Tertiary Education Quality and Standards Agency Act 2011

No. 73, 2011

Compilation No. 22

Compilation date:	1 January 2022
Includes amendments up to:	Act No. 80, 2021
Registered:	4 January 2022

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2022C00004 registered 04/01/2022

About this compilation

This compilation

This is a compilation of the *Tertiary Education Quality and Standards Agency Act 2011* that shows the text of the law as amended and in force on 1 January 2022 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Introduction 1

Division 1—Preliminary 1

1 Short title 1
2 Commencement 1

Division 2—Objects and simplified outline 4

3 Objects 4
4 Simplified outline 4

Division 3—Definitions 6

5 Definitions 6
6 Meaning of *regulated higher education award* 18
7 Meaning of *vacancy* 19
7A Fit and proper person 19

Division 4—Act excludes State and Territory higher education laws 21

9 Act excludes State and Territory higher education laws 21

Division 5—General application of this Act 22

10 Crown to be bound 22
11 Application to external Territories and outside Australia 22
12 Geographical jurisdiction of offences 22

Part 2—Basic principles for regulation 23

13 Basic principles for regulation 23
14 Principle of regulatory necessity 23
15 Principle of reflecting risk 23
16 Principle of proportionate regulation 24
17 Application to authorised officers 24

Part 3—Registration 25

Division 1—Applying for registration 25

18 Applying for registration 25
19 Preliminary assessment of application 25
20 Substantive assessment of application 26
21 Registration 27
22 TEQSA to notify applicant of decision about registration 28
23 Commencement and duration of registration 29

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Conditions of registration 30
24 Complying with conditions 30
25 Condition—accredited course 30
25A Condition—fit and proper person 30
26 Condition—courses to be provided consistently with the Threshold Standards 30
26A Condition—compliance with the tuition protection requirements 31
26B Guidelines 33
26C Condition—registered higher education provider charge must be paid 33
27 Condition—financial information must be provided 34
28 Condition—other information must be provided 35
29 Condition—notifying TEQSA of material changes 35
30 Condition—record keeping 36
31 Condition—cooperation 36
32 Other conditions 36
33 Conditions about authority to self-accredit 37
34 TEQSA to notify provider of decision to impose, vary or revoke a condition 38
Division 3—Renewing registration 40
35 Applying to renew registration 40
36 Renewing registration 40
37 TEQSA to notify provider of decision about renewal 41
Division 3A—Extension of registration period 42
37A Extension of registration period 42
Division 4—Changing provider registration category 43
38 Changing provider registration category 43
39 Consultation—change relates to use of "university" 43
40 TEQSA to notify provider of decision 44
Division 5—Applying to self-accredit 45
41 Applying to self-accredit courses of study 45
42 TEQSA to notify provider of decision 45
Division 6—Withdrawing registration 46
43 Withdrawing registration 46
44 TEQSA to notify provider of decision about withdrawal 46

Authorised Version C2022C00004 registered 04/01/2022

Part 4—Accreditation of courses of study 47
Division 1—Accrediting courses of study 47
45 Who can accredit courses of study 47
Division 2—Applying for accreditation 49
46 Applying for accreditation 49
47 Preliminary assessment of application 49
48 Substantive assessment of application 49
49 Accreditation of course of study 50
50 TEQSA to notify provider of decision about accreditation 51
51 Commencement and duration of accreditation 51
Division 3—Conditions of accreditation 53
52 Complying with conditions 53
53 Conditions 53
54 TEQSA to notify provider of decision to impose, vary or revoke a condition 53
Division 4—Renewing accreditation 54
55 Applying to renew accreditation 54
56 Renewing accreditation 54
57 TEQSA to notify provider of decision about renewal 55
Division 5—Extension of accreditation period 56
57A Extension of accreditation period 56
Part 5—Higher Education Standards Framework 57
Division 1—Higher Education Standards Framework 57
58 Making the Higher Education Standards Framework 57
Division 2—Compliance with the Framework 59
59 Compliance assessments 59
59A Quality of research 59
60 Quality (including thematic) assessments 60
61 Accreditation assessments 60
62 Matters relevant to assessments 60
Part 5A—Tuition protection 62
Division 1—Preliminary 62
62A What this Part is about 62
62B Application of this Part 62
62C When a provider defaults in relation to a student 64

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Tuition Protection 66

Subdivision A—Obligations of defaulting providers 66

62D Providers must give notice of default to Higher Education Tuition Protection Director ... 66

62E Providers must give notice of default to affected students ... 67

62F Obligations on providers in case of default ... 68

62G Failure to discharge obligations ... 72

62H Providers to notify of outcome of discharge of obligations ... 72

Subdivision B—Role of the Higher Education Tuition Protection Director 74

62J Student placement service ... 74

62K When payments must be made from the Higher Education Tuition Protection Fund ... 77

62L Consequences of payments being made from the Higher Education Tuition Protection Fund ... 79

62M Notification obligations for payments made from the Higher Education Tuition Protection Fund ... 80

Subdivision C—Obligations on replacement providers 80

62N Obligations of providers to provide information about replacement courses ... 80

62P Obligations of replacement providers ... 81

62Q Obligations of replacement providers regarding enrolment information ... 82

Subdivision D—Miscellaneous 83

62R Arrangements for payments between providers ... 83

62S Other tuition protection information must be provided ... 84

62T Right to refund may be cancelled etc. without compensation ... 85

62U Continuing application of Part to certain persons ... 85

Part 6—Information gathering and authorised officers 86

Division 1—Requiring people to give information etc. 86

63 Requiring certain persons to give information etc. ... 86

64 Contravening requirement to give information etc. ... 87

65 Copying documents—compensation ... 87

66 TEQSA may retain documents and things ... 87

67 Returning documents or things produced ... 88

68 Disposal if cannot be returned ... 89

69 Self-incrimination ... 89

Authorised Version C2022C00004 registered 04/01/2022

Division 7—Authorised officers 91
94 Authorised officers 91

Part 7—Enforcement 92

Division 1A—Simplified outline 92
97 Simplified outline of this Part 92

Division 1—Administrative sanctions 94

Subdivision A—Sanctions 94
98 Provider is non-compliant 94
99 Sanctions about accredited course 94
100 Shortening period of registration 94
101 Cancelling registration 94
101A TEQSA to notify provider of decision to impose sanction 95

Subdivision B—Other matters 95
102 Automatic cancellation if provider wound up 95
103 Seeking registration after cancellation 95

Division 2—Offences and civil penalty provisions 96
105 Offering a regulated higher education award if unregistered 96
106 Representing offer of a regulated higher education award if unregistered 96
107 Offering an award without a course of study 97
108 Regulated entity represents itself as university 98
109 Falsely representing entity as a registered higher education provider 99
110 Falsely representing that entity provides a course of study leading to a regulated higher education award 100
111 Falsely representing course of study is accredited 100
112 Providing an unaccredited course of study 101
113 Breach of condition of registration 101
114 Breach of condition of accreditation 102
114A Prohibition on providing etc. academic cheating services 102
114B Prohibition on advertising academic cheating services 103
114C Additional operation of sections 114A and 114B 104

Division 3—Monitoring 107
115 Monitoring powers 107

Division 4—Investigation 111
116 Investigation powers 111

Authorised Version C2022C00004 registered 04/01/2022

Division 5—Civil penalty provisions 114
117 Civil penalty provisions ... 114
Division 6—Infringement notices 116
118 Infringement notices ... 116
Division 7—Enforceable undertakings 117
119 Enforceable undertakings ... 117
Division 8—Injunctions 119
127 Injunctions—general ... 119
127A Injunctions relating to online locations that facilitate provision of, or advertising of, academic cheating services ... 120
Part 8—Tertiary Education Quality and Standards Agency 124
Division 1—Establishment, functions and powers of TEQSA 124
132 Establishment ... 124
133 Constitution ... 124
134 Functions and powers ... 125
135 Independence of TEQSA ... 126
136 Minister may give directions to TEQSA ... 127
137 TEQSA has privileges and immunities of the Crown ... 127
Division 2—Appointment of Commissioners 128
138 Appointment ... 128
139 Term of appointment ... 128
140 Remuneration and allowances ... 128
141 Leave of absence ... 129
142 Outside employment ... 129
143 Disclosure of interests to the Minister ... 129
144 Other terms and conditions ... 130
145 Resignation ... 130
146 Termination of appointment ... 130
147 Acting appointments ... 131
Division 3—TEQSA procedures 133
Subdivision A—Meetings 133
148 Times and places of meetings ... 133
149 Conduct of meetings ... 133
150 Disclosure of interests ... 134
Subdivision B—Decisions without meetings 135
151 Decisions without meetings ... 135

Authorised Version C2022C00004 registered 04/01/2022

152 Record of decisions 135
Division 4—Chief Executive Officer 136
Subdivision A—Office and functions of the Chief Executive Officer 136
153 Chief Executive Officer 136
154 Functions and powers of the Chief Executive Officer 136
Subdivision B—Appointment of the Chief Executive Officer 136
154A Appointment of the Chief Executive Officer 136
154B Period of appointment for the Chief Executive Officer 136
154C Acting appointments 137
Subdivision C—Terms and conditions for the Chief Executive Officer 137
154D Remuneration and allowances 137
154E Leave of absence 138
154F Outside employment 138
154G Disclosure of interests to the Minister 138
154H Resignation 138
154J Termination of appointment 138
154K Other terms and conditions 139
Subdivision D—Delegation 139
154L Delegation by the Chief Executive Officer 139
Subdivision E—Directions by Minister 140
155 Minister may give directions to Chief Executive Officer 140
Subdivision F—Other matters 141
155A Chief Executive Officer not subject to direction by TEQSA on certain matters 141
Division 5—Staff 142
156 Staff 142
157 Staff to be made available to TEQSA 142
Division 6—Fees 143
158 Fees 143
Division 7—Planning 144
160 Approving corporate plans 144
161 Varying corporate plans 144

Authorised Version C2022C00004 registered 04/01/2022

Part 9—Higher Education Standards Panel 146
Division 1—Establishment and functions 146
166 Establishment 146
167 Constitution 146
168 Functions 146
169 Panel has privileges and immunities of the Crown 147
Division 2—Appointment of Panel members 148
170 Appointment 148
171 Term of appointment 148
172 Remuneration and allowances 148
173 Leave of absence 149
174 Outside employment 149
175 Disclosure of interests to the Minister 149
176 Other terms and conditions 149
177 Resignation 149
178 Termination of appointment 150
179 Acting appointments 150
Division 3—Panel meetings 152
180 Holding meetings 152
181 Quorum 152
182 Procedure of meetings 152
Part 10—Administrative law matters 154
Division 1—Review of decisions 154
Subdivision A—Review of TEQSA decisions 154
183 Reviewable decisions of TEQSA 154
184 Applying for internal review of reviewable decisions made by delegates of TEQSA 155
185 Internal review by TEQSA 156
186 Deadline for internal review 157
187 Review by the Administrative Appeals Tribunal 157
Subdivision B—Review of tuition protection decisions 157
187A Reviewable decisions relating to tuition protection 157
187B Reviewer of decisions 158
187C Reviewer may reconsider reviewable decisions 159
187D Reconsideration of reviewable decisions on request 160
187E AAT review of reviewable decisions 161

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Management of higher education information 162
Subdivision A—Restriction on disclosure or use of information 162
188 Offence of unauthorised disclosure or use of information 162
Subdivision B—Information sharing 163
189 Disclosing information about breaches of regulatory requirements 163
190 Disclosing information about proposed cancellations of registration 164
191 Disclosing information to Tertiary Admission Centres 164
192 Disclosing information to the Minister and Department 165
193 Disclosing information to professional bodies etc. 165
194 Disclosing information to certain government bodies etc. 165
195 Disclosing information under international cooperative arrangements 166
195A Disclosing information to other persons 166
195B Disclosing information to complainants 167
196 Disclosing information to the public 167
197 Information about national security 167
Subdivision C—Higher education student records 167
197AA Higher education student records to be provided to TEQSA 167
197AB TEQSA may request higher education student records 168
197AC Provision of higher education student records to another registered higher education provider 169
197AD TEQSA's management of higher education student records 169
197AE Compensation 170
Division 3—Management of academic cheating services information 171
197A Offence of unauthorised disclosure or use of academic cheating services information 171
197B Authorised disclosure and use of academic cheating services information 171
197C Obtaining academic cheating services information 172
197D Information about national security 172
Part 11—National Register of Higher Education Providers 173
198 National Register of Higher Education Providers 173
Part 12—Miscellaneous 174
199 Delegation by TEQSA 174
201 Delegates must comply with directions 174

Authorised Version C2022C00004 registered 04/01/2022

201A Delegation by Secretary 174
201B Delegation by the Minister 175
202 Protection from criminal or civil actions 175
203 Review of impact of Act 176
203A Review of operation of tuition protection 176
204 Guidelines 176
204A Use of Australian domain names with the word "university" etc. 177
205 Regulations 179

Endnotes 180

Endnote 1—About the endnotes 180

Endnote 2—Abbreviation key 182

Endnote 3—Legislation history 183

Endnote 4—Amendment history 187

Authorised Version C2022C00004 registered 04/01/2022

An Act to regulate higher education, and for other purposes

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act may be cited as the *Tertiary Education Quality and Standards Agency Act 2011*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2011
2. Sections 3 to 8	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
3. Section 9	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7	29 January 2012 (paragraph (b) applies)

Authorised Version C2022C00004 registered 04/01/2022

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
	months beginning on the day this Act receives the Royal Assent.	
4. Part 1, Division 5	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
5. Parts 2 to 4	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7 months beginning on the day this Act receives the Royal Assent.	29 January 2012 (paragraph (b) applies)
6. Part 5, Division 1	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
7. Part 5, Division 2, and Parts 6 and 7	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7 months beginning on the day this Act receives the Royal Assent.	29 January 2012 (paragraph (b) applies)
8. Parts 8 to 10	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
9. Part 11	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7 months beginning on the day this Act receives the Royal Assent.	29 January 2012 (paragraph (b) applies)

Authorised Version C2022C00004 registered 04/01/2022

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
10. Part 12	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Objects and simplified outline

3 Objects

The objects of this Act are:

(a) to provide for national consistency in the regulation of higher education; and

(b) to regulate higher education using:

(i) a standards-based quality framework; and

(ii) principles relating to regulatory necessity, risk and proportionality; and

(c) to protect and enhance:

(i) Australia's reputation for quality higher education and training services; and

(ii) Australia's international competitiveness in the higher education sector; and

(iii) excellence, diversity and innovation in higher education in Australia; and

(d) to encourage and promote a higher education system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population; and

(e) to protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education; and

(f) to ensure students undertaking, or proposing to undertake, higher education, have access to information relating to higher education in Australia; and

(g) to protect and enhance the academic integrity of courses provided by higher education providers by prohibiting academic cheating services.

