



Australian Government

Tertiary Education Quality and Standards Agency



Proposed changes to the publication of TEQSA's decisions

TEQSA Consultation Paper

February 2017

Responding to this paper

TEQSA requests that responses to the consultation questions posed in this paper, along with any other relevant feedback, be submitted via email to consultation@teqsa.gov.au.

Submissions close at **5.00pm on 14 March 2017**.

Interested parties can also email consultation@teqsa.gov.au with queries about this paper, or to seek clarification of the consultation questions.

Please note that TEQSA intends to publish a summary of submissions received. If you do not wish for your submission (or part of your submission) to be published, please indicate this in your response. TEQSA may alter the format or content of submissions before they are published, or decline to publish particular submissions, having regard to the requirements for Australian Government websites.

Background

TEQSA publishes information about most of its decisions under the TEQSA Act, consistent with the requirements of the TEQSA Act and the terms of the National Register Guidelines (<https://www.legislation.gov.au/Details/F2016L00101>). TEQSA generally publishes this information on a monthly basis. TEQSA does not publish information about:

1. Decisions which are the subject of a current review process or within the statutory period within which an application for review may be made for the decision;
2. Decisions to reject an application for initial registration; and
3. Decisions to reject an application for initial accreditation of a course of study.

For decisions which are published by TEQSA, TEQSA publishes information on the National Register of Higher Education Providers in a tabular format. This information can be viewed and searched by provider name or by course name. TEQSA also publishes public reports on the landing page for the provider or course to which a decision relates – these reports set out the provider's name, the relevant legislative provisions relating to the decision being reported, the decision and main reasons for the decision, a summary of TEQSA's observations relevant to the decision and links to relevant information(including relevant objects of the TEQSA Act, information about TEQSA's role, and the Threshold Standards),

TEQSA updates the National Register each month to reflect decisions made in the previous month, subject to the exclusions at points 1 to 3 above.

In October 2016, TEQSA also began publishing lists of the decisions it has made. These reports are available on the National Register of higher education providers at <http://www.teqsa.gov.au/national-register>.

TEQSA last consulted with the higher education sector on its approach to publication in 2013. Following that consultation, TEQSA outlined its approach to publication, including a number of principles that would guide the nature and content of TEQSA's public reporting of its regulatory decisions. While TEQSA subsequently engaged in targeted consultations with respect to specific changes proposed for the National Register Guidelines, TEQSA's approach to publication of its regulatory decisions has remained largely unchanged since July 2013.

Questions about whether TEQSA should publish more information, including whether the information TEQSA publishes should be published in a more timely way, involve an important balance between the interests of higher education providers, students and other stakeholders. The developments in TEQSA's practices and in the approaches of other agencies mean that it is now timely to revisit these issues.

Approaches of other agencies

It is common for other Australian Government agencies to publish information about decisions before the period for applying for review of those decisions has expired. For instance, the Australian Skills Quality Authority, which regulates providers which offer Vocational Education and Training, introduced a revised approach to publication of its decisions from 1 July 2016. Under that approach, ASQA publishes information about decisions shortly after they are made. This information is accompanied by a summary of the reconsideration and review options available to training providers and, where relevant, by up-to-date information on the status of any review processes. Of the 172 providers currently registered with TEQSA, approximately half of these providers are also registered with ASQA.

Other agencies, including the Australian Charities and Not-for-profits Commission, the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission, all emphasise the importance of informing the public about compliance with the relevant regulatory framework and promoting confidence in the regulator's work. Most agencies publish the details of significant regulatory decisions before the expiry of a review period, subject to matters discussed in the following section.

Proposed principles for publishing information

As noted above, in 2013, TEQSA outlined a number of principles to guide the nature and content of reporting about TEQSA's decisions. TEQSA proposes that a simplified set of principles be adopted to guide TEQSA's approach in future, informed by the approaches of other Australian Government agencies. These principles are:

1. **Transparency** - TEQSA is committed to transparency in its regulatory and quality assurance activities in order to:
 - a. promote awareness of, and compliance with, the TEQSA Act, the Higher Education Standards Framework and other relevant legislation;
 - b. promote confidence in TEQSA's approach to regulation and quality assurance and, more generally, in Australia's regulatory and quality assurance framework for higher education;
 - c. ensure that TEQSA is accountable for its regulatory and quality assurance activities; and
 - d. ensure that students and other stakeholders have current information about higher education in Australia, including TEQSA's work in the higher education sector.
2. **Compliance** - TEQSA will ensure that any publication of information is consistent with TEQSA's obligations under the TEQSA Act and other legislation.
3. **Fairness** - TEQSA will ensure that any publication of information is in accordance with principles of procedural fairness and does not prejudice a provider's right to have a decision reviewed.
4. **Consistency** - TEQSA will adopt a consistent approach to the publication of information.

TEQSA considers that these principles reflect the approach described in 2013 and take account of the issues raised in previous responses to consultation by TEQSA, while presenting a clearer and simpler description of TEQSA's approach.

Consultation question

- ▶ **Question 1:** Do you agree with the proposed principles to guide TEQSA's approach to publishing information about its decisions?

