



Guidance Note: *Transnational Higher Education into Australia*

(Including international providers seeking to offer higher education in Australia)

Version 1.2 (11 October 2017)

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 does transnational higher education into Australia encompass?

Transnational Education (TNE) into Australia encompasses providers based outside of Australia who provide, or are seeking to provide, education to students located in Australia. For the purposes of this note, 'TNE' refers solely to transnational higher education provided or offered *into* Australia unless otherwise specified (as distinct from transnational higher education offered overseas by Australian providers, which is covered by a separate guidance note on Third Party Arrangements).

Does TEQSA regulate TNE?

Regulation of TNE by TEQSA in the higher education sector is governed by the *Tertiary Education Quality and Standards Agency Act 2011* (the TEQSA Act). The extent to which an entity (i.e. a provider of higher education) is regulated by TEQSA varies based on a number of matters including, in particular, whether the provider is an Australian or an overseas entity.

The TEQSA Act only applies to the operations of overseas higher education providers where the provider offers or confers a higher education qualification for a course of study that is 'provided wholly or mainly from Australian premises'.

In determining whether a course of study is provided mainly from Australian premises, TEQSA will operate from the starting point that provision of more than 50% of a course from Australian premises indicates a course that is provided 'mainly' from those premises. However, this will depend on the provider and the nature of the specific course being offered. Importantly, TEQSA will also have regard to the regulatory principles of risk, proportionality and necessity when determining whether regulatory action (in this case registration of an overseas provider) is necessary in the circumstances.



Options for provision of TNE into Australia

Overseas providers of higher education seeking to offer higher education in Australia may wish to:

- a. establish an Australian campus(es) at which students will undertake their entire course of study for a higher education qualification
- b. establish an Australian subsidiary to solely or jointly deliver the course of study and confer the relevant qualification
- c. enrol Australian students in online courses provided from overseas premises
- d. offer students the opportunity to take classes for shorter periods of time at Australian premises operated by the provider, either:
 - i. as part of a course of study (such as a 'study abroad program') leading to the award of a qualification, that is completed mainly overseas, or
 - ii. as a stand-alone course of study that does not involve conferral of a higher education qualification
- e. establish arrangements with an Australian registered higher education provider where the Australian provider confers the higher education award.

Option 'a' would require the overseas provider to be registered and regulated by TEQSA. Option 'b' would require the subsidiary, but not the overseas provider, to be registered and regulated by TEQSA. Options 'c', 'd' and 'e' would not require the overseas provider to be registered or regulated by TEQSA, but option 'e' would require an arrangement with another entity that is registered with and regulated by TEQSA.

In summary:

- an overseas entity must be registered by TEQSA if the entity offers or awards higher education qualifications for courses of study that are provided wholly or mainly from Australian premises,
- an Australian entity (i.e. including an Australian subsidiary of an overseas provider) must be registered if it offers or confers higher education qualifications, irrespective of the location of the courses of study leading to those qualifications, and

If a provider offers or confers higher education qualifications to international students studying in Australia on a student visa, the provider must be registered under the ESOS Act (i.e. on CRICOS) and meet the requirements of the National Code.

Registration and regulation of an overseas provider under the TEQSA Act is not required:

- for international online courses offered to Australian students wholly or mainly from overseas
- for short-term study abroad arrangements in Australia where the majority of the course is provided outside Australia, or
- where no award¹ is offered or conferred for completion of the course.

¹ Note that the ESOS Act applies to non-award courses.



In seeking registration by TEQSA, an overseas entity operating in Australia could apply to be registered in the Higher Education Provider (HEP) category or the Overseas University/Overseas University of Specialisation categories².

Where an overseas provider has an Australian subsidiary that provides higher education courses, the subsidiary must apply to TEQSA to be registered in the HEP category or one of the Australian University College categories.

The Criteria for Classification of Higher Education Provider Categories are given in Part B of the HES Framework. Prospective providers should note that ***the use of the title 'university' is restricted and regulated in Australia***³.

Relevant Standards in the HES Framework

Where TNE is subject to regulation under the TEQSA Act, the provider must meet and continue to meet all of the requirements of the *Higher Education Standards Framework (Threshold Standards) 2015* (HES Framework), except for those aspects that are not directly applicable to the provider concerned. Requirements not applicable might include the research standards if a provider is not engaged in research, and the Criteria for Classification of Higher Education Providers that are not applicable to the particular provider.

If a provider enters into an arrangement with a third party, Section 5.4 of Part A of the HES Framework applies in particular to that arrangement.

In the event that TNE is offered to international students who are studying in Australia on a student visa, both the *Education Services for Overseas Students Act 2000* (the ESOS Act) and the *National Code of Practice for Providers of Education and Training to Overseas Students 2007*⁴ (the National Code) would also apply. Among other requirements, the ESOS Act requires a provider to be registered under the ESOS Act and prohibits the marketing of courses to overseas students until the provider and its courses are registered under the ESOS Act. The ESOS Act may also require a provider to be incorporated in Australia. Separate guidance material is being prepared on the requirements of the ESOS Act and related matters.

Intent of the Standards

The intent of the Standards is to ensure that regulated TNE meets the requirements of the HES Framework in the same way as any other higher education offered in Australia.

² See Part B1 of the HES Framework for the requirements for different categories of higher education provider.

³ <https://www.education.gov.au/guidelines-use-word-university>.

⁴ Both the ESOS Act and the National Code were under review at the time of writing this guidance note.



Risks to Quality

The risks posed by TNE providers are the same as those posed by all other providers, with the additional risk that overseas providers may have a lower level of understanding of Australian regulatory requirements.

What will TEQSA 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 transnational education into Australia.

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.

In the first stages of engagement, TEQSA will wish to understand the nature of a prospective provider's proposed operations in Australia and their regulatory implications under the TEQSA Act and, if applicable, under the ESOS Act as well. TEQSA will take account of a prospective provider's standing in its home jurisdiction and may seek information from the provider's home regulator.

Overseas providers who may be interested in offering a course of study wholly or mainly in Australia should [contact TEQSA](#) in the first instance.



Resources and references

TEQSA (2016), *Application Guide for Registration in any University Category*, <<http://www.teqsa.gov.au/applying-under-the-new-standards>>.

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

TEQSA guidance material relating to ESOS (under development).

TEQSA (2016), *Guidance Note on Third-Party Arrangements*, <<http://www.teqsa.gov.au/hesf-2015-specific-guidance-notes>>.

UNESCO/Council Of Europe (2002), *Code Of Good Practice In The Provision Of Transnational Education*, <http://www.coe.int/t/dg4/highereducation/recognition/Code%20of%20good%20practice_EN.asp>.

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	19 August 2016	Made available as beta version for consultation
1.1	20 October 2016	Internal enhancement
1.2	11 October 2017	Addition to 'What will TEQSA look for?' text box.