4 Simplified outline

The following is a simplified outline of this Act:

Authorised Version C2022C00004 registered 04/01/2022

- An entity must be registered before it can offer or confer any of the following awards (regulated higher education awards):
  (a) Australian higher education awards;
  (b) overseas higher education awards, if those awards relate to courses of study provided at Australian premises.

- Registered higher education providers must have their courses of study accredited before those courses can be provided in connection with regulated higher education awards. Some providers (including those providers registered in the "Australian University" provider category) are authorised to self-accredit some or all of their courses of study.

- The Tertiary Education Quality and Standards Agency (***TEQSA***) registers providers and accredits courses of study. TEQSA regulates higher education using principles relating to regulatory necessity, risk and proportionality, and using a standards-based quality framework.

- That quality framework is a series of standards made by the Minister on the advice of the Higher Education Standards Panel.

- TEQSA has a role in preventing and minimising the use and promotion of academic cheating services in courses provided by higher education providers.

Authorised Version C2022C00004 registered 04/01/2022

Division 3—Definitions

5 Definitions

In this Act:

academic cheating service means the provision of work to or the undertaking of work for students, in circumstances where the work:

(a) is, or forms a substantial part of, an assessment task that students are required to personally undertake; or

(b) could reasonably be regarded as being, or forming a substantial part of, an assessment task that students are required to personally undertake.

academic cheating services information means information that:

(a) was obtained under, or for the purposes of, this Act; and

(b) relates to the use or provision of an academic cheating service by a person; and

(c) identifies, or is reasonably capable of being used to identify, the person.

accreditation assessment means an assessment conducted under section 61.

accredited course means a course of study that:

(a) if a registered higher education provider is authorised to self-accredit the course of study—is accredited by the provider; and

(b) otherwise—is accredited by TEQSA.

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

affected unit, of an original course, means a unit of study that a domestic student was enrolled in when a registered higher education provider defaulted in relation to the student.

Authorised Version C2022C00004 registered 04/01/2022

approved means approved by TEQSA, in writing, for the purposes of the provision in which the expression occurs.

assessment task means an assignment, essay, examination, practicum, presentation, project or any other assessable part of a course of study, whether mandatory or optional.

associated provisions: this Act's ***associated provisions*** are the provisions of the *Crimes Act 1914* or the *Criminal Code* that relate to this Act.

Australia, when used in a geographical sense, includes the external Territories.

Australian corporation means a trading or financial corporation formed within the limits of the Commonwealth (to which paragraph 51(xx) of the Constitution applies).

Australian course of study means:

(a) a single course leading to an Australian higher education award; or

(b) a course recognised by the higher education provider at which the course is undertaken as a combined or double course leading to one or more Australian higher education awards.

Example: An example of a combined or double course covered by paragraph (b) is a course that leads to the Australian higher education awards of Bachelor of Arts and Bachelor of Laws.

Australian higher education award means a higher education award offered or conferred (whether solely or jointly) by:

(a) an Australian corporation; or

(b) a corporation established by or under a law of the Commonwealth or a Territory; or

(c) a person (other than an individual) established in Australia who conducts activities in a Territory; or

(d) an Australian resident who conducts activities in a Territory.

Authorised Version C2022C00004 registered 04/01/2022

Australian premises, in relation to an overseas higher education award, means premises:

(a) in Australia; and

(b) occupied by the person (the ***offeror***) who offers or confers the award, or by another entity; and

(c) from which the offeror, or the other entity under an arrangement with the offeror, provides all or part of a course of study.

Australian Qualifications Framework has the same meaning as in the *Higher Education Support Act 2003*.

Australian resident means an individual who resides in Australia and is:

(a) an Australian citizen; or

(b) the holder (within the meaning of the *Migration Act 1958*) of a permanent visa (within the meaning of that Act).

authorised officer means a person appointed as an authorised officer under section 94.

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

Chief Commissioner means the Chief Commissioner of TEQSA.

Chief Executive Officer means the Chief Executive Officer of TEQSA.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

commercial purpose means a purpose relating to the derivation of financial gain or reward.

Commissioner means the Chief Commissioner or another Commissioner of TEQSA.

Commonwealth authority means:

Authorised Version C2022C00004 registered 04/01/2022

(a) an Agency (within the meaning of the *Public Service Act 1999*); or
(b) a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth.

compliance assessment means an assessment conducted under section 59.

condition includes:
(a) for a condition imposed under section 32 (about conditions on registration)—that condition as varied under that section; or
(b) for a condition imposed under section 53 (about conditions on accreditation)—that condition as varied under that section.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

course of study means:
(a) an Australian course of study; or
(b) an overseas course of study.

decision-maker for a decision relating to tuition protection: see section 187A.

default: see section 62C.

disclose means divulge or communicate.

domestic student means a person who:
(a) is not an overseas student (or an overseas student within the meaning of the *Education Services for Overseas Students Act 2000*); and
(b) is enrolled, or proposes to become enrolled, in an Australian course of study with a registered higher education provider.

enrolled: a person ***enrolled*** in an Australian course of study (or unit of study) includes a person undertaking the course (or unit).

Authorised Version C2022C00004 registered 04/01/2022

entrusted person means a person who is or was any of the following:

(a) a Commissioner;
(b) a Panel member;
(c) the Chief Executive Officer;
(d) a member of the staff of TEQSA;
(e) a person performing a service for TEQSA.

executive officer of an entity means a person, by whatever name called and whether or not a director of the entity, who is concerned in, or takes part in, the entity's management.

Federal Court means the Federal Court of Australia.

FEE-HELP assistance has the same meaning as in the *Higher Education Support Act 2003*.

fit and proper person has a meaning affected by section 7A.

foreign corporation means a foreign corporation to which paragraph 51(xx) of the Constitution applies.

full-time Commissioner means a Commissioner appointed on a full-time basis.

HECS-HELP assistance has the same meaning as in the *Higher Education Support Act 2003*.

HESA investigator has the same meaning as in the *Higher Education Support Act 2003*.

higher education award means:

(a) a diploma, advanced diploma, associate degree, bachelor degree, undergraduate certificate, graduate certificate, graduate diploma, masters degree or doctoral degree; or
(b) a qualification covered by level 5, 6, 7, 8, 9 or 10 of the Australian Qualifications Framework; or
(c) an award of a similar kind, or represented as being of a similar kind, to any of the above awards;

Authorised Version C2022C00004 registered 04/01/2022

other than an award offered or conferred for the completion of a vocational education and training course.

higher education information means information, relating to a regulated entity:

(a) that is obtained by TEQSA; and

(b) that relates to TEQSA's functions; and

(c) that is not personal information (within the meaning of the *Privacy Act 1988*).

higher education provider means:

(a) a constitutional corporation that offers or confers a regulated higher education award; or

(b) a corporation that:

(i) offers or confers a regulated higher education award; and

(ii) is established by or under a law of the Commonwealth or a Territory; or

(c) a person who offers or confers a regulated higher education award for the completion of a course of study provided wholly or partly in a Territory.

Higher Education Standards Framework means:

(a) the Threshold Standards; and

(b) any other standards made under paragraph 58(1)(b).

higher education student records:

(a) in relation to an entity that is a registered higher education provider, means a document, or an object, in any form (including any electronic form) that is held by the entity because of the document's or object's connection with a person who is or was enrolled in an accredited course provided by the entity; and

(b) in relation to an entity that is a former registered higher education provider, means a document, or an object, in any form (including any electronic form) that was held by the entity when the entity was a registered higher education

Authorised Version C2022C00004 registered 04/01/2022

provider because of the document's or object's connection with a person who was enrolled in an accredited course provided by the entity.

Higher Education Tuition Protection Director means the person referred to in section 167-15 of the *Higher Education Support Act 2003*.

Higher Education Tuition Protection Fund means the Fund established by section 167-1 of the *Higher Education Support Act 2003*.

Information Guidelines means guidelines referred to in item 1 of the table in section 204.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

lawyer means:

(a) a barrister; or
(b) a solicitor; or
(c) a barrister and solicitor; or
(d) a legal practitioner;

of the High Court or of the Supreme Court of a State or Territory.

member of the staff of TEQSA means:

(a) a person referred to in subsection 156(1); or
(b) a person whose services are made available to TEQSA under section 157.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

national security information has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

Open Universities Australia means Open Universities Australia Pty Ltd (ACN 053 431 888).

Authorised Version C2022C00004 registered 04/01/2022

original course means an Australian course of study in relation to which a registered higher education provider has defaulted.

overseas course of study means:

(a) a single course leading to an overseas higher education award; or

(b) a course recognised by the higher education provider at which the course is undertaken as a combined or double course leading to one or more overseas higher education awards.

Example: An example of a combined or double course covered by paragraph (b) is a course that leads to the overseas higher education awards of Bachelor of Arts and Bachelor of Laws.

overseas higher education award means a higher education award offered or conferred (whether solely or jointly) by:

(a) a foreign corporation; or

(b) a person (other than an individual) established outside of Australia who conducts activities in a Territory; or

(c) an individual, who is not an Australian resident, who conducts activities in a Territory.

overseas student means a person who:

(a) is not an Australian citizen; and

(b) is enrolled, or proposes to become enrolled, in:

(i) an Australian course of study with a registered higher education provider; or

(ii) a unit of study access to which was provided by Open Universities Australia;

but does not include:

(c) a person entitled to stay in Australia, or to enter and stay in Australia, without any limitation as to time; or

(d) a New Zealand citizen; or

(e) a diplomatic or consular representative of New Zealand, a member of the staff of such a representative or the spouse, de facto partner (within the meaning of the *Acts Interpretation Act 1901*) or dependent relative of such a representative.

Authorised Version C2022C00004 registered 04/01/2022

Panel means the Higher Education Standards Panel established by section 166.

Panel Chair means the Panel Chair mentioned in paragraph 167(1)(a).

Panel member means the Panel Chair or another member of the Panel.

part-time Commissioner means a Commissioner appointed on a part-time basis.

preliminary assessment application fee means:

(a) for an application under section 18 (about applications for registration)—the fee payable under paragraph 18(3)(c); or

(b) for an application under section 46 (about applications for accreditation)—the fee payable under paragraph 46(2)(c).

premises includes the following:

(a) a structure, building, vehicle, vessel or aircraft;

(b) a place (whether or not enclosed or built on);

(c) a part of a thing referred to in paragraph (a) or (b).

protected person has the meaning given by subsection 202(2).

provide a course of study: an entity may ***provide a course of study*** by one or more of the following means:

(a) a lecture, class or examination on campus or other premises;

(b) a postal or other like service;

(c) a computer adapted for communicating by way of the internet or another communications network;

(d) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network;

(e) a telephone;

(f) any other electronic device.

provider category means a provider category listed in the Threshold Standards.

Authorised Version C2022C00004 registered 04/01/2022

provider obligation period: see subsection 62F(2).

qualified auditor means:

(a) a registered company auditor (within the meaning of the *Corporations Act 2001*); or

(d) a person approved by TEQSA under subsection 27(4).

quality assessment means an assessment conducted under section 60.

Register means the National Register of Higher Education Providers established and maintained under section 198.

registered higher education provider means a higher education provider registered under Part 3 and listed on the Register under paragraph 198(1)(a).

registered higher education provider charge means charge imposed by the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*.

Register Guidelines means guidelines referred to in item 2 of the table in section 204.

regulated entity means:

(a) a constitutional corporation; or

(b) a corporation established by or under a law of the Commonwealth or a Territory; or

(c) a person who conducts activities in a Territory.

regulated higher education award has the meaning given by section 6.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relative, in relation to a representative, includes:

(a) an exnuptial or adoptive child of the representative, or someone of whom the representative is an exnuptial or adoptive child; and

Authorised Version C2022C00004 registered 04/01/2022

(b) someone who is a child (within the meaning of the *Family Law Act 1975*) of the representative, or of whom the representative is a child (within the meaning of that Act); and
(c) relatives traced through relationships referred to in paragraphs (a) and (b).

replacement course means an Australian course of study that enables a domestic student to finish:
(a) an original course; or
(b) a course that is equivalent to an original course.

replacement unit means a unit of study that replaces an affected unit of an original course.

Research Minister means the Minister administering the *Australian Research Council Act 2001*.

reviewable decision:
(a) for a decision by TEQSA—means a decision covered by section 183;
(b) for a decision relating to tuition protection—means a decision covered by section 187A.

reviewer, of a reviewable decision relating to tuition protection: see section 187B.

Secretary means the Secretary of the Department.

State or Territory authority means:
(a) a Department, or agency, of a State or Territory; or
(b) a body, whether incorporated or not, established for a public purpose by or under a law of a State or Territory.

substantive assessment application fee means:
(a) for an application under section 18 (about applications for registration)—the fee payable under paragraph 20(1)(b); or
(b) for an application under section 46 (about applications for accreditation)—the fee payable under paragraph 48(1)(b).

Authorised Version C2022C00004 registered 04/01/2022

Table A provider has the same meaning as in the *Higher Education Support Act 2003*.

TEQSA: see ***Tertiary Education Quality and Standards Agency***.

Tertiary Admission Centre means a person, body or organisation that provides services in relation to student admissions and enrolments on behalf of registered higher education providers.

Tertiary Education Quality and Standards Agency or ***TEQSA*** means the body established by section 132.

Threshold Standards means the Threshold Standards made under paragraph 58(1)(a).

tuition fees means:

(a) in relation to a unit of study for which a domestic student is liable to pay a student contribution amount within the meaning of the *Higher Education Support Act 2003*—that amount; or

(b) in relation to a unit of study for which a domestic student is liable to pay a tuition fee within the meaning of the *Higher Education Support Act 2003*—that amount; or

(c) if paragraph (a) or (b) does not apply—the amount, or the amount worked out using a method, prescribed by the Up-front Payments Guidelines.

tuition protection requirements has the meaning given by subsection 26A(3).

unit of study:

(a) in relation to an Australian course of study and a registered higher education provider that is also a higher education provider within the meaning of the *Higher Education Support Act 2003*—has the same meaning as in that Act; or

(b) in relation to an Australian course of study and a registered higher education provider that is not of the kind mentioned in paragraph (a) means:

Authorised Version C2022C00004 registered 04/01/2022

(i) a subject or unit (however described) that a person may undertake as part of the course; or

(ii) if the course is not comprised of subjects or units as referred to in subparagraph (i)—the course.

up-front payment for a domestic student for a unit of study:

(a) for a unit of study for which the student is liable to pay a student contribution amount within the meaning of the *Higher Education Support Act 2003*—has the same meaning as in section 93-15 of that Act; or

(b) for a unit of study for which the student is liable to pay a tuition fee within the meaning of the *Higher Education Support Act 2003*—has the same meaning as in section 107-5 of that Act; or

(c) if paragraph (a) or (b) does not apply—means a payment of all or a part of the student's tuition fees for the unit.

