



Guide to conditions

Introduction

This document provides guidance about TEQSA's use of conditions.

TEQSA imposes conditions on a provider's registration or the accreditation of a course of study to address concerns or areas of risk in relation to a provider's operations. The use of conditions enables providers to continue operating while working towards full compliance with their obligations as registered higher education providers.

Conditions are imposed by TEQSA under subsections 32(1) or 53(1) of the *Tertiary Education Quality and Standards Act 2011* (TEQSA Act), or subsections 10B (1) or 83(3) of the *Education Services for Overseas Students Act 2000* (ESOS Act). Additionally, all registered higher education providers must comply with the conditions of registration set out in sections 25 to 31 of the TEQSA Act.

Imposing conditions

Generally, a condition can be imposed on a provider where TEQSA identifies a material risk it seeks to prevent, monitor or mitigate.

TEQSA must apply the principles of regulatory necessity, reflecting risk and proportionate regulation¹ when determining whether to impose a condition. For instance, it may be more appropriate for TEQSA to request information from a provider rather than imposing a condition.

Conditions may also be imposed in order to give TEQSA visibility of a particular issue to enable TEQSA to reach a clearer view on the associated level of risk. Again, the condition should be explicit in its purpose and the documentation required in order for the condition to be satisfied.

A condition is an adverse outcome. Therefore, when TEQSA recommends the imposition of a condition, TEQSA must give the affected provider:

- written reasons for the recommendation to impose a condition
- an opportunity to comment on the evidence, facts and reasoning relating to the condition(s) being imposed.

Regulatory requirements

Generally, TEQSA needs to give reasonable notice of, and a reasonable opportunity to respond to, the decision which is being considered, the issues on which the decision will turn, and the evidence on which the decision will be based.

¹ See TEQSA Act, Part 2: Basic principles for regulation.



TEQSA Act

Under section 33 of the TEQSA Act, where a condition restricts or removes the self-accrediting authority of a university, TEQSA must give the provider and relevant Ministers notice of an intention to impose a condition for specified reasons, and a reasonable opportunity to make representations.

In addition, under section 34 of the TEQSA Act, TEQSA must notify a provider of a decision to impose a condition within 30 days of the decision being made. The notification must include the decision, the reasons for the decision and the period for which the condition is imposed.

ESOS Act

Under section 93 of the ESOS Act, there is an obligation to provide a written notice to a provider notifying them that TEQSA is considering imposing or varying a condition, and affording a provider a minimum period to give written submissions.

Further, under section 169AC of the ESOS Act, TEQSA must provide an affected provider with written notice of a decision to impose a condition as soon as practicable.

Review rights

If a decision to impose or vary a condition on a provider's registration or course accreditation is made by a delegate of TEQSA, the provider may apply for internal review of the decision. Under section 169AG (1)(a) of the ESOS Act, a provider can also apply to the Administrative Appeals Tribunal (AAT) for review of a decision by a delegate.

If a decision to impose or vary a condition on a provider's registration or course accreditation is made by the Commissioners collectively, the provider may apply to the AAT for review of the decision. Under section 169AG (1) (a) of the ESOS Act, a provider can also apply to the AAT for review of a decision by a delegate.

In either case, a notice of decision must take reasonable steps to inform the provider of the review rights available.

SMART conditions

- TEQSA endeavours to make conditions **SMART** (specific, measurable, actionable, realistic, targeted).
- Conditions are obligations providers are expected to meet and as such they will be constructed in a manner that their mandatory nature is understood. They will contain words such as 'must' and 'will' rather than 'may' or 'should'.
- Conditions will be precise and targeted at the identified risk and clear in what exactly a provider must do to comply with a condition, and when a condition will be taken to have been satisfied. Subjective words such as 'sufficient' or 'adequate' will be avoided to minimise confusion on how or when a condition will be taken to be satisfied.



- Where a condition relies on content from an Expert Report or other external source, TEQSA will include relevant parts of the report in the condition to avoid providers having to reference external materials.
- As much as possible conditions will invite a provider to use their judgement in determining the most appropriate documents to produce in demonstrating how the provider addresses concerns raised. However, in some instances, it may be necessary for TEQSA to be prescriptive about the specific evidence it seeks.

