered in such an agreement are provided in Appendix A to this note. TEQSA will also wish to be satisfied about how the arrangement is represented (Section 7.1) as well as the information that is provided to inform students about the arrangement and any implications for the students (Section 7.3). This information will need to be sufficient, accurate and not misleading.

Monitoring and quality assurance

TEQSA needs to be satisfied that the TPA is quality assured by the primary provider's internal quality assurance systems and processes, and that the provider can supply evidence that the TPA meets the requirements of the HES Framework. TEQSA will want to see evidence of a systematic process of periodic monitoring and review (e.g. auditing) of the TPA by the primary provider that encompasses performance against the deliverables of the agreement and compliance with the relevant requirements of the HES Framework for the types of activity involved.

TEQSA will expect a provider to monitor the performance of student cohorts who participate in a TPA and to evaluate their performance against institutional or other benchmarks that allow a comparison of the effectiveness of the TPA. Such cohort comparisons should take particular account of any known educational risks that are inherent in the TPA. TEQSA will need to be satisfied that such risks are being managed effectively.

The periodicity of the review cycle should be consistent with the underlying risks. TEQSA will wish to ascertain to what extent both the registered provider and the third party have fulfilled the obligations placed on them in the agreement. To what extent has the third party adhered to the policies and procedures it is bound to observe? How does the registered provider know this?



TEQSA will seek to review samples of recent audit reports as well as evidence that recommendations for improvement have been followed up and implemented by either the provider or the third party as needed. Material issues should have been drawn to the attention of the governing body. The use of external reviewers (i.e. reviewers not employed by the provider or the third party) adds credibility to audits of third party providers, provided that they are well-qualified for the role.

In the case of offshore provision, TEQSA will, where possible, use information from quality assurance or regulatory bodies in the host country to inform its regulatory decision making.

Resources and references

Australian Collaborative Education Network (2015) Developing Collaborative Relationships with Providers, <http://acen.edu.au/wp-content/uploads/2015/11/TPP_DevelopingCollaborativeRelationships_Nov2015.pdf>.

Edwards, J., Crosling, G., Edwards, R. (2010), *Outsourcing university degrees: implications for quality control*, Journal of Higher Education Policy and Management, 32, pp 303-315.

International Education Association of Australia (2015): A guide to working with third-party providers: <https://www.ieaa.org.au/documents/item/593>>.

Quality Assurance Agency (2014), *UK Quality Code for Higher Education*¹, Part B: *Assuring and enhancing academic quality*, Chapter B10: *Managing higher education provision with others*, <<http://www.qaa.ac.uk/assuring-standards-and-quality>>.

Quality Assurance Agency for Higher Education (2010), *Outcomes from collaborative provision audit: Framework, guidance and formal agreements*, <<http://www.qaa.ac.uk/en/Publications/Documents/Outcomes-from-Collaborative-provision-audit-Approval-and-review-of-partnerships-and-programmes.pdf>>.

Stella, A. and Bhushan, S. (eds) (2011), *Quality assurance of transnational higher education: the experiences of Australian and India*, Australian Universities Quality Agency and National University of Educational Planning and Administration, India.

TEQSA (2016), *Explanations of terms in Part A of the HES Framework 2015*, <<http://www.teqsa.gov.au/explanations-hes-framework-terms>>.

¹ This document sets out expectations for providers of UK higher education.



TEQSA welcomes the diversity of educational delivery across the sector and acknowledges that its Guidance Notes may not encompass all of the circumstances seen in the sector. TEQSA also recognises that the requirements of the HESF can be met in different ways according to the circumstances of the provider. Provided the requirements of the HESF are met, TEQSA will not prescribe how they are met. If in doubt, please consult your TEQSA case manager.

Version #	Date	Key changes
1.0	April 2015	
2.0	19 August 2016	Updated for the HESF 2015 and made available as beta version for consultation.
2.1	11 October 2017	Addition to 'What will TEQSA look for?' text box.
2.2	08 October 2019	Updated to include consultation feedback.



Appendix A

The scope and extent of legal agreements with third parties will vary in accordance with the scope and extent of functions being undertaken by a third party. The material provided here is meant to be comprehensive for prompting and guidance purposes, however it is not intended to be prescriptive or exhaustive. Legal agreements should clearly allocate rights and responsibilities between the registered provider and the third party in each of the following areas, as *applicable* to the functions being delivered by the third party.

Topics for agreements with third parties

- The rights and responsibilities of the registered provider for matters such as:
 - provision of and rights over current intellectual property
 - policy and procedural framework, including clarification of which of the registered provider's policies and procedures apply, and which of the third party's policies and procedures apply
 - provision of current administrative guidelines/manual
 - provision of academic support to third party managers and academic staff
 - student and staff induction
 - best endeavours to maintain TEQSA registration and course accreditation
 - marketing and promotion
 - student admission and enrolment requirements and processes (including English language requirements)
 - credit transfer and recognition of prior learning (RPL)
 - setting of student fees
 - maintenance of student records
 - student complaints and grievances
 - provision of assessment and marking, monitoring of student progress, academic integrity, student appeals and grievance processes
 - course and unit management, including evaluation of courses and teaching, and
 - provision of support services
 - compliance with laws and regulatory obligations in the home jurisdiction, including the ESOS Act and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*.
- The rights and responsibilities of each third party for matters such as:



- provision of and rights over intellectual property (especially if licensing courseware to the registered provider)
- best endeavours to maintain local registration or accreditation
- representation as appropriate on registered provider's academic bodies
- compliance with registered provider's specified policy and procedures, and provision of information to students about all applicable policies and procedures
- marketing and promotion of the course, and ensuring that marketing and pre-enrolment materials are:
 - current, accurate and compliant with HES Framework Section 7.2
 - approved by the registered provider
- student admission and enrolment requirements and processes (including English language requirements)
- academic integrity
- delivery of the course at an equivalent level of quality of delivery to the registered provider including:
 - student and staff induction
 - local (i.e. provided by the third party) employment of teachers with the required qualifications and experience, approved by the registered provider
 - provision of required property and facilities (for face-to-face or blended delivery)
 - provision of local course materials
 - provision of local tutorial services
 - maintenance of accurate local student records and student administration
 - provision and regulation of local assessment activities and marking, monitoring of student progress and feedback to students
 - co-operative participation in moderation of assessment and periodic audits
 - remittance and payment of fees
 - provision of support services, including English language support where required
- student complaints, grievances and appeals
- periodic audit requirements
- management of work placements (if applicable)



- compliance with laws and regulatory obligations in the third party's jurisdiction (including e.g. copyright law), and
- reporting requirements, including:
 - requirements to notify the registered provider of material changes, and
 - reporting of student performance data including student satisfaction.
- Arrangements for review or amendment of the agreement, termination (for example if either party breaches its designated responsibilities), and for teach-out in the event of a contract being terminated or not renewed
- Whether further sub-contracting is permitted, and if so, what controls are put in place to ensure that the registered provider retains the ability to ensure that the relevant Standards are met, and
- Dispute resolution processes.