Up-front Payments Guidelines means guidelines made by the Minister under section 26B.

up-front payments tuition protection levy means levy imposed by the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020.*

vacancy has a meaning affected by section 7.

vocational education and training course means a VET course (within the meaning of the *National Vocational Education and Training Regulator Act 2011*).

6 Meaning of *regulated higher education award*

(1) A ***regulated higher education award*** is:

(a) an Australian higher education award offered or conferred for the completion of an Australian course of study; or

(b) an overseas higher education award offered or conferred for the completion of an overseas course of study provided wholly or mainly from Australian premises related to the award.

Authorised Version C2022C00004 registered 04/01/2022

(2) The course of study does not need to be provided by the person that offers or confers the award.

(3) Paragraph (1)(a) does not apply to an Australian higher education award to the extent that it is offered or conferred by:

(a) a foreign corporation; or

(b) a person (other than an individual) established outside of Australia who conducts activities in a Territory; or

(c) an individual, who is not an Australian resident, who conducts activities in a Territory.

7 Meaning of *vacancy*

(1) For the purposes of a reference in:

(a) this Act to a vacancy in the office of a Commissioner; or

(b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;

there are taken to be 4 offices of Commissioners in addition to the Chief Commissioner.

(2) For the purposes of a reference in:

(a) this Act to a vacancy in the office of a Panel member; or

(b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;

there are taken to be 10 offices of Panel members in addition to the Panel Chair.

7A Fit and proper person

(1) In determining whether a person is a fit and proper person for the purposes of this Act, regard may be had to the matters (if any) specified in an instrument under subsection (2).

(2) TEQSA may, by legislative instrument, make a determination specifying matters for the purposes of subsection (1).

Authorised Version C2022C00004 registered 04/01/2022

(3) TEQSA must not make an instrument under subsection (2) unless the Minister has given written approval to the making of the instrument.

(4) TEQSA must give the Minister such information as the Minister reasonably requires for the purposes of making a decision under subsection (3).

Authorised Version C2022C00004 registered 04/01/2022

Division 4—Act excludes State and Territory higher education laws

9 Act excludes State and Territory higher education laws

(1) The following entities are not required to comply with a State or Territory law purporting to regulate the provision of higher education:

(a) a higher education provider;

(b) a regulated entity who intends to become a higher education provider if:

(i) the regulated entity has applied to TEQSA for registration under section 18; and

(ii) TEQSA has not made a decision on the application.

(2) Subsection (1) does not apply in relation to a State or Territory law to the extent that:

(a) the law establishes the higher education provider or regulated entity; or

(b) the law regulates who may carry on an occupation; or

(c) the law is of a kind specified in regulations made for the purposes of this paragraph.

(3) Subsection (1) does not apply in relation to a State or Territory law if that law purports to regulate a matter, of which the provision of higher education is only a part, unless that law is of a kind specified in regulations made for the purposes of this subsection.

Authorised Version C2022C00004 registered 04/01/2022

Division 5—General application of this Act

10 Crown to be bound

(1) This Act binds the Crown in each of its capacities.

(2) However, nothing in this Act makes the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

11 Application to external Territories and outside Australia

(1) This Act extends to every external Territory.

(2) Except so far as the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

12 Geographical jurisdiction of offences

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to each offence against this Act or this Act's associated provisions.

Authorised Version C2022C00004 registered 04/01/2022

Part 2—Basic principles for regulation

13 Basic principles for regulation

TEQSA must comply with the following principles when exercising a power under this Act in relation to a regulated entity:

(a) the principle of regulatory necessity;

(b) the principle of reflecting risk;

(c) the principle of proportionate regulation.

14 Principle of regulatory necessity

TEQSA complies with the principle of regulatory necessity if its exercise of the power does not burden the entity any more than is reasonably necessary.

15 Principle of reflecting risk

(1) TEQSA complies with the principle of reflecting risk if its exercise of the power has regard to:

(a) the entity's history, including the history of:

(i) its scholarship, teaching and research; and

(ii) its students' experiences; and

(iii) its financial status and capacity; and

(iv) its compliance with the Threshold Standards, this Act, this Act's associated provisions and other laws regulating education; and

(b) matters relating to the risk of the entity not complying with the Threshold Standards, this Act or this Act's associated provisions in the future, including:

(i) its internal quality assurance mechanisms; and

(ii) its financial status and capacity; and

(iii) the history of persons related to the entity.

Authorised Version C2022C00004 registered 04/01/2022

(2) For the purposes of subparagraph (1)(b)(iii), a person is ***related*** to a regulated entity if the person:

(a) is able to control, or to materially influence, the entity's activities or internal affairs; or

(b) is able to determine, or to materially influence, the entity's financial or operating policies; or

(c) is financially interested in the entity's success or failure or apparent success or failure; or

(d) is a holding company of the entity; or

(e) is a subsidiary of the entity; or

(f) is a subsidiary of a holding company of the entity.

16 Principle of proportionate regulation

TEQSA complies with the principle of proportionate regulation if its exercise of the power is in proportion to:

(a) any non-compliance; or

(b) risk of future non-compliance;

by the entity with the Threshold Standards, this Act or this Act's associated provisions.

17 Application to authorised officers

This Part applies to an authorised officer in a corresponding way to the way it applies to TEQSA.

Authorised Version C2022C00004 registered 04/01/2022

Part 3—Registration

Division 1—Applying for registration

18 Applying for registration

(1) A regulated entity who is, or intends to become, a higher education provider may apply to TEQSA for registration within a particular provider category.

(2) If an application is made, the entity may also apply to TEQSA for a course of study to be accredited.

Note: For an application for a course of study to be accredited, see section 46.

(3) An application for registration must be:
(a) in the approved form; and
(b) accompanied by any information, documents and assistance that TEQSA requests; and
(c) accompanied by the fee determined under section 158 for a preliminary assessment under this Part.

19 Preliminary assessment of application

(1) TEQSA must, within 30 days after an application is made, advise the applicant:
(a) whether its application for registration in a particular provider category is appropriate, and if it is not, what provider category would be appropriate (if any); and
(b) whether an application is required for a course of study to be accredited.

(2) Before making a decision under paragraph (1)(a) about a provider category, TEQSA must:
(a) have regard to the Threshold Standards; and

Authorised Version C2022C00004 registered 04/01/2022

(b) if the provider category applied for, or the provider category that TEQSA considers would be appropriate, is either the "Australian University" or "Overseas University" provider category:

(i) consult the Minister for each relevant State and Territory responsible for higher education; and

(ii) have regard to any advice or recommendations given by each of those Ministers.

(3) If the applicant withdraws its application, the preliminary assessment application fee is not refundable.

20 Substantive assessment of application

(1) The applicant may continue with its application by:

(a) providing any further information, documents and assistance that TEQSA requests; and

(b) paying the fee determined under section 158 for a substantive assessment under this Part.

(2) When conducting the substantive assessment, TEQSA must:

(a) proceed on the basis that the application is for registration in the provider category advised as appropriate under paragraph 19(1)(a); and

(b) if that provider category is either the "Australian University" or "Overseas University" provider category:

(i) consult the Minister for each relevant State and Territory responsible for higher education; and

(ii) have regard to any advice or recommendations given by each of those Ministers.

(3) If an applicant withdraws its application, the substantive assessment application fee is not refundable.

Authorised Version C2022C00004 registered 04/01/2022

21 Registration

Grant of application for registration

(1) TEQSA may grant the application for registration if TEQSA is satisfied that:
  (a) the applicant meets the Threshold Standards; and
  (b) the applicant, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the applicant's affairs, is a fit and proper person; and
  (c) for an applicant to which Part 5A will apply—the applicant will comply with tuition protection requirements.

Decision on application

(2) TEQSA must make a decision on the application:
  (a) within 9 months of receiving it; or
  (b) if a longer period is determined by TEQSA under subsection (3)—within that period.

For the purposes of paragraph (a), TEQSA is taken to receive the application when it receives payment of the substantive assessment application fee.

Longer period for decision on application

(3) If TEQSA is satisfied that, for reasons beyond its control, a decision on the application cannot be made within the period mentioned in paragraph (2)(a), TEQSA may determine a longer period, not exceeding a further 9 months, within which it must make a decision on the application.

(4) If TEQSA determines a longer period, it must do so not later than 6 weeks before the end of the period mentioned in paragraph (2)(a).

(5) If TEQSA determines a longer period, TEQSA must, within 7 days of making the determination:
  (a) notify the applicant, in writing, of the determination; and
  (b) give, in writing, the reasons for the determination.

Authorised Version C2022C00004 registered 04/01/2022

Period of registration

(6) If TEQSA grants the applicant's application, TEQSA must also determine the period for which the applicant is registered. The period must not exceed 7 years.

Note 1: For renewals of registration, see section 36.

Note 2: TEQSA may also impose conditions on the registration (see subsection 32(1)).

Note 3: The period of registration may be extended (see section 37A).

Decision not made

(7) TEQSA is taken to have rejected the application if a decision is not made within the period applicable under subsection (2).

22 TEQSA to notify applicant of decision about registration

TEQSA must, within 30 days of its decision to grant or reject an application for registration as a registered higher education provider, notify the applicant, in writing, of:

(a) the decision; and

(b) if TEQSA grants the application—the following:

(i) the provider category in which the applicant is registered;

(ia) if the provider category is not the provider category that the applicant applied for under subsection 18(1)—the reasons for deciding on that category;

(ii) the period for which the applicant is registered;

(iii) whether the applicant may self-accredit one or more courses of study; and

(c) if TEQSA rejects the application—the reasons for the decision.

Note: TEQSA must also notify of any conditions imposed under subsection 32(1) on the applicant's registration (see section 34).

Authorised Version C2022C00004 registered 04/01/2022

23 Commencement and duration of registration

(1) An applicant's registration:

(a) commences on the day specified in the notice given under section 22; and

(b) ends at the end of the period specified in the most recent notice given under section 22 or 37 in relation to the registration.

(2) Paragraph (1)(b) has effect subject to the following:

(a) subsection 36(3) (about renewing registration);

(b) section 37A (about extending registration);

(c) section 43 (about withdrawing registration);

(d) Division 1 of Part 7 (about cancelling registration and other administrative sanctions).

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Conditions of registration

24 Complying with conditions

A registered higher education provider must:

(a) comply with the conditions imposed by sections 25 to 31 on the provider's registration; and

(b) comply with any conditions imposed under subsection 32(1) on the provider's registration.

Note: The provider's registration will be automatically cancelled if a winding-up order is made in respect of the provider (see section 102).

25 Condition—accredited course

A registered higher education provider must offer at least one accredited course.

25A Condition—fit and proper person

A registered higher education provider, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the provider's affairs, must be a fit and proper person.

26 Condition—courses to be provided consistently with the Threshold Standards

(1) This section applies to a registered higher education provider if the provider offers or confers a regulated higher education award for the completion of a course of study provided wholly or partly by another entity.

(2) The provider must ensure that the other entity provides the course of study consistently with the Threshold Standards.

Authorised Version C2022C00004 registered 04/01/2022

26A Condition—compliance with the tuition protection requirements

(1) This section applies to a registered higher education provider if Part 5A applies to the provider.

(2) The provider must comply with the tuition protection requirements.

(3) The ***tuition protection requirements*** are:

(a) the requirements set out in this section, Part 5A and the Up-front Payments Guidelines; and

(b) the requirements set out in the Up-front Payments Guidelines for the purposes of this paragraph.

(4) The provider must pay the following when it is due and payable by the provider:

(a) up-front payments tuition protection levy;

(b) any penalty for late payment of up-front payments tuition protection levy.

Note 1: Up-front payments tuition protection levy is imposed by the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*.

Note 2: An amount equal to each amount of up-front payments tuition protection levy received from a registered higher education provider is credited to the Higher Education Tuition Protection Fund: see paragraph 167-5(aa) of the *Higher Education Support Act 2003*.

Note 3: The Higher Education Tuition Protection Fund Advisory Board advises the Higher Education Tuition Protection Director in relation to certain components of the up-front payments tuition protection levy: see paragraph 167-35(1)(b) of the *Higher Education Support Act 2003*.

(5) The Up-front Payments Guidelines may make provision for, or in relation to, all or any of the following matters:

(a) the issue of notices setting out the amount of up-front payments tuition protection levy payable by a provider;

(b) when up-front payments tuition protection levy is due and payable;

(c) the issue of notices extending the time for payment of up-front payments tuition protection levy;

Authorised Version C2022C00004 registered 04/01/2022

(d) penalties for late payment of up-front payments tuition protection levy;
(e) to whom up-front payments tuition protection levy and any penalties for late payment are payable;
(f) the refund, remission or waiver of up-front payments tuition protection levy or penalties for late payment;
(g) the review of decisions made under the Up-front Payments Guidelines in relation to the collection or recovery of up-front payments tuition protection levy;
(h) any other matters relating to the collection or recovery of up-front payments tuition protection levy.

(6) The Up-front Payments Guidelines may, for the purposes of paragraph 167-10(1)(b) of the *Higher Education Support Act 2003*, make provision for, or in relation to, payments made in connection with the tuition protection requirements, including in relation to the following:
(a) the circumstances in which payments may be made;
(b) amounts of different kinds of payments;
(c) methods for calculating different kinds of payments.

Note: For example, the Up-front Payments Guidelines may provide that a provider of a replacement course may receive a transfer payment if a student accepts an offer of a replacement course with the provider.

Information and documents related to tuition protection

(7) The Up-front Payments Guidelines may set out specified information and documents that a registered higher education provider must:
(a) keep records of for the purposes of the tuition protection requirements; and
(b) give to the Secretary in accordance with subsection (8).

(8) The information and documents mentioned in subsection (7) must be given to the Secretary:
(a) within the period specified by the Secretary; and
(b) in the manner and form approved by the Secretary.

Authorised Version C2022C00004 registered 04/01/2022

(9) Without limiting subsection (7), the information and documents may relate to one or more of the following:

(a) the provider's domestic students (including information and documents relating to each student's enrolment, progression in units of study and results);

(b) the provider's tuition fees, including the amount of any up-front payments received for each domestic student for a unit of study;

(c) identifying information about the provider's domestic students, including the full names and contact details of the students;

(d) any other matter related to tuition protection under this Act.