If TEQSA requires the production of specific documentation such as a financial report or minutes from meetings of its governing body, the condition will precisely identify what issue the requested documents are expected to address, so that it is clear the condition is not satisfied simply by the provision of the particular documentation. For instance, if the governing body's minutes are requested to demonstrate appropriate financial oversight, the condition will specify that *the minutes must demonstrate sound decision making about financial risk management matters*.

- TEQSA may also impose a condition that describes what is required in a response. For instance, TEQSA may outline a specific document to be produced to give TEQSA clearer visibility of a particular issue and associated risk. Such a condition will clearly outline the issue which must be addressed in the specified document and/ or the way a document must be produced to satisfy the condition.
- Where a requirement must be satisfied in order for a condition to be revoked², the condition will specify that the requirement applies 'until TEQSA notifies the provider it is satisfied' the provider has adequately addressed the condition.

In some situations it may also specify:

- that a condition will not be satisfied if the document does not address one or more requirements, and/or
 - a date for responding to the condition which allows TEQSA to take further action if the provider's response is assessed as inadequate upon review.
- Where TEQSA is imposing a number of conditions, it may group them thematically.
 - Where a condition is being imposed on the accreditation of more than one course of study, TEQSA may reference 'the courses' rather than naming each course in the condition.

Varying or revoking conditions

TEQSA may vary or revoke a condition it has imposed on its own initiative, or where a provider has applied for a condition to be varied or revoked. In making a decision as to whether to vary or revoke a condition, TEQSA must consider the regulatory principles of necessity, risk and proportionality and determine whether the material risk that TEQSA sought to monitor or mitigate is appropriately addressed.

TEQSA Act

TEQSA must notify a provider in writing of a decision to vary or revoke a condition within 30

² The word 'revoke' applies to the lifting of a condition under the TEQSA Act, whereas the word 'remove' applies in the case of a condition imposed under the ESOS Act. The word 'revoke' is used throughout this instruction sheet for consistency of terminology.



days of making the decision. The decision must outline the reasons for the decision and – in the case of a decision to vary a condition – the condition variation.

ESOS Act

Under section 93(3) of the ESOS Act outlines the minimum notice period that TEQSA is required to give a provider when varying or removing a condition imposed under the ESOS Act. This time varies from 24 hours to 7 days based on the circumstances of the case. Generally, where the circumstances do not require urgent action, TEQSA will grant a provider a period of 28 days to respond.

Conditions and withdrawn registration

ESOS Act

The ESOS Act does not expressly provide for an application to be made for withdrawal of registration. As such, in order to give effect to a provider's request to withdraw registration, TEQSA must make the decision to cancel the registration under the ESOS Act based on section 83(1A) of the ESOS Act. When section 83(1A) is used to facilitate a provider request to withdraw registration, TEQSA makes the decision on the basis that the provider's decision to cease operations means that it will not be able to provide courses to its accepted students. In such instances, TEQSA does not draw any adverse inference from a provider's decision to cancel registration.

TEQSA Act and ESOS Act

If a provider with active conditions withdraws their registration under the TEQSA Act, or registration and course accreditation under the ESOS Act, any active conditions related to the registration or course accreditation would also be withdrawn. This is because conditions are attached to the accreditation of a specific course/ courses and or provider's registration and would cease to operate if the course is not accredited or the provider ceased operating.

Failing to comply with a condition

Failure to comply with a condition is a breach of the TEQSA and ESOS Acts, and may lead to TEQSA commencing enforcement action, including seeking civil penalty orders under section 115 of the TEQSA Act. Sections 83(1) (d) and (3) and section 94 of the ESOS Act deal with breaches of registration conditions under the ESOS Act.

Failure to comply with a condition is relevant to the consideration of other regulatory options (including decisions about future applications), consistent with the basic principles of regulation. In serious cases, TEQSA may consider shortening a provider's period of registration or course accreditation, or cancelling its registration or course accreditation altogether.