



TEQSA's approach to compliance and enforcement

Overview

As a modern, effective and pro-active quality assurance and regulatory agency, TEQSA monitors higher education providers on an ongoing basis to ensure that they continue to comply with the requirements of the [Tertiary Education Quality and Standards Agency Act 2011](#) (the TEQSA Act) and associated instruments such as the [Higher Education Standards Framework \(Threshold Standards\) 2015](#) (the HES Framework), and where providers deliver education to overseas students on student visas, to comply with the requirements of the [Education Services for Overseas Students Act 2000](#) (ESOS Act) and associated instruments such as the [National Code of Practice for Providers of Education and Training to Overseas Students 2017](#) (the National Code).

Where a provider is found to be non-compliant, or where TEQSA identifies substantial risks of a provider being non-compliant, TEQSA takes enforcement actions to ensure that the risks are reduced and that compliance is restored and strengthened.

Compliance with the HES Framework, the National Code and other relevant standards (collectively, the Standards) is essential to ensure the promotion and protection of the interests of students and the reputation of the higher education sector. It also reassures those providers that are voluntarily compliant and invest in quality, that non-compliant providers will not obtain an unfair competitive advantage.

The objective of enforcement action is to achieve outcomes that:

- are effective in reducing the risk of noncompliance
- are efficient in reducing the risk at least cost to both providers and TEQSA
- protect students and the reputation of the sector
- maintain the confidence of key stakeholders in TEQSA's ability to secure compliance.

This statement summarises TEQSA's policies and processes for ensuring compliance with the Standards. Its central purpose is to indicate to higher education providers how they can expect TEQSA to act to ensure compliance and what actions TEQSA will take when it identifies substantial risks of, or actual, non-compliance.



TEQSA's approach to compliance and enforcement

While TEQSA's principal objective is to encourage and facilitate voluntary compliance, TEQSA will, where necessary, take enforcement action. The possibility of enforcement action and sanctions is an important component of TEQSA's risk based model—however, TEQSA will only take enforcement action where after consideration it is deemed to be necessary.

The onus is on providers to achieve and maintain compliance with the Standards. TEQSA recognises that sometimes there will be lapses in compliance by providers. The important thing is that providers recognise any lapses, and that they take prompt corrective action. TEQSA prefers to prevent harms before they occur, rather than impose sanctions on providers after they occur, which may impose a cost on students and may threaten the sector's reputation. TEQSA will assess whether any lapses are deliberate, opportunistic or unintentional in forming its view about whether and what enforcement action is required.

TEQSA takes a multi-faceted approach that escalates enforcement actions to assure compliance where this is necessary. However, TEQSA's principal aim is to promote and support a culture of effective self-assurance within providers—to ensure that they meet the Standards so that enforcement action isn't needed. TEQSA does this by, among other things:

- using a relationship management approach to maintain communication and cooperation with providers and, where necessary, giving advice to providers about effective self-assurance practices
- providing guides to our processes, as well as guidance notes sharing our insights and experiences about significant issues in achieving effective self-assurance
- engaging with providers on our annual risk assessments, in particular where we identify significant risks to students and/or risks to financial viability and sustainability
- consulting and working with peak bodies in the sector to ensure that our approach is understood and to receive feedback from them about their members' perspectives
- conducting sector-wide thematic analyses and reporting results back to the sector.

TEQSA is confident that most providers are willing and able to be compliant, or to take actions to achieve compliance, when they identify risks or TEQSA identifies concerns. However, where it finds evidence of persistent and significant risks of failure to meet the Standards, TEQSA takes a responsive, graduated, strategic and issues-focused approach to ensuring compliance:

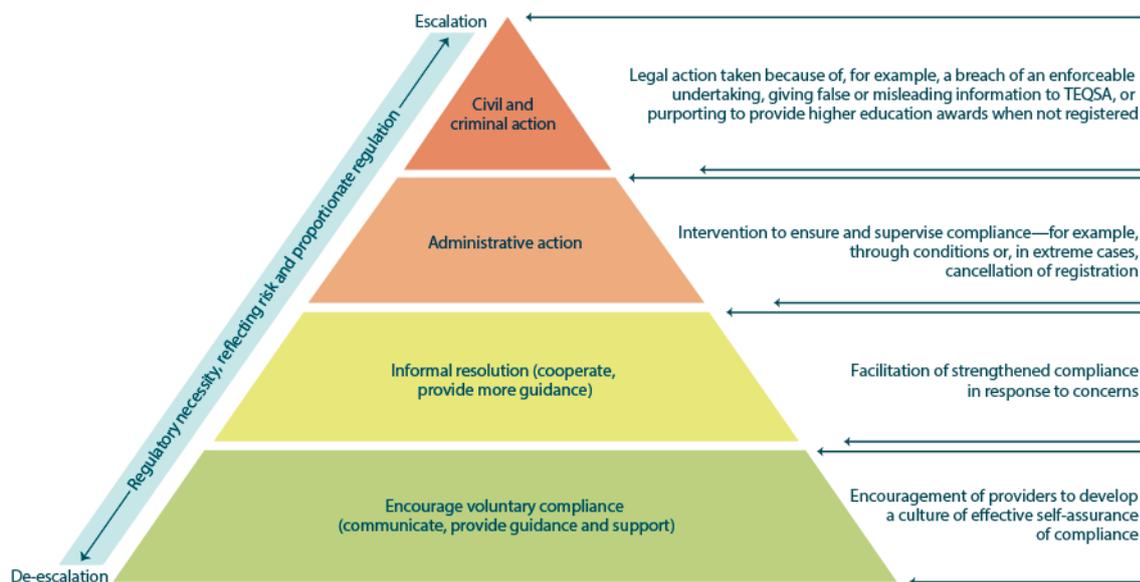
- For providers that it judges are both willing and able to address compliance issues when they arise, TEQSA takes a cooperative and facilitative approach. In particular, TEQSA offers specific advice and guidance to assist providers to address issues and comply with the relevant standards. Where appropriate, TEQSA may utilise a voluntary undertaking to address compliance issues. This is an action plan developed in consultation with the provider, which commits the provider to undertake specific action to reduce the risk or address non-compliance with the relevant standards. TEQSA will monitor a provider's progress with a voluntary undertaking to ensure the provider gets back on track. When TEQSA judges that providers are at substantial risk of non-compliance, are either unwilling or unable to sustain compliance with the Standards, or have failed to do so after receiving advice and

guidance, TEQSA applies sanctions designed to assure compliance, and supervises the actions subsequently taken by the providers.

- The sanctions may include applying conditions on a provider’s registration or on accreditation of one or more of its courses. Sanctions may also include reducing the length of the provider’s period of registration or accreditation—this enables TEQSA to undertake a comprehensive review of the outcomes of a provider’s actions to address issues earlier than otherwise would be the case. TEQSA may cancel the registration or the course accreditation(s) of a provider, following a detailed investigation and compliance assessment, and after considering whether conditions and a shortened registration or accreditation would be sufficient.

The diagram below illustrates TEQSA’s approach, including the graduation and escalation of sanctions where they are needed to achieve compliance.

Figure 1. TEQSA’s graduated approach to exercising formal powers.



The pyramid of sanctions is based on a model developed by Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, 1992, p.35.

TEQSA’s enforcement objectives and actions

TEQSA’s aim is to achieve high levels of compliance while minimising burden on providers and administrative costs for TEQSA. To achieve this, our approach is targeted, evidence-informed, risk-based, compliance-focused and supportive to the greatest extent possible in the specific circumstances. TEQSA has discretion in the actions it undertakes, and uses this discretion to achieve the best outcomes at least cost to providers and to TEQSA.

The three legislative principles in the TEQSA Act are applied so that, as well as reflecting the risk of non-compliance:

- enforcement action is limited to only that which is necessary
- enforcement action is proportional to the nature, extent and severity of the risks of non-compliance and to TEQSA’s assessment of a provider’s willingness and ability to acknowledge and rectify the issues identified by TEQSA.