26B Guidelines

The Minister may, by legislative instrument, make guidelines (the ***Up-front Payments Guidelines***) providing for matters:

(a) required or permitted by this Act or the *Higher Education Support Act 2003* to be provided by the Up-front Payments Guidelines; or

(b) necessary or convenient to be provided in order to carry out or give effect to Part 5A of this Act or Part 5-1A or 5-1B of the *Higher Education Support Act 2003*.

26C Condition—registered higher education provider charge must be paid

(1) A registered higher education provider must pay the following when they are due and payable by the provider:

(a) registered higher education provider charge;

(b) any penalty for late payment of registered higher education provider charge.

Note: Registered higher education provider charge is imposed by the *Tertiary Education Quality and Standards Agency (Charges) Act 2021*.

Authorised Version C2022C00004 registered 04/01/2022

(2) The Registered Higher Education Provider Charge Guidelines may make provision for, or in relation to, all or any of the following matters:

(a) the issue of notices setting out the amount of registered higher education provider charge payable by a provider;

(b) when registered higher education provider charge is due and payable;

(c) the issue of notices extending the time for payment of registered higher education provider charge;

(d) penalties for late payment of registered higher education provider charge;

(e) to whom registered higher education provider charge and any penalties for late payment are payable;

(f) the refund, remission or waiver of registered higher education provider charge or penalties for late payment;

(g) the review of decisions made under the Registered Higher Education Provider Charge Guidelines in relation to the collection or recovery of registered higher education provider charge;

(h) any other matters relating to the collection or recovery of registered higher education provider charge.

(3) If regulations under the *Tertiary Education Quality and Standards Agency (Charges) Act 2021* provide for the amount of registered higher education provider charge for a year for a registered higher education provider to be equal to the sum of one or more components, then a reference in this section to registered higher education provider charge includes a reference to the amount of such a component.

27 Condition—financial information must be provided

Providers must give TEQSA annual financial statements

(1) A registered higher education provider must give TEQSA a financial statement for each annual financial reporting period for which the provider is registered.

Authorised Version C2022C00004 registered 04/01/2022

(2) The provider's annual financial reporting period is the period of 12 months:
  (a) to which the provider's accounts relate; and
  (b) that is notified, in writing, to TEQSA as the provider's annual financial reporting period.

(3) A statement given under subsection (1) must be:
  (a) in the approved form; and
  (b) provided together with a report on the statement by an independent qualified auditor; and
  (c) provided within 6 months after the end of the annual financial reporting period to which the statement relates.

TEQSA may approve additional persons as qualified auditors

(4) TEQSA may, in writing, approve a person as a qualified auditor for the purposes of this Act.

28 Condition—other information must be provided

(1) This section applies to a registered higher education provider if:
  (a) TEQSA believes on reasonable grounds that the provider has information relevant to TEQSA's functions; and
  (b) TEQSA, by written notice given to the provider, requests the provider to give TEQSA the information:
    (i) within the period (not shorter than 14 days after the notice is given) specified in the notice; and
    (ii) in the manner specified in the notice.

(2) The provider must comply with the request.

29 Condition—notifying TEQSA of material changes

(1) A registered higher education provider must notify TEQSA if any of the following events happens or is likely to happen:
  (a) an event that will significantly affect the provider's ability to meet the Threshold Standards;

Authorised Version C2022C00004 registered 04/01/2022

(b) an event that will require the Register to be updated in respect of the provider.

(2) The notification must be given no later than 14 days after the day the provider would reasonably be expected to have become aware of the event.

30 Condition—record keeping

A registered higher education provider must keep adequate records for the purposes of this Act.

31 Condition—cooperation

A registered higher education provider must cooperate with TEQSA to facilitate TEQSA's performance of its functions.

32 Other conditions

TEQSA may impose conditions on registrations etc.

(1) TEQSA may impose other conditions on a registered higher education provider's registration. Examples of the kinds of conditions that may be imposed (which need not be imposed at the time of registration) include the following:

(a) if section 26 applies to the provider:

(i) that the provider do certain things in relation to the other entity referred to in that section;

(ii) that the other entity referred to in that section do certain things;

(b) that the provider do any or all of the following for one or more accredited courses:

(i) maintain a particular staffing profile;

(ii) provide access to particular facilities;

(iii) provide particular support services;

(c) restricting or removing the provider's authority to self-accredit one or more courses of study;

Authorised Version C2022C00004 registered 04/01/2022

(d) restricting or removing the provider's ability to provide an accredited course;

(e) restricting the number of students that may enrol in a particular accredited course provided by the provider;

(f) restricting or removing the provider's ability to offer or confer a regulated higher education award.

Note 1: TEQSA may need to consult before imposing a condition of a kind covered by paragraph (c) (see section 33).

Note 2: A condition covered by paragraph (d) could, for example, prohibit a registered higher education provider:

(a) doing anything for the purposes of recruiting or enrolling students or intending students for an accredited course; or

(b) soliciting or accepting any money from a student or an intending student for an accredited course.

(2) TEQSA may, on its own initiative, vary or revoke a condition imposed under subsection (1).

Applications to vary or revoke a condition

(3) TEQSA may also vary or revoke a condition imposed under subsection (1) if the registered higher education provider applies for the variation or revocation.

(4) The provider's application must be:

(a) in the approved form; and

(b) accompanied by any information, documents and assistance that TEQSA requests; and

(c) accompanied by the fee determined under section 158 for an application under this section.

33 Conditions about authority to self-accredit

TEQSA to consult about such conditions

(1) Subsection (2) applies if:

Authorised Version C2022C00004 registered 04/01/2022

(a) a registered higher education provider is registered in either the "Australian University" or "Overseas University" provider category; and

(b) TEQSA proposes to make a decision to:

(i) impose under subsection 32(1) a condition restricting or removing the provider's authority to self-accredit one or more courses of study; or

(ii) vary or revoke a condition of that kind.

(2) Before doing so, TEQSA must give the provider and the Minister for each relevant State and Territory responsible for higher education:

(a) a written notice stating that TEQSA intends to make the decision for specified reasons; and

(b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.

(3) TEQSA must have regard to any representations received under subsection (2).

Consequences for accreditation if authority removed

(4) If:

(a) a course of study is accredited by a registered higher education provider; and

(b) a condition imposed under subsection 32(1) removes the provider's authority to self-accredit the course of study;

the accreditation is cancelled when that removal takes effect.

Note: The provider may apply to TEQSA for TEQSA to accredit the course of study under Part 4.

34 TEQSA to notify provider of decision to impose, vary or revoke a condition

(1) TEQSA must, within 30 days of making a decision under subsection 32(1), (2) or (3), notify the registered higher education provider, in writing, of:

Authorised Version C2022C00004 registered 04/01/2022

(a) the decision; and
(b) the reasons for the decision; and
(c) if the decision is to impose a condition—the period for which the condition is imposed.

(2) Paragraph (1)(b) does not apply if:
(a) the decision is made under subsection 32(3) in response to an application made by a registered higher education provider; and
(b) the decision is in accordance with the application.

Authorised Version C2022C00004 registered 04/01/2022

Division 3—Renewing registration

35 Applying to renew registration

(1) A registered higher education provider may apply to TEQSA, in the approved form, to have its registration renewed:
  (a) at least 180 days before its registration is to end; or
  (b) within such shorter period as TEQSA allows.

(2) An application must be accompanied by the fee determined under section 158 for an application under this section.

36 Renewing registration

Deciding whether to grant the application

(1) Upon receiving a registered higher education provider's application for renewal of registration, TEQSA may renew the provider's registration if TEQSA is satisfied that:
  (a) the provider continues to meet the Threshold Standards; and
  (b) the provider, and each person who makes or participates in making decisions that affect the whole, or a substantial part, of the provider's affairs, is a fit and proper person.

(2) The things TEQSA may do to assist it to make a decision under subsection (1) include:
  (a) requesting information, documents or assistance from the provider; and
  (b) conducting a compliance assessment.

(3) The provider's registration is taken to continue until TEQSA decides whether to renew the provider's registration.

(4) If TEQSA renews the provider's registration, TEQSA must determine the period for which the provider's registration is renewed. The period must not exceed 7 years.

Authorised Version C2022C00004 registered 04/01/2022

Note 1: Any conditions imposed on the registration, and in force immediately before its renewal, will apply to the renewed registration.

Note 2: The period of registration may be extended (see section 37A).

Proposal to reject the application

(5) If TEQSA proposes to make a decision to reject the provider's application for renewal of registration, TEQSA must give each entity mentioned in subsection (6):
  (a) a written notice stating that TEQSA intends to make the decision for specified reasons; and
  (b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.

(6) The entities are:
  (a) the provider; and
  (b) if the provider's registration is in either the "Australian University" or "Overseas University" provider category—the Minister for each relevant State and Territory responsible for higher education.

(7) TEQSA must consider any representations received under subsection (5).

37 TEQSA to notify provider of decision about renewal

TEQSA must, within 30 days of its decision to grant or reject an application for renewal of registration, notify the registered higher education provider, in writing, of:
  (a) the decision; and
  (b) if TEQSA grants the application—the period for which the registration is renewed; and
  (c) if TEQSA rejects the application—the reasons for the decision.

Authorised Version C2022C00004 registered 04/01/2022

Division 3A—Extension of registration period

37A Extension of registration period

(1) TEQSA may extend the period of a registered higher education provider's registration.

(2) The extended period may exceed 7 years.

(3) This section has effect subject to the following:
  (a) subsection 36(3) (about renewing registration);
  (b) section 43 (about withdrawing registration);
  (c) Division 1 of Part 7 (about cancelling registration and other administrative sanctions).

Authorised Version C2022C00004 registered 04/01/2022

Division 4—Changing provider registration category

38 Changing provider registration category

(1) TEQSA may change the provider category in which a registered higher education provider is registered:
  (a) on its own initiative; or
  (b) on application by the provider.

(1A) In relation to an application under paragraph (1)(b), if TEQSA considers that the provider category in which the provider is registered should not be changed, TEQSA may decide not to change that category.

(2) However, before making a decision under subsection (1) or (1A) TEQSA must have regard to the Threshold Standards.

(3) A registered higher education provider's application must be:
  (a) in the approved form; and
  (b) accompanied by any information, documents and assistance that TEQSA requests; and
  (c) accompanied by the fee determined under section 158 for an application under this section.

39 Consultation—change relates to use of "university"

(1) This section applies if:
  (a) TEQSA proposes to make a decision under subsection 38(1) to change the provider category in which a registered higher education provider is registered; and
  (b) the provider's current provider category, or the proposed provider category, is either the "Australian University" or "Overseas University" provider category.

(2) Before doing so, TEQSA must give the provider and the Minister for each relevant State and Territory responsible for higher education:

Authorised Version C2022C00004 registered 04/01/2022

(a) a written notice stating that TEQSA intends to make the decision for specified reasons; and
(b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.

(3) TEQSA must have regard to any representations received under subsection (2).

40 TEQSA to notify provider of decision

TEQSA must, within 30 days of making a decision under subsection 38(1) or (1A), notify the registered higher education provider, in writing, of:
(a) the decision; and
(b) the reasons for the decision.

Authorised Version C2022C00004 registered 04/01/2022

Division 5—Applying to self-accredit

41 Applying to self-accredit courses of study

(1) TEQSA may, on application, authorise a registered higher education provider to self-accredit one or more courses of study.

(2) However, before doing so TEQSA must have regard to the Threshold Standards.

(3) A registered higher education provider's application must be:
  (a) in the approved form; and
  (b) accompanied by any information, documents and assistance that TEQSA requests; and
  (c) accompanied by the fee determined under section 158 for an application under this section.

42 TEQSA to notify provider of decision

TEQSA must, within 30 days of making a decision under subsection 41(1), notify the registered higher education provider, in writing, of:
  (a) the decision; and
  (b) the reasons for the decision.

Authorised Version C2022C00004 registered 04/01/2022

Division 6—Withdrawing registration

43 Withdrawing registration

(1) A registered higher education provider may apply to TEQSA, in the approved form, to withdraw its registration.

(2) Upon receiving the provider's application to withdraw its registration, TEQSA may grant the application if TEQSA is satisfied that it is appropriate to allow the registration to be withdrawn.

44 TEQSA to notify provider of decision about withdrawal

TEQSA must, within 30 days of its decision to grant or reject an application to withdraw a registration, notify the registered higher education provider, in writing, of:

(a) the decision; and

(b) if TEQSA grants the application—the day on which the withdrawal takes effect; and

(c) if TEQSA rejects the application—the reasons for the decision.

Authorised Version C2022C00004 registered 04/01/2022

Part 4—Accreditation of courses of study

Division 1—Accrediting courses of study

45 Who can accredit courses of study

Australian universities can self-accredit courses of study

(1) Each registered higher education provider that:

(a) is registered in the "Australian University" provider category; and

(b) is:

(i) established by or under, or recognised by, a law of the Commonwealth, a State or a Territory; or

(ii) registered as a company under Part 2A.2 of the *Corporations Act 2001*;

is authorised to self-accredit each course of study that leads to a higher education award that it offers or confers.

(2) However, this authority is subject to section 32 (about imposing conditions on a provider's registration).

Note: TEQSA may impose a condition restricting or removing the provider's authority to self-accredit. TEQSA will need to consult (see section 33) and comply with the principles in Part 2 before doing so.

(2A) Subsection (1) does not apply to a registered higher education provider in the "Australian University" provider category if that provider has a specialised focus in accordance with the Threshold Standards.

(3) Subsection (1) does not limit the registered higher education providers that may be authorised to self-accredit one or more courses of study.

Authorised Version C2022C00004 registered 04/01/2022

TEQSA can accredit courses of study

(4) Divisions 2 to 4 of this Part apply to a registered higher education provider in relation to a course of study if the provider is not authorised to self-accredit the course of study.

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Applying for accreditation

46 Applying for accreditation

(1) A regulated entity who is, or has applied to become, a registered higher education provider may apply to TEQSA for a course of study to be accredited.

(2) An application must be:
  (a) in the approved form; and
  (b) accompanied by any information, documents and assistance that TEQSA requests; and
  (c) accompanied by the fee determined under section 158 for a preliminary assessment under this Part.

47 Preliminary assessment of application

(1) TEQSA must, within 30 days after an application is made:
  (a) advise the applicant whether its application is accompanied by sufficient information, documents and assistance; and
  (b) if it is not, request that the applicant provide further information, documents or assistance.

(2) If the applicant withdraws its application, the preliminary assessment application fee is not refundable.

48 Substantive assessment of application

(1) The applicant may continue with its application by:
  (a) providing any further information, documents and assistance that TEQSA requests; and
  (b) paying the fee determined under section 158 for a substantive assessment under this Part.

(2) If an applicant withdraws its application, the substantive assessment application fee is not refundable.

Authorised Version C2022C00004 registered 04/01/2022

49 Accreditation of course of study

Grant of application for accreditation

(1) Following an application for a course of study to be accredited, TEQSA may accredit the course of study in relation to the applicant if TEQSA is satisfied that:
  (a) the applicant is a registered higher education provider; and
  (b) the course of study meets the Threshold Standards.

Decision on application

(2) TEQSA must make a decision on the application:
  (a) within 9 months of receiving it; or
  (b) if a longer period is determined by TEQSA under subsection (3)—within that period.

  For the purposes of paragraph (a), TEQSA is taken to receive the application when it receives payment of the substantive assessment application fee.

Longer period for decision on application

(3) If TEQSA is satisfied that, for reasons beyond its control, a decision on the application cannot be made within the period mentioned in paragraph (2)(a), TEQSA may determine a longer period, not exceeding a further 9 months, within which it must make a decision on the application.

(4) If TEQSA determines a longer period, it must do so not later than 6 weeks before the end of the period mentioned in paragraph (2)(a).

(5) If TEQSA determines a longer period, TEQSA must, within 7 days of making the determination:
  (a) notify the applicant, in writing, of the determination; and
  (b) give, in writing, the reasons for the determination.

Authorised Version C2022C00004 registered 04/01/2022

Period of accreditation

(6) If TEQSA accredits a course of study in relation to a registered higher education provider, TEQSA must also determine the period for which the course of study is accredited. The period must not exceed 7 years, but need not be for the same period for which the provider is registered.

Note 1: The period will end automatically if the provider ceases to be registered as a registered higher education provider (see paragraph 51(2)(a)).

Note 2: Accreditation can be renewed (see section 56).

Note 3: TEQSA may also impose conditions on the accreditation (see subsection 53(1)).

Note 4: The period of accreditation may be extended (see section 57A).

Decision not made

(7) TEQSA is taken to have rejected the application if a decision is not made within the period applicable under subsection (2).

50 TEQSA to notify provider of decision about accreditation

TEQSA must, within 30 days of its decision to grant or reject an application for a course of study to be accredited, notify the applicant, in writing, of:

(a) the decision; and

(b) if TEQSA grants the application—the period for which the course of study is accredited; and

(c) if TEQSA rejects the application—the reasons for the decision.

Note: TEQSA must also notify of any conditions imposed under subsection 53(1) on the accreditation (see section 54).

51 Commencement and duration of accreditation

(1) Accreditation of a course of study:

Authorised Version C2022C00004 registered 04/01/2022

(a) commences on the first day of the period specified in the notice given under section 50; and

(b) ends at the end of the period specified in the most recent notice given under section 50 or 57 in relation to the accreditation.

(2) Paragraph (1)(b) has effect subject to the following:

(a) the accreditation ends immediately if the provider ceases to be registered as a registered higher education provider;

(b) subsection 56(3) (about renewing accreditation);

(ba) section 57A (about extending accreditation);

(c) Division 1 of Part 7 (about cancelling accreditation and other administrative sanctions).

Authorised Version C2022C00004 registered 04/01/2022

Division 3—Conditions of accreditation

52 Complying with conditions

A registered higher education provider must comply with any conditions imposed under subsection 53(1) on the accreditation of a course of study.

53 Conditions

(1) TEQSA may impose conditions on the accreditation of a course of study.

(2) TEQSA may, on its own initiative, vary or revoke a condition imposed under subsection (1).

(3) TEQSA may also vary or revoke a condition imposed under subsection (1) if the registered higher education provider applies for the variation or revocation.

(4) The provider's application must be:
  (a) in the approved form; and
  (b) accompanied by any information, documents and assistance that TEQSA requests; and
  (c) accompanied by the fee determined under section 158 for an application under this section.

54 TEQSA to notify provider of decision to impose, vary or revoke a condition

TEQSA must, within 30 days of making a decision under subsection 53(1), (2) or (3), notify the registered higher education provider, in writing, of:
  (a) the decision; and
  (b) the reasons for the decision; and
  (c) if the decision is to impose a condition—the period for which the condition is imposed.

Authorised Version C2022C00004 registered 04/01/2022

Division 4—Renewing accreditation

55 Applying to renew accreditation

(1) A registered higher education provider may apply to TEQSA, in the approved form, for the renewal of the accreditation of a course of study in relation to the provider:

(a) at least 180 days before the accreditation of the course of study is to end; or

(b) within such shorter period as TEQSA allows.

(2) An application must be accompanied by the fee determined under section 158 for an application under this section.

56 Renewing accreditation

Deciding whether to grant the application

(1) Upon receiving an application for renewal of the accreditation of a course of study, TEQSA may renew the accreditation of the course of study in relation to the registered higher education provider if it is satisfied that the accredited course continues to meet the Threshold Standards.

(2) The things TEQSA may do to assist it to make a decision under subsection (1) include:

(a) requesting information, documents or assistance from the provider; and

(b) conducting an accreditation assessment.

(3) The accreditation of the course of study is taken to continue until TEQSA decides whether to renew the accreditation.

(4) If TEQSA renews the accreditation, TEQSA must determine the period for which the accreditation is renewed. The period must not exceed 7 years.

Authorised Version C2022C00004 registered 04/01/2022

Note 1: The period will end automatically if the provider ceases to be registered as a registered higher education provider (see paragraph 51(2)(a)).

Note 2: Any conditions imposed on the accreditation, and in force immediately before its renewal, will apply to the renewed accreditation.

Proposal to reject the application

(5) If TEQSA proposes to make a decision to reject the provider's application for renewal of the accreditation, TEQSA must give the provider:

(a) a written notice stating that TEQSA intends to make the decision for specified reasons; and

(b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.

(6) TEQSA must consider any representations received under subsection (5).

57 TEQSA to notify provider of decision about renewal

TEQSA must, within 30 days of its decision to grant or reject an application for renewal of accreditation, notify the registered higher education provider, in writing, of:

(a) the decision; and

(b) if TEQSA grants the application—the period for which the accreditation is renewed; and

(c) if TEQSA rejects the application—the reasons for the decision.

Authorised Version C2022C00004 registered 04/01/2022

Division 5—Extension of accreditation period

57A Extension of accreditation period

(1) TEQSA may extend the period of the accreditation of a course of study.

(2) The extended period may exceed 7 years.

(3) This section has effect subject to the following:

(a) the accreditation ends immediately if the provider ceases to be registered as a registered higher education provider;

(b) subsection 56(3) (about renewing accreditation);

(c) Division 1 of Part 7 (about cancelling accreditation and other administrative sanctions).

Authorised Version C2022C00004 registered 04/01/2022

Part 5—Higher Education Standards Framework

Division 1—Higher Education Standards Framework

58 Making the Higher Education Standards Framework

Making the standards

(1) The Minister may, by legislative instrument, make the following standards that make up the Higher Education Standards Framework:
  (a) the Threshold Standards;
  (b) other standards against which the quality of higher education can be assessed.

Note: For varying or revoking a standard, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Requirements before making any of the standards

(3) The Minister must not make a standard under this section unless:
  (a) a draft of the standard has been developed by the Panel; and
  (b) the Minister has consulted each of the following about the draft:
    (i) the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education;
    (ii) if the Minister is not also the Research Minister—the Research Minister;
    (iii) TEQSA.

(4) Before the Minister makes a standard under this section, the Minister must have regard to:
  (a) the draft of the standard developed by the Panel; and
  (b) any advice or recommendations given to the Minister by any of the following:

Authorised Version C2022C00004 registered 04/01/2022

(i) the Panel, that Ministerial Council or TEQSA;
(ii) if the Minister is not also the Research Minister—the Research Minister.

Content of the standards

(5) Despite subsection 14(2) of the *Legislation Act 2003*, a standard may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Compliance with the Framework

59 Compliance assessments

TEQSA may review or examine any aspect of an entity's operations to assess whether a registered higher education provider continues to meet the Threshold Standards.

Note: This enables TEQSA to review the operations of an entity that provides part of a course of study that leads to a regulated higher education award offered or conferred by the registered higher education provider.

59A Quality of research

(1) If TEQSA is considering the Threshold Standards, to the extent they relate to research, in relation to:

(a) a regulated entity that has applied under section 18 to TEQSA for registration within the "Australian University" provider category; or

(b) a registered higher education provider that has applied under section 38 to change to the "Australian University" provider category; or

(c) a registered higher education provider that is in the "Australian University" provider category;

TEQSA must have regard to the quality of the research undertaken by the entity or provider.

(2) In doing so, if an instrument is in force under subsection (7), TEQSA must have regard to the matters determined in the instrument.

(3) Subsection (2) does not limit the matters to which TEQSA may have regard.

Matters relating to the quality of research

(4) TEQSA may, in writing, determine matters relating to the quality of research for the purposes of this section.

Authorised Version C2022C00004 registered 04/01/2022

(5) A determination under subsection (4) has no effect unless the Minister has approved it in writing.

(6) TEQSA must give the Minister such information as the Minister reasonably requires for the purposes of approving the determination.

(7) A determination under subsection (4) made by TEQSA and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

60 Quality (including thematic) assessments

(1) TEQSA may review or examine any aspect of an entity's operations to:

(a) assess the level of quality of higher education provided by one or more registered higher education providers; or

(b) assess whether there are any systemic issues relating to a particular course of study leading to a particular regulated higher education award; or

(c) assess the level of quality of, or whether there are any systemic issues relating to, the courses of study that lead to one or more kinds of regulated higher education awards.

(2) At least 60 days before starting a review or examination that TEQSA is satisfied could impact on a majority of registered higher education providers, TEQSA must give written notice of the proposed review or examination to the Minister and the Panel.

61 Accreditation assessments

TEQSA may review or examine an accredited course to assess whether the course continues to meet the Threshold Standards.

62 Matters relevant to assessments

Consent

(1) Sections 59, 60 and 61 have effect subject to subsection (2).

Authorised Version C2022C00004 registered 04/01/2022

(2) TEQSA must obtain an entity's consent before:
  (a) entering the entity's premises; or
  (b) doing anything on those premises;
for the purposes of a review or examination under this Division.

(3) However, subsection (2) has effect subject to section 24 (about a registered provider having to comply with conditions).

Note 1: When deciding whether to give the consent mentioned in subsection (2), a registered higher education provider needs to have regard to the condition that it cooperate with TEQSA (see section 31).

Note 2: A condition could be imposed under subsection 32(1) for the provider to arrange for another entity's consent to be given.

Operations that can be reviewed or examined

(4) The operations covered by sections 59 and 60 are not limited to the entity's higher education operations.

Authorised Version C2022C00004 registered 04/01/2022

Part 5A—Tuition protection

Division 1—Preliminary

62A What this Part is about

Certain registered higher education providers who default in delivering a unit of study to a domestic student for whom an up-front payment for the unit of study has been made must give information about the default to the Higher Education Tuition Protection Director and to the student. If the student was entitled to FEE-HELP assistance or HECS-HELP assistance for the unit, the provider may also have obligations under Part 5-1A of the *Higher Education Support Act 2003* in relation to the default.

The provider must assist the student to find a replacement unit or replacement course, or provide a refund to the student (and offer the student a choice about this). If the provider fails to discharge this obligation, the Director must offer the student a suitable replacement course. If there is no suitable replacement course, or the student does not accept the offer, the Director must provide a refund to the student.

62B Application of this Part

(1) This Part applies to registered higher education providers other than:
  (a) Table A providers; or
  (b) providers that are owned by the Commonwealth, a State or a Territory; or
  (c) providers that are established under one of the following:
    (i) the *Technical and Further Education Commission Act 1990* (NSW);
    (ii) the *Education and Training Reform Act 2006* (Vic.);

Authorised Version C2022C00004 registered 04/01/2022

(iii) the *TAFE Queensland Act 2013* (Qld);
(iv) the *Vocational Education and Training Act 1996* (WA);
(v) the *TAFE SA Act 2012* (SA);
(vi) the *Training and Workforce Development Act 2013* (Tas.);
(vii) the *Canberra Institute of Technology Act 1987* (ACT); or

(d) providers of a kind prescribed by the Up-front Payments Guidelines.

(2) Despite subsection (1), the Minister may, by written notice, determine that this Part:
(a) applies to a specified registered higher education provider; or
(b) does not apply to a specified registered higher education provider;
if the Minister considers it appropriate that this Part applies, or does not apply, to the provider.

(3) In deciding whether it is appropriate that this Part applies, or does not apply, to a specified registered higher education provider, the Minister must have regard to the following:
(a) the risk of the provider defaulting in relation to one or more domestic students;
(b) the provider's financial status and capacity;
(c) any non-compliance, or risk of future non-compliance, with the Threshold Standards, this Act, legislative instruments made under this Act or this Act's associated provisions;
(d) any advice given to the Minister by TEQSA or the Higher Education Tuition Protection Director in relation to any of the matters referred to in paragraphs (a) to (c);
(e) any other matter the Minister considers appropriate.

(4) A determination under subsection (2):
(a) may be made either unconditionally or subject to conditions; and
(b) may be expressed to be in force indefinitely or for a specified period.

Authorised Version C2022C00004 registered 04/01/2022

(5) A determination made under subsection (2) is not a legislative instrument.

(6) Despite subsection (1), sections 62N, 62P and 62Q apply to all registered higher education providers.

Note: Section 62N deals with the obligations of providers to provide information about replacement courses, section 62P deals with obligations of providers who provide replacement courses and section 62Q deals with the requirement of providers who provide replacement courses to keep up-to-date enrolment information.

62C When a provider defaults in relation to a student

(1) A registered higher education provider ***defaults*** in relation to a domestic student if:

(a) the provider fails to start to provide a unit of study to the student on the day the unit was scheduled to start; and

(b) the student has not withdrawn before that day; and

(c) an up-front payment:

(i) was made for the student for the unit of study on or before that day; or

(ii) was not made for the student for the unit on or before that day and the student was not entitled, and would not have been entitled, to FEE-HELP assistance or HECS-HELP assistance for the unit.

(2) A registered higher education provider ***defaults*** in relation to a domestic student if:

(a) the provider ceases to provide a unit of study to the student on a day after the unit starts but before it is completed; and

(b) the student has not withdrawn before that day; and

(c) an up-front payment:

(i) was made for the student for the unit of study on or before that day; or

(ii) was not made for the student for the unit on or before that day and the student was not entitled, and would not have been entitled, to FEE-HELP assistance or HECS-HELP assistance for the unit.

Authorised Version C2022C00004 registered 04/01/2022

(3) A registered higher education provider ***defaults*** in relation to a domestic student if circumstances prescribed by the Up-front Payments Guidelines apply in relation to the provider and the student.

Note: If the student was entitled, or would have been entitled, to FEE-HELP assistance or HECS-HELP assistance in relation to the unit of study (or any other affected units of the original course) the provider may also have defaulted in relation to the student under the *Higher Education Support Act 2003*: see section 166-10 of that Act.

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Tuition Protection

Subdivision A—Obligations of defaulting providers

62D Providers must give notice of default to Higher Education Tuition Protection Director

Application of section

(1) This section applies if a registered higher education provider defaults in relation to a domestic student.

Notifying the Higher Education Tuition Protection Director of default

(2) The provider must, within 24 hours of the default occurring, give written notice to the Higher Education Tuition Protection Director of the circumstances of the default.

Notifying the Higher Education Tuition Protection Director of details of default

(3) The provider must, within 3 business days of the default occurring, give a written notice to the Higher Education Tuition Protection Director specifying:

(a) the following information:

(i) the student's full name and contact details;

(ii) the units of study and the Australian course of study that the student was enrolled in at the time of the default;

(iii) the amount of the tuition fees for each unit of study that the student was enrolled in at the time of the default;

(iv) details about the payment of those tuition fees; and

(b) advice as to:

(i) whether the provider intends to discharge its obligations to the student under section 62F; and

Authorised Version C2022C00004 registered 04/01/2022

(ii) (if appropriate) how the provider intends to discharge those obligations; and

(c) any other matter prescribed by the Up-front Payments Guidelines.

(4) If requested in writing by the Higher Education Tuition Protection Director, the provider must give to the Director a copy of a student's record of results for any units of study that the student has completed.

Notice requirements

(5) A notice given under subsection (2) or (3) must comply with any requirements prescribed by the Up-front Payments Guidelines.

Civil penalty

(6) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

Offence

(7) A registered higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

62E Providers must give notice of default to affected students

Application of section

(1) This section applies if a registered higher education provider defaults in relation to a domestic student.

Authorised Version C2022C00004 registered 04/01/2022

Notifying students of default

(2) The provider must, within 24 hours of the default occurring, give written notice of the default to the domestic student in relation to whom the provider has defaulted.

Notice requirements

(3) A notice given under subsection (2) must comply with any requirements prescribed by the Up-front Payments Guidelines.

Civil penalty

(4) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

Offence

(5) A registered higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

62F Obligations on providers in case of default

Application of section

(1) This section applies if a registered higher education provider defaults in relation to a domestic student.

Provider obligations

(2) The provider must discharge its obligations to the student, in accordance with this section, within the period (the ***provider obligation period***) of 14 days after the day the provider defaulted in relation to the student.

(3) The provider discharges its obligations to the student if:

Authorised Version C2022C00004 registered 04/01/2022

(a) the provider arranges for the student to be offered a place in a suitable replacement unit or suitable replacement course and the student accepts the offer in writing; or

(b) the provider provides a refund in accordance with subsection (8).

Suitable replacement units or suitable replacement courses

(4) The provider must identify whether:

(a) there are one or more suitable replacement units or suitable replacement courses for the student; or

(b) there is no suitable replacement unit or suitable replacement course for the student.

Matters relating to whether a course is a suitable replacement course

(5) In identifying whether there is a suitable replacement course, the provider must have regard to the following matters:

(a) whether the replacement course leads to the same or a comparable qualification as the original course;

(b) what credits the student may receive for the units of study of the original course successfully completed by the student;

(c) whether the mode of delivery of the replacement course is the same as the mode of delivery of the original course;

(d) the location where the replacement course will be primarily delivered;

(e) whether the student:

(i) will incur additional fees that are unreasonable; and

(ii) will be able to attend the course without unreasonable impacts on the student's prior commitments;

(f) any other matters prescribed by the Up-front Payments Guidelines.

Authorised Version C2022C00004 registered 04/01/2022

Matters relating to whether a unit is a suitable replacement unit

(6) In identifying whether there is a suitable replacement unit, the provider must have regard to the following matters:

(a) whether the student will receive credit under the student's original course for the replacement unit;

(b) whether the mode of delivery of the replacement unit is the same as the mode of delivery of the affected unit;

(c) the location where the replacement unit will be primarily delivered;

(d) whether the student:

(i) will incur additional fees that are unreasonable; and

(ii) will be able to attend the replacement unit without unreasonable impacts on the student's prior commitments;

(e) any other matters prescribed by the Up-front Payments Guidelines.

Suitable replacement unit or suitable replacement course available

(7) If paragraph (4)(a) applies, the provider must give a written notice to the student that includes the following:

(a) a statement that the student may decide to do one of the following:

(i) enrol in a suitable replacement unit or suitable replacement course;

(ii) enrol in another unit of study or course;

(iii) elect to receive a refund in accordance with subsection (8);

(b) a description of each suitable replacement unit or suitable replacement course, including the qualification that the suitable replacement course leads to;

(c) the contact details of the provider of each suitable replacement unit or suitable replacement course;

(d) an explanation that, if tuition fees have been paid for the affected unit of the original course, tuition fees would not be

Authorised Version C2022C00004 registered 04/01/2022

payable for a suitable replacement unit or the replacement unit of a suitable replacement course;

(e) an explanation that if the student chooses to enrol in another unit of study or course, there is no obligation on the provider of the other unit or course to offer a replacement unit without charge to the student;

(f) an explanation of the matters the provider must have regard to under subsections (5) and (6);

(g) any other matters prescribed by the Up-front Payments Guidelines.

No suitable replacement unit or suitable replacement course or student elects refund

(8) If:

(a) paragraph (4)(b) applies; or

(b) the student elects to receive a refund as referred to in subparagraph (7)(a)(iii);

the provider must pay the student a refund of the amount equal to the sum of any up-front payments made for the affected unit.

(9) The provider must provide the refund under subsection (8) in accordance with any requirements prescribed by the Up-front Payments Guidelines.

Elections for FEE-HELP or HECS-HELP must be consistent

(10) Despite paragraph (7)(a), if the student was entitled to FEE-HELP assistance or HECS-HELP assistance for any affected units of the original course, any elections made under that paragraph in relation to those units must be consistent with any elections made under paragraph 166-25(7)(a) of the *Higher Education Support Act 2003* in relation to those units.

Example: A student who is entitled to FEE-HELP assistance or HECS-HELP assistance for an affected unit of an original course also makes an up-front payment for the same affected unit. The student elects, under subparagraph 166-25(7)(a)(i) of the *Higher Education Support Act 2003*, to enrol in a suitable replacement course. The student must elect

Authorised Version C2022C00004 registered 04/01/2022

to enrol in a suitable replacement course under subparagraph (7)(a)(i) of this section in relation to the affected unit.

(11) The Up-front Payments Guidelines may prescribe circumstances in which elections are considered to be consistent or inconsistent for the purposes of subsection (10).

62G Failure to discharge obligations

Civil penalty

(1) A registered higher education provider is liable to a civil penalty if:
  (a) the provider defaults in relation to a domestic student; and
  (b) the provider fails to discharge its obligations to the student in accordance with section 62F.

Civil penalty: 60 penalty units.

Offence

(2) A registered higher education provider commits an offence of strict liability if:
  (a) the provider defaults in relation to a domestic student; and
  (b) the provider fails to discharge its obligations to the student in accordance with section 62F.

Penalty: 60 penalty units.

(3) The maximum penalty for each day that an offence under subsection (2) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (2) is a continuing offence under section 4K of the *Crimes Act 1914*.

62H Providers to notify of outcome of discharge of obligations

(1) A registered higher education provider that defaults in relation to a domestic student must give a notice to the Higher Education

Authorised Version C2022C00004 registered 04/01/2022

Tuition Protection Director within 7 days after the end of the provider obligation period.

(2) The notice must include the following:

(a) whether the provider discharged its obligations to the student in accordance with section 62F;

(b) if the provider arranged a replacement unit or replacement course:

(i) details of the student; and

(ii) details of the replacement unit or replacement course; and

(iii) evidence of the student's acceptance of an offer of a place in the replacement unit or replacement course;

(c) if the provider provided a refund to the student under subsection 62F(8):

(i) details of the student; and

(ii) details of the amount of the refund.

(3) The notice must comply with any requirements prescribed by the Up-front Payments Guidelines.

Civil penalty

(4) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

Offence

(5) A registered higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

Authorised Version C2022C00004 registered 04/01/2022

Subdivision B—Role of the Higher Education Tuition Protection Director

62J Student placement service

Application of section

(1) This section applies if the Higher Education Tuition Protection Director determines that:

(a) a registered higher education provider has defaulted in relation to a domestic student; and

(b) either:

(i) the provider has failed to discharge its obligations under section 62F to the student by the end of the provider obligation period; or

(ii) the provider is unlikely to be able to discharge its obligations under section 62F to the student by the end of the provider obligation period.

Higher Education Tuition Protection Director must decide

(2) The Higher Education Tuition Protection Director must decide:

(a) that the Director is satisfied that there are one or more suitable replacement courses for the student; or

(b) that the Director is not satisfied that there is a suitable replacement course for the student.

Matters relating to whether a course is a suitable replacement course

(3) In deciding whether the Higher Education Tuition Protection Director is satisfied that there is a suitable replacement course, the Director must have regard to the following matters:

(a) whether the replacement course leads to the same or a comparable qualification as the original course;

(b) what credits the student may receive for the units of study of the original course successfully completed by the student;

Authorised Version C2022C00004 registered 04/01/2022

(c) whether the mode of delivery of the replacement course is the same as the mode of delivery of the original course;
(d) the location where the replacement course will be primarily delivered;
(e) whether the student:
(i) will incur additional fees that are unreasonable; and
(ii) will be able to attend the course without unreasonable impacts on the student's prior commitments;
(f) any other matters prescribed by the Up-front Payments Guidelines.

Suitable replacement course available

(4) If paragraph (2)(a) applies, the Higher Education Tuition Protection Director must give a written notice to the student that includes the following:
(a) a statement that the student may decide to do one of the following:
(i) enrol in a suitable replacement course;
(ii) enrol in another course;
(iii) elect to have an amount equal to the amount the provider was liable to pay the student under subsection 62F(8) paid to the student;
(b) a description of each suitable replacement course, including the qualification that the replacement course leads to;
(c) the contact details of the provider of each suitable replacement course;
(d) an explanation that, if tuition fees have been paid for the affected unit of the original course, tuition fees would not be payable for a replacement unit of a suitable replacement course;
(e) an explanation that if the student chooses to enrol in another course, there is no obligation on the provider of the other course to offer a replacement unit without charge to the student;

Authorised Version C2022C00004 registered 04/01/2022

(f) an explanation of the matters the Director must have regard to under subsection (3);
(g) any other matters prescribed by the Up-front Payments Guidelines.

Accepting an offer of a suitable replacement course

(5) If the Higher Education Tuition Protection Director arranges for the student to be offered a place in a suitable replacement course, the student may accept the offer.

(6) An acceptance must:
(a) be in writing; and
(b) be given to the provider of the suitable replacement course within the period specified in subsection (7).

(7) For the purposes of subsection (6), the period is:
(a) the period of 30 days after the Higher Education Tuition Protection Director gives notice under subsection (4); or
(b) if the Director determines that exceptional circumstances apply:
(i) any shorter period determined in writing by the Director; or
(ii) any longer period (not exceeding 12 months) determined in writing by the Director, and agreed to by the student.

No suitable replacement course available

(8) If paragraph (2)(b) applies, the Higher Education Tuition Protection Director must give a written notice to the student that includes the following:
(a) an explanation of the matters the Director must have regard to under subsection (3);
(b) an explanation of the student's right to request reconsideration, under section 187D, of the Director's decision within 28 days after the day on which the student is given the notice;

Authorised Version C2022C00004 registered 04/01/2022

(c) a statement that, to facilitate early refunds, the student may, at any time during the 28 days, give the Director notice in writing that the student will not seek reconsideration of the decision;

(d) a statement that, if the student does not apply for reconsideration, an amount equal to the amount the provider was liable to pay to the student under subsection 62F(8) will be paid to the student.

Elections for FEE-HELP or HECS-HELP must be consistent

(9) Despite paragraph (4)(a), if the student was entitled to FEE-HELP assistance or HECS-HELP assistance for any affected units of the original course, any elections made under that paragraph in relation to those units must be consistent with any elections made under paragraph 166-26B(4)(a) of the *Higher Education Support Act 2003* in relation to those units.

Example: A student who is entitled to FEE-HELP assistance or HECS-HELP assistance for an affected unit of an original course also makes an up-front payment for the same affected unit. The student elects, under subparagraph 166-26B(4)(a)(iii) of the *Higher Education Support Act 2003*, to have an amount re-credited to the student's HELP balance. The student must elect to receive a refund of the up-front payment under subparagraph (4)(a)(iii) of this section in relation to the affected unit.

(10) The Up-front Payments Guidelines may prescribe circumstances in which elections are considered to be consistent or inconsistent for the purposes of subsection (9).

62K When payments must be made from the Higher Education Tuition Protection Fund

(1) If a domestic student accepts an offer of a replacement course in accordance with subsections 62J(5), (6) and (7), the Higher Education Tuition Protection Director must pay to the provider of the replacement course an amount equal to the amount the defaulting provider was liable to pay to the student under subsection 62F(8).

Authorised Version C2022C00004 registered 04/01/2022

(2) The Higher Education Tuition Protection Director must pay a domestic student an amount equal to the amount the defaulting provider was liable to pay to the student under subsection 62F(8) if:

(a) the provider has failed to discharge its obligations under section 62F to the student by the end of the provider obligation period; and

(b) either:

(i) the Director decides, under paragraph 62J(2)(b), that the Director is not satisfied that there is a suitable replacement course for the student; or

(ii) the student elects, under subparagraph 62J(4)(a)(iii), to have an amount equal to the amount the provider was liable to pay the student under subsection 62F(8) paid to them.

(3) Despite subsection (2), the Higher Education Tuition Protection Director is not required to pay an amount under that subsection if:

(a) the Director becomes aware of the circumstances referred to in paragraph (2)(a) more than 12 months after the day the provider defaulted in relation to the student; or

(b) the Director becomes aware of the circumstances referred to in subparagraph (2)(b)(ii) more than 12 months after the day the Director gives notice to the student under subsection 62J(4).

(4) Despite subsection (1), the Higher Education Tuition Protection Director may pay a greater amount than the amount required to be paid under that subsection to the provider of the replacement course if the Director considers that to do so:

(a) would best protect the interests of the student; and

(b) would not jeopardise the sustainability of the Higher Education Tuition Protection Fund.

(5) Despite subsection (1), if:

Authorised Version C2022C00004 registered 04/01/2022

(a) the Higher Education Tuition Protection Director is required under that subsection to pay an amount to the provider of the replacement course; and

(b) the amount required to be paid is more than the cost of the replacement course;

the Higher Education Tuition Protection Director must pay the difference to the student.

(6) A payment under this section must be made in accordance with any requirements prescribed by the Up-front Payments Guidelines.

62L Consequences of payments being made from the Higher Education Tuition Protection Fund

Cessation of claim

(1) If:

(a) a registered higher education provider defaults in relation to a domestic student; and

(b) the Higher Education Tuition Protection Director pays an amount in accordance with section 62K in relation to the student;

the student ceases to have any claim against the provider in respect of the up-front payments made for the affected unit.

Provider must pay back Higher Education Tuition Protection Director

(2) Instead, the provider must pay the Higher Education Tuition Protection Director an amount equal to the amount that the Higher Education Tuition Protection Director paid in relation to the student under section 62K.

(3) The Higher Education Tuition Protection Director may, on behalf of the Commonwealth, recover that amount from the provider as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Authorised Version C2022C00004 registered 04/01/2022

Higher Education Tuition Protection Director may enforce security

(4) If the provider had granted the Higher Education Tuition Protection Director a charge or other security over any of its assets, the Director may enforce the charge or security in satisfaction, or partial satisfaction, of the debt.

62M Notification obligations for payments made from the Higher Education Tuition Protection Fund

(1) This section applies if:
  (a) a registered higher education provider defaults in relation to a domestic student; and
  (b) the Higher Education Tuition Protection Director makes a payment to the registered higher education provider who provides the replacement course, or to the student, under section 62K.

(2) The Higher Education Tuition Protection Director must give a written notice to the defaulting provider stating the amounts of any such payments.

Subdivision C—Obligations on replacement providers

62N Obligations of providers to provide information about replacement courses

(1) The Higher Education Tuition Protection Director may, by written notice, require a registered higher education provider to provide such information that the Director reasonably requires to enable the Director to make a decision under subsection 62J(2) regarding suitable replacement courses for a domestic student in relation to whom a provider has defaulted.

(2) The information must be provided:
  (a) in a form (if any) approved by the Higher Education Tuition Protection Director for the information; and

Authorised Version C2022C00004 registered 04/01/2022

(b) in accordance with such other requirements as the Director makes.

Civil penalty

(3) A registered higher education provider is liable to a civil penalty if:
(a) the provider is given a notice under subsection (1); and
(b) the provider fails to comply with the notice.

Civil penalty: 60 penalty units.

Offence

(4) A registered higher education provider commits an offence of strict liability if:
(a) the provider is given a notice under subsection (1); and
(b) the provider fails to comply with the notice.

Penalty: 60 penalty units.

62P Obligations of replacement providers

(1) This section applies if a domestic student accepts an offer of a place in a replacement unit or replacement course as referred to in paragraph 62F(3)(a) or subsection 62J(5).

(2) The registered higher education provider who provides the replacement course or replacement unit must give written notice of the acceptance to the Higher Education Tuition Protection Director within 14 days of the acceptance.

(3) The registered higher education provider who provides the replacement unit or replacement course must ensure that the student:
(a) for a replacement course—is granted credits for units of study of the original course successfully completed by the student; and
(b) if the student has paid tuition fees for an affected unit of the original course—is not charged tuition fees for the

Authorised Version C2022C00004 registered 04/01/2022

replacement unit or the replacement unit of the replacement course; and

(c) is enrolled in the replacement unit or replacement course as soon as practicable.

Civil penalty

(4) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

Offence

(5) A registered higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

62Q Obligations of replacement providers regarding enrolment information

(1) A registered higher education provider who provides a replacement unit or replacement course to a domestic student must keep up to date records of the following in relation to the student:

(a) the student's full name and contact details;

(b) the name of the replacement unit or the replacement course (and units of study) that the student is currently enrolled in;

(c) any tuition fees paid (or incurred) by the student for the replacement unit or for any units of study of the replacement course;

(d) any payments made by the Director under section 62K to the provider in relation to the replacement course;

(e) details of the replacement unit or units of study of the replacement course successfully completed by the student;

(f) details of the credits granted to the student for the replacement unit or for the units of study of the original course successfully completed by the student.

Authorised Version C2022C00004 registered 04/01/2022

Civil penalty

(2) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

Offence

(3) A registered higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

Subdivision D—Miscellaneous

62R Arrangements for payments between providers

(1) If a registered higher education provider (the ***original provider***) for a unit of study or an Australian course of study enters into an arrangement with one or more other registered higher education providers to provide the unit or course jointly to one or more domestic students, the arrangement must:

(a) be such that the students pay their tuition fees directly to the original provider; or

(b) both:

(i) be in writing; and

(ii) provide for the receipt and disbursement of any tuition fees paid by students directly to any of the other providers.

(2) However, for the purpose of determining the original provider's obligations under the tuition protection requirements, any tuition fees paid by students directly to any of the other providers are taken to have been paid directly to the original provider.

Authorised Version C2022C00004 registered 04/01/2022

Civil penalty

(3) A registered higher education provider is liable to a civil penalty if the provider contravenes subsection (1).

Civil penalty: 60 penalty units.

Offence

(4) A registered higher education provider commits an offence of strict liability if the provider contravenes subsection (1).

Penalty: 60 penalty units.

62S Other tuition protection information must be provided

(1) This section applies to a registered higher education provider if:
  (a) the Higher Education Tuition Protection Director believes on reasonable grounds that the provider has information relevant to the Director's functions under this Act; and
  (b) the Director, by written notice given to the provider, requests the provider to give the Director the information:
    (i) within the period (not shorter than 14 days after the notice is given) specified in the notice; and
    (ii) in the manner specified in the notice.

(2) The provider must comply with the notice within the period specified in the notice.

Civil penalty

(3) A registered higher education provider is liable to a civil penalty if the provider contravenes subsection (2).

Civil penalty: 60 penalty units.

Offence

(4) A registered higher education provider commits an offence of strict liability if the provider contravenes subsection (2).

Authorised Version C2022C00004 registered 04/01/2022

Penalty: 60 penalty units.

62T Right to refund may be cancelled etc. without compensation

A right to be paid an amount under section 62K is granted on the basis that:

(a) the right may be cancelled, revoked, terminated or varied by or under later legislation; and

(b) no compensation is payable if the right is so cancelled, revoked, terminated or varied.

62U Continuing application of Part to certain persons

(1) This Part continues to apply in relation to a person that was a registered higher education provider as if the person were still a registered higher education provider.

(2) Subsection (1) applies for the purposes of dealing with or resolving any matter that arose during, or that relates to, the period when the person was a registered higher education provider.

Authorised Version C2022C00004 registered 04/01/2022

Part 6—Information gathering and authorised officers

Division 1—Requiring people to give information etc.

63 Requiring certain persons to give information etc.

(1) This section applies to a person if TEQSA believes on reasonable grounds that:

(a) the person is, or was, connected with:

(i) a regulated entity; or

(ii) a former regulated entity; and

(b) the person is capable of giving or producing information, a document or a thing relevant to TEQSA's function in paragraph 134(1)(c) (about investigating compliance with this Act).

(1A) This section also applies to a person if TEQSA believes on reasonable grounds that the person is capable of giving or producing information, or a document or a thing, relating to a matter that constitutes, or may constitute, a contravention of section 114A or 114B.

(2) TEQSA may, by written notice given to the person, require the person:

(a) to give TEQSA the information; or

(b) to produce to TEQSA the document or thing; or

(c) to make copies of the document and to produce to TEQSA those copies;

within the period and in the manner specified in the notice.

(3) The notice must:

(a) not specify a period shorter than 14 days after the notice is given, unless TEQSA reasonably considers that a shorter

Authorised Version C2022C00004 registered 04/01/2022

period is necessary that is at least 24 hours after the notice is given; and

(b) set out the effect of section 64.

(4) Subsection (1) does not apply to:

(a) a lawyer who is acting, or has acted, for the regulated entity or former regulated entity; or

(b) national security information; or

(c) documents or things relating to national security.

(5) Subsection (1A) does not apply to:

(a) a lawyer who is acting, or has acted, for a person who is suspected of contravening, or has contravened, section 114A or 114B; or

(b) national security information; or

(c) documents or things relating to national security.

64 Contravening requirement to give information etc.

A person commits an offence if:

(a) the person has been given a notice under subsection 63(2); and

(b) the person fails to comply with a requirement in the notice.

Penalty: 30 penalty units.

65 Copying documents—compensation

A person is entitled to be paid by TEQSA, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 63(2)(c).

66 TEQSA may retain documents and things

TEQSA may retain documents and things etc.

(1) If a document (including a copy of a document), or a thing, is produced to TEQSA under section 63, TEQSA:

Authorised Version C2022C00004 registered 04/01/2022

(a) may take possession of, and may make copies of, the document or thing; and

(b) may retain possession of the document or thing for such period as is necessary:

(i) for the purposes of this Act; or

(ii) for the purposes of an investigation to which the document or thing relates; or

(iii) to enable evidence to be secured for the purposes of a prosecution or civil penalty proceeding.

Access and certified copy to be provided

(2) Subsections (3) to (5) apply to a document produced under paragraph 63(2)(b).

(3) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by TEQSA to be a true copy.

(4) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(5) Until a certified copy is supplied, TEQSA must, at such times and places as TEQSA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

67 Returning documents or things produced

(1) If:

(a) a document (other than a copy of a document), or thing, is produced to TEQSA under section 63; and

(b) TEQSA can no longer retain it under paragraph 66(1)(b);

TEQSA must take reasonable steps to return it, unless the document or thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

Authorised Version C2022C00004 registered 04/01/2022

(2) The document or thing must be returned to the person who produced it (or to the owner if that person is not entitled to possess it).

68 Disposal if cannot be returned

(1) TEQSA may dispose of a document or thing in such manner as it considers appropriate if:

(a) the document or thing is produced to TEQSA under section 63; and

(b) under section 67, TEQSA is required to take reasonable steps to return the document or thing to a person; and

(c) either:

(i) TEQSA cannot, despite making reasonable efforts, locate the person; or

(ii) the person has refused to take possession of the document or thing.

(2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

69 Self-incrimination

(1) A person is not excused from:

(a) giving information; or

(b) producing a document (including a copy of a document) or thing;

under section 63 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual, none of the following:

Authorised Version C2022C00004 registered 04/01/2022

(a) the information given;
(b) the document, copy or thing produced;
(c) the giving of the information or the producing of the document, copy or thing;
(d) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document, copy or thing;

is admissible in evidence against the individual:

(e) in civil proceedings for the recovery of a penalty; or
(f) in criminal proceedings, other than proceedings for an offence against:
  (i) section 64; or
  (ii) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
  (iii) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

Authorised Version C2022C00004 registered 04/01/2022

Division 7—Authorised officers

94 Authorised officers

(1) TEQSA may, in writing, appoint a member of the staff of TEQSA as an ***authorised officer*** for the purposes of this Act.

(2) TEQSA must not appoint a person as an authorised officer unless:
   (a) the person holds the classification of APS Executive Level 1 or higher, or an equivalent classification; and
   (b) TEQSA is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an authorised officer.

(3) An authorised officer must, in exercising powers as an authorised officer, comply with any directions of TEQSA.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

Authorised Version C2022C00004 registered 04/01/2022

Part 7—Enforcement

Division 1A—Simplified outline

97 Simplified outline of this Part

- There are administrative sanctions for non-compliant registered higher education providers.
- There are a range of offences and civil penalties for contraventions of this Act.
- The Regulatory Powers Act is triggered to allow a range of enforcement actions in relation to this Act.
- Authorised officers are permitted to enter premises under a monitoring warrant or with consent of the occupier and to exercise monitoring powers under that Act for the purposes of determining whether various provisions of this Act or instruments under this Act have been complied with.
- Authorised officers may enter premises and exercise investigation powers to determine whether there has been a contravention of provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.
- A relevant court can order the payment of a civil penalty for a contravention of a civil penalty provision.
- Infringement notices can be issued for an alleged contravention of a civil penalty provision.
- Undertakings to comply with this Act may be accepted and enforced under the Regulatory Powers Act. If a person gives

Authorised Version C2022C00004 registered 04/01/2022

an undertaking, the undertaking may be enforced by a court order.

- A court can grant an injunction restraining a person from contravening a provision of this Act or requiring a person to comply with a provision of this Act. A court can also grant an injunction relating to online locations that facilitate provision of, or advertising of, academic cheating services.

Authorised Version C2022C00004 registered 04/01/2022

Division 1—Administrative sanctions

Subdivision A—Sanctions

98 Provider is non-compliant

This Subdivision applies if a registered higher education provider has:

(a) failed to meet the Threshold Standards; or

(b) breached a condition imposed on its registration; or

(c) breached a condition imposed on the accreditation of a course of study accredited in relation to the provider; or

(d) failed to ensure that an accredited course in relation to the provider meets the Threshold Standards;

or if circumstances exist in relation to the provider that are of a kind specified in regulations made for the purposes of this section.

Note: TEQSA may impose conditions under section 32 or 53 instead of, or in addition to, applying a sanction under this Subdivision.

99 Sanctions about accredited course

For a failure or breach relating to a course of study, TEQSA may:

(a) shorten the period of accreditation of the course of study; or

(b) cancel the accreditation of the course of study.

100 Shortening period of registration

TEQSA may shorten the period of the provider's registration.

101 Cancelling registration

(1) TEQSA may cancel the provider's registration.

(2) However, before doing so, TEQSA must give the provider and the Minister for each relevant State and Territory responsible for higher education:

Authorised Version C2022C00004 registered 04/01/2022

(a) a written notice stating that TEQSA intends to make a decision to cancel the provider's registration for specified reasons; and

(b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.

(3) TEQSA must have regard to any representations received under subsection (2).

(4) Subsection (2) does not apply if TEQSA is satisfied that the circumstances require immediate action.

101A TEQSA to notify provider of decision to impose sanction

TEQSA must, within 30 days after making a decision under section 99, 100 or 101, notify the provider, in writing, of:

(a) the decision; and

(b) the reasons for the decision.

Subdivision B—Other matters

102 Automatic cancellation if provider wound up

A registered higher education provider's registration is cancelled, by force of this section, if a winding-up order is made in respect of the provider.

103 Seeking registration after cancellation

An entity whose registration under Part 3 is cancelled cannot reapply for registration for:

(a) 2 years after the cancellation takes effect; or

(b) such shorter period as TEQSA considers appropriate.

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Offences and civil penalty provisions

Note: There are offence and civil penalty provisions in Part 5A also.