Timing of publication

TEQSA previously determined that it would not publish information about a decision until the expiry of the period for providers to apply for review (28 days), or at the completion of the review process. This approach prevents TEQSA from informing students and other stakeholders about significant decisions for at least 28 days after the decision is made. In many cases, TEQSA would not make a statement about a decision for months, or even years, after a decision has been made.

While it is important to ensure that higher education providers receive procedural fairness, TEQSA considers that procedural fairness can be afforded in ways which also ensure that sufficient information about significant decisions is available as decisions are made.

TEQSA proposes to:

1. Publish information about decisions when they are made, or as soon as practicable thereafter.
2. Confine the information published to a description of TEQSA's decision, the provisions of the TEQSA Act or the Higher Education Standards Framework on which the decision was based and (where relevant) a description of the review rights available in relation to the decision.
3. Ensure that the published information is updated to reflect the status of any review process.

TEQSA acknowledges that some higher education providers may be concerned about the publication of details of a decision prior to the exhaustion of any review rights in relation to that decision. However, TEQSA considers that the approach described above represents an appropriate balance between the interests of higher education providers and the broader public interest in making suitable information available in a timely way.

Consultation question

- ▶ **Question 2:** Do you agree with the proposed approach to the timing of the publication of information about TEQSA's decisions?

Scope of information published

TEQSA currently publishes information about most of its decisions under the TEQSA Act. However, as noted earlier in this paper, TEQSA does not publish information about:

1. Decisions to reject an application for initial registration; and
2. Decisions to reject an application for initial accreditation of a course of study

There is a substantial public interest in these decisions. In particular, there is currently close scrutiny of new entrants to the higher education sector in light of program and quality issues that impacted the reputation of the Vocational Education and Training sector.

TEQSA acknowledges that applicants may be concerned that publishing details of these decisions may discourage innovation or unfairly reflect adversely on otherwise reputable providers. However, in light of the substantial public interest in these decisions, TEQSA considers that it is appropriate that there is public awareness of TEQSA's decisions in relation to the rejection of applications. This reflects the need for consistency in TEQSA's approach to the public reporting of TEQSA's decisions and the importance of transparency in TEQSA's decision making.

Accordingly, TEQSA proposes to publish information about these decisions. Applicants which are concerned about the publication of information about an unsuccessful application may choose to withdraw their application following the notification that TEQSA is considering rejecting the application.

Consultation question

- ▶ **Question 3:** Do you agree with the proposal to publish information about the rejection of applications for initial registration and course accreditation?

Method of publication

TEQSA currently publishes information about its decisions on the National Register of higher education providers.

The National Register is an important source of information about higher education providers and TEQSA considers that it is appropriate to continue to use the National Register as the principal method of publishing information about its decisions. In order to give effect to the other proposals in this paper, TEQSA proposes to amend the National Register Guidelines to require the publication of information in accordance with these proposals. This includes amendment of the National Register Guidelines to:

1. Include decisions to reject applications by an existing higher education provider for initial accreditation of a course of study in the decisions required to be reported in paragraph 9(a) of the National Register Guidelines;
2. Amend paragraph 9(b) to specify that TEQSA must include information about the review rights available in relation to a decision and (where relevant) that a higher education provider has applied for review of a decision.
3. Amend paragraph 9(c) to specify that the information in paragraph 9(b) will be included after the higher education provider has been notified of the decision and will be updated where a provider applies for review, where TEQSA's decision is stayed, where the review application is withdrawn or where a decision is made on the review process;
4. Amend paragraph 9(d) to specify that where a decision is varied or substituted on review, the published information must include both TEQSA's decision and the decision made on review.

Consultation question

- ▶ **Question 4:** Do you agree with the proposed amendments to the National Register Guidelines?

The National Register of higher education providers is an important source of information about registered higher education providers and the courses of study accredited by TEQSA. However, it does not provide a mechanism by which those who may be interested in a particular decision can be made aware of that decision.

For instance, while a decision to reject an application for renewal of registration would be of substantial interest to current or prospective students of the relevant higher education provider, those students would only obtain that information from the National Register if they were already looking for that information, or otherwise knew to look for that information.

Further, for significant decisions, it is often important to provide additional background information about a particular decision. In the case of a decision to reject an application for renewal of registration, this may include information about the status of any review underway and tuition assurance arrangements for students, to ensure that the impact of the decision on students is as minimal as possible. This background information is less suited to publication on the National Register given the volume of existing information and the need to consistently present information across a variety of decision types.

Finally, section 198 of the TEQSA Act does not provide for TEQSA to include information about entities which are not, and have never been, higher education providers on the National Register.

In light of these matters, TEQSA considers that it is appropriate to also publish news announcements and media releases about significant decisions made by TEQSA. These announcements would be in accordance with the proposals described elsewhere in this paper, including in relation to the principles, timing and scope of publication.

Consultation question

- ▶ **Question 5:** Do you agree with the proposal to publish news announcements and media releases about significant decisions by TEQSA?

Consultation process

This paper is being made available on TEQSA's website (www.teqsa.gov.au) and has been sent directly to peak bodies for providers regulated by TEQSA under the TEQSA Act.

Responses to the questions posed in this paper and other relevant feedback can be provided through the following email address consultation@teqsa.gov.au.

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