Principles of procedural fairness are applied so that providers have an opportunity to respond to issues raised in a draft assessment report or draft summary of findings for TEQSA's proposed enforcement actions. If an adverse decision is subsequently made, the provider can apply for an internal review by TEQSA, where that is possible, and/or apply for a merits review of the decision by the Administrative Appeals Tribunal, if they choose.

At the time of renewal of a provider's registration and/or renewal of accreditation of its courses, TEQSA receives evidence intended to demonstrate the provider's continuing compliance with the Standards. This enables TEQSA to undertake a comprehensive review of the provider's higher education operations and of its compliance with the Standards and to take enforcement action, if necessary.

On an ongoing basis, TEQSA monitors all providers through annual risk assessments and by gathering other information and intelligence. For example:

- A provider that is flagged as high risk in an annual risk assessment can expect TEQSA to further investigate the causes and consequences of the higher education provider's risk rating, and to undertake enforcement action where necessary to reduce the ongoing risk of non-compliance.
- Providers assessed to have moderate risks of non-compliance, but with significant consequences if risks are not well-managed, can also expect to be subject to further enquiries and possibly enforcement action.
- Other providers can also expect to be subjected to further investigation and enforcement action if other sources of information and intelligence available to TEQSA suggest that they may be at substantial risk of non-compliance.
- TEQSA may initiate investigations on the basis of complaints about providers, intelligence gained from media monitoring, or from other sources, that suggest possible non-compliance, and this may lead to enforcement action where substantiated.

For providers identified for additional investigation and/or enforcement action, TEQSA will develop a compliance and enforcement action plan relevant to the nature and potential consequences of the issues of concern. The action plan would usually include some or all of the following actions by TEQSA staff:

- **Provider visit:** A provider visit may be undertaken to seek more information and insights, and to meet with senior management, staff, students and members of the provider's corporate and academic governing bodies to form an opinion about governance, management, and the treatment of risks to quality by the provider. This may lead to:
 - a conclusion that the provider is managing risks effectively
 - the provider entering into a voluntary undertaking
 - conditions being imposed on the provider's registration/accreditation(s) and/or that other assurance action be undertaken
 - a more detailed investigation or a formal compliance assessment.
- **Further investigation:** If a provider does not provide adequate information or assurance at a provider visit, or in response to additional requests, TEQSA staff may undertake a more detailed, structured investigation, covering key areas of concern and the provider's response to them. This may lead to:
 - a conclusion that the provider is managing risks effectively



- the provider entering into a voluntary undertaking
- conditions being imposed on the provider's registration/accreditation(s) and/or that the period of registration/accreditation(s) be reduced, and/or that other action be undertaken, including, but not limited to, regular provider visits to monitor the provider's actions in addressing issues of concern
- a formal compliance assessment.

1. Compliance assessment: If a provider visit or other information suggests substantial risks of non-compliance, TEQSA staff may undertake a formal compliance assessment. This may lead to:

- a conclusion that the provider is managing risks effectively
- provider entering into a voluntary undertaking
- conditions being imposed on the provider's registration, and/or reducing the provider's registration period, and closely monitoring and supervising the provider to ensure the conditions are met fully and effectively (e.g. regular reports to TEQSA and/or frequent provider visits be made to oversee implementation of the conditions)
- in extreme cases, TEQSA cancelling the provider's registration.

While TEQSA prefers to engage cooperatively with providers to assure quality, and to rely to the extent possible on providers' own quality assurance processes, TEQSA will actively pursue compliance and enforcement action where it deems it necessary to ensure the promotion and protection of the interests of students and the reputation of the higher education sector. TEQSA believes that most providers are willing and able to comply with the Standards and to deliver high quality education to their students. TEQSA hopes that, over time, the need for compliance and enforcement action will further reduce as ever more providers recognise the benefits of self-assurance of compliance and quality.

Further information

Further information about TEQSA's approach to compliance and enforcement can be obtained by directing an email enquiry to: enquiries@teqsa.gov.au.