105 Offering a regulated higher education award if unregistered

Offence

(1) A higher education provider commits an offence if the higher education provider is not a registered higher education provider.

Penalty: 300 penalty units.

Civil penalty

(2) A higher education provider contravenes this subsection if the higher education provider is not a registered higher education provider.

Civil penalty: 600 penalty units.

106 Representing offer of a regulated higher education award if unregistered

Offence

(1) A regulated entity commits an offence if:
  (a) the entity represents that the entity:
    (i) is offering, or will offer, a regulated higher education award; or
    (ii) is conferring, or will confer, a regulated higher education award; and
  (b) the entity is not a registered higher education provider.

Penalty: 300 penalty units.

Civil penalty

(2) A regulated entity contravenes this subsection if:

Authorised Version C2022C00004 registered 04/01/2022

(a) the entity represents that the entity:
(i) is offering, or will offer, a regulated higher education award; or
(ii) is conferring, or will confer, a regulated higher education award; and
(b) the entity is not a registered higher education provider.

Civil penalty: 600 penalty units.

107 Offering an award without a course of study

Offence

(1) A regulated entity commits an offence if:
(a) the entity offers or confers:
(i) an Australian higher education award; or
(ii) an overseas higher education award for the completion of a course of study provided wholly or mainly from Australian premises related to the award; and
(b) for one or more students, the entity offers or confers the award:
(i) without requiring the completion of a course of study; and
(ii) not as an honorary award.

Penalty: 300 penalty units.

Civil penalty

(2) A regulated entity contravenes this subsection if:
(a) the entity offers or confers:
(i) an Australian higher education award; or
(ii) an overseas higher education award for the completion of a course of study provided wholly or mainly from Australian premises related to the award; and
(b) for one or more students, the entity offers or confers the award:

Authorised Version C2022C00004 registered 04/01/2022

(i) without requiring the completion of a course of study; and

(ii) not as an honorary award.

Civil penalty: 600 penalty units.

108 Regulated entity represents itself as university

Offence

(1) A regulated entity commits an offence if:

(a) the entity uses the word "university" to represent itself, or its operations, as a university in relation to:

(i) an Australian course of study; or

(ii) an overseas course of study, to the extent that the course of study is, or is to be, provided wholly or mainly from Australian premises that are related to an overseas higher education award; or

(iii) a regulated higher education award; and

(b) the entity is not a registered higher education provider registered in either the "Australian University" or "Overseas University" provider category.

Penalty: 300 penalty units.

Civil penalty

(2) A regulated entity contravenes this subsection if:

(a) the entity uses the word "university" to represent itself, or its operations, as a university in relation to:

(i) an Australian course of study; or

(ii) an overseas course of study, to the extent that the course of study is, or is to be, provided wholly or mainly from Australian premises that are related to an overseas higher education award; or

(iii) a regulated higher education award; and

Authorised Version C2022C00004 registered 04/01/2022

(b) the entity is not a registered higher education provider registered in either the "Australian University" or "Overseas University" provider category.

Civil penalty: 600 penalty units.

Use of the word "university"

(3) Without limiting paragraph (1)(a) or (2)(a), an entity is taken to use the word "university" if the entity:
(a) uses a variant of that word; or
(b) uses that word, or a variant of that word, by itself or in combination with other words.

109 Falsely representing entity as a registered higher education provider

Offence

(1) A regulated entity commits an offence if:
(a) the entity represents that the entity is a registered higher education provider; and
(b) the representation is untrue.

Penalty: 300 penalty units.

Civil penalty

(2) A regulated entity contravenes this subsection if:
(a) the entity represents that the entity is a registered higher education provider; and
(b) the representation is untrue.

Civil penalty: 600 penalty units.

Authorised Version C2022C00004 registered 04/01/2022

110 Falsely representing that entity provides a course of study leading to a regulated higher education award

Offence

(1) A regulated entity commits an offence if:

(a) the entity represents that it provides all or part of a course of study that leads to a regulated higher education award; and

(b) the representation is untrue.

Penalty: 120 penalty units.

Civil penalty

(2) A regulated entity contravenes this subsection if:

(a) the entity represents that it provides all or part of a course of study that leads to a regulated higher education award; and

(b) the representation is untrue.

Civil penalty: 240 penalty units.

111 Falsely representing course of study is accredited

Offence

(1) A regulated entity commits an offence if:

(a) the entity represents that a course of study is an accredited course in relation to an entity; and

(b) the representation is untrue.

Penalty: 120 penalty units.

Civil penalty

(2) A regulated entity contravenes this subsection if:

(a) the entity represents that a course of study is an accredited course in relation to an entity; and

(b) the representation is untrue.

Authorised Version C2022C00004 registered 04/01/2022

Civil penalty: 240 penalty units.

112 Providing an unaccredited course of study

Offence

(1) A registered higher education provider commits an offence if:
  (a) one or more entities provide all or part of a course of study; and
  (b) the course of study leads to a regulated higher education award offered or conferred by the provider; and
  (c) the course of study is not an accredited course in relation to the provider.

Penalty: 120 penalty units.

Civil penalty

(2) A registered higher education provider contravenes this subsection if:
  (a) one or more entities provide all or part of a course of study; and
  (b) the course of study leads to a regulated higher education award offered or conferred by the provider; and
  (c) the course of study is not an accredited course in relation to the provider.

Civil penalty: 240 penalty units.

113 Breach of condition of registration

A registered higher education provider contravenes this section if:
  (a) a condition is imposed on the provider's registration; and
  (b) the provider does an act or omits to do an act; and
  (c) the act or omission breaches the condition.

Civil penalty: 120 penalty units.

Authorised Version C2022C00004 registered 04/01/2022

114 Breach of condition of accreditation

A registered higher education provider contravenes this section if:

(a) a condition is imposed on the accreditation of a course of study accredited in relation to the provider; and

(b) the provider does an act or omits to do an act; and

(c) the act or omission breaches the condition.

Civil penalty: 120 penalty units.

114A Prohibition on providing etc. academic cheating services

Providing etc. an academic cheating service for a commercial purpose

(1) A person commits an offence if the person provides, offers to provide or arranges for a third person to provide an academic cheating service:

(a) to a student undertaking, with a higher education provider:

(i) an Australian course of study; or

(ii) an overseas course of study provided at Australian premises; and

(b) for a commercial purpose.

Penalty: 2 years imprisonment or 500 penalty units, or both.

(2) Strict liability applies to:

(a) paragraph (1)(a); and

(b) the physical element of circumstance in paragraphs (a) and (b) of the definition of ***academic cheating service*** in section 5.

Providing etc. an academic cheating service

(3) A person contravenes this subsection if the person provides, offers to provide or arranges for a third person to provide an academic cheating service to a student undertaking, with a higher education provider:

Authorised Version C2022C00004 registered 04/01/2022

(a) an Australian course of study; or
(b) an overseas course of study provided at Australian premises.

Civil penalty: 500 penalty units.

Generally not necessary to prove provision etc. of an academic cheating service to a particular student

(4) In proceedings for a contravention of subsection (1) or (3), it is not necessary to prove that the person provided, offered to provide or arranged for a third person to provide an academic cheating service to a particular student.

(5) Subsection (4) does not apply in relation to proceedings for a contravention of subsection (1) or (3) (as that provision is given effect by paragraph 114C(4)(c)) if the student referred to in that subsection is an alien (within the meaning of paragraph 51(xix) of the Constitution).

114B Prohibition on advertising academic cheating services

(1) A person commits an offence if:
(a) the person advertises, or publishes or broadcasts an advertisement for, an academic cheating service to students undertaking, with a higher education provider:
(i) an Australian course of study; or
(ii) an overseas course of study provided at Australian premises; and
(b) either:
(i) the person does so for a commercial purpose; or
(ii) the academic cheating service has a commercial purpose.

Penalty: 2 years imprisonment or 500 penalty units, or both.

(2) A person contravenes this subsection if the person advertises, or publishes or broadcasts an advertisement for, an academic cheating service to students undertaking, with a higher education provider:

Authorised Version C2022C00004 registered 04/01/2022

(a) an Australian course of study; or
(b) an overseas course of study provided at Australian premises.

Civil penalty: 500 penalty units.

114C Additional operation of sections 114A and 114B

(1) In addition to the effect they have in relation to higher education providers, sections 114A and 114B also have effect as provided by this section.

Note: For the meaning of ***higher education provider***, see section 5.

Section 114A—trade and commerce

(2) Section 114A also has the effect it would have as if:
(a) each reference to providing an academic cheating service were expressly confined to a service that is, or is to be, provided in the course of trade and commerce to which paragraph 51(i) of the Constitution applies; or
(b) each reference to an offer to provide, or to an arrangement to provide, an academic cheating service were expressly confined to an offer or arrangement made in the course of trade and commerce to which paragraph 51(i) of the Constitution applies.

Section 114A—communications

(3) Section 114A also has the effect it would have as if:
(a) each reference to providing an academic cheating service were expressly confined to a service that is, or is to be, provided by means of a service to which paragraph 51(v) of the Constitution applies; or
(b) each reference to an offer to provide, or to an arrangement to provide, an academic cheating service were expressly confined to an offer or arrangement made by means of a service to which paragraph 51(v) of the Constitution applies.

Authorised Version C2022C00004 registered 04/01/2022

Section 114A—aliens

(4) Section 114A also has the effect it would have as if:
   (a) each reference to a person who provides, offers to provide or arranges for a third person to provide an academic cheating service were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution); or
   (b) each reference to a third person in respect of whom an arrangement is made were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution); or
   (c) each reference to a student were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution).

Sections 114A—constitutional corporations (other than higher education providers)

(5) Section 114A also has the effect it would have as if:
   (a) each reference to a person who provides, offers to provide or arranges for a third person to provide an academic cheating service were expressly confined to a constitutional corporation; or
   (b) each reference to a third person in respect of whom an arrangement is made were expressly confined to a constitutional corporation.

Section 114B—trade and commerce

(6) Section 114B also has the effect it would have as if:
   (a) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were expressly confined to a service that is, or is to be, provided in the course of trade and commerce to which paragraph 51(i) of the Constitution applies; or
   (b) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were

Authorised Version C2022C00004 registered 04/01/2022

expressly confined to advertising, publishing or broadcasting in the course of trade and commerce to which paragraph 51(i) of the Constitution applies.

Section 114B—communications

(7) Section 114B also has the effect it would have as if:

(a) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were expressly confined to a service that is, or is to be, provided by means of a service to which paragraph 51(v) of the Constitution applies; or

(b) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were expressly confined to advertising, publishing or broadcasting by means of a service to which paragraph 51(v) of the Constitution applies.

Section 114B—aliens

(8) Section 114B also has the effect it would have as if each reference to a person who advertises, or publishes or broadcasts an advertisement for, an academic cheating service were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution).

Section 114B—constitutional corporations

(9) Section 114B also has the effect it would have as if each reference to a person who advertises, or publishes or broadcasts an advertisement for, an academic cheating service were expressly confined to a constitutional corporation.

Authorised Version C2022C00004 registered 04/01/2022

Division 3—Monitoring

115 Monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

(a) a provision of this Act; or

(b) a provision of an instrument made under subsection 58(1); or

(c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act, or of the Up-front Payments Guidelines, is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act:

(a) a provision covered by subsection 130(1) of the *Education Services for Overseas Students Act 2000* is related to the provisions mentioned in subsection (1) of this section; and

(b) a provision covered by subsection 130(2) of the *Education Services for Overseas Students Act 2000* is related to the information mentioned in subsection (2) of this section.

Authorised Version C2022C00004 registered 04/01/2022

Authorised applicant

(4) For the purposes of Part 2 of the Regulatory Powers Act:

(a) the Chief Executive Officer and each Commissioner and authorised officer is an authorised applicant in relation to:

(i) a provision of this Act (except Part 5A); and

(ii) a provision of an instrument made under subsection 58(1); and

(iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and

(iv) information given in compliance or purported compliance with a provision of this Act (except Part 5A) or of the Up-front Payments Guidelines; and

(b) each HESA investigator and authorised officer is an authorised applicant in relation to:

(i) a provision of Part 5A; and

(ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A; and

(iii) information given in compliance or purported compliance with a provision of Part 5A.

Authorised person

(5) For the purposes of Part 2 of the Regulatory Powers Act:

(a) an authorised officer is an authorised person in relation to:

(i) a provision of this Act (except Part 5A); and

(ii) a provision of an instrument made under subsection 58(1); and

(iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and

(iv) information given in compliance or purported compliance with a provision of this Act (except Part 5A) or of the Up-front Payments Guidelines; and

Authorised Version C2022C00004 registered 04/01/2022

(b) each HESA investigator and authorised officer is an authorised person in relation to:
(i) a provision of Part 5A; and
(ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A; and
(iii) information given in compliance or purported compliance with a provision of Part 5A.

Issuing officer

(6) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Relevant chief executive

(7) For the purposes of Part 2 of the Regulatory Powers Act:
(a) the Chief Executive Officer is a relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2); and
(b) the Secretary is also a relevant chief executive in relation to:
(i) a provision of Part 5A; and
(ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A; and
(iii) information given in compliance or purported compliance with a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

Relevant court

(11) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
(a) the Federal Court;

Authorised Version C2022C00004 registered 04/01/2022

(b) the Federal Circuit and Family Court of Australia (Division 2).

Person assisting

(12) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Extension to external Territories

(13) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

Authorised Version C2022C00004 registered 04/01/2022

Division 4—Investigation

116 Investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

(a) an offence against this Act; or

(b) a civil penalty provision of this Act; or

(c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

(2) For the purposes of Part 3 of the Regulatory Powers Act, each of the following provisions is related to evidential material that relates to a provision mentioned in subsection (1):

(a) an offence against the *Education Services for Overseas Students Act 2000*;

(b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to the *Education Services for Overseas Students Act 2000*.

Authorised applicant

(3) For the purposes of Part 3 of the Regulatory Powers Act:

(a) the Chief Executive Officer and each Commissioner and authorised officer is an authorised applicant in relation to evidential material that relates to:

(i) an offence against this Act (except Part 5A); or

(ii) a civil penalty provision of this Act (except Part 5A); or

Authorised Version C2022C00004 registered 04/01/2022

(iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and

(b) each HESA investigator and authorised officer is an authorised applicant in relation to evidential material that relates to:

(i) an offence against Part 5A; or

(ii) a civil penalty provision of Part 5A; or

(iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A.

Authorised person

(4) For the purposes of Part 3 of the Regulatory Powers Act:

(a) an authorised officer is an authorised person in relation to evidential material that relates to:

(i) an offence against this Act (except Part 5A); or

(ii) a civil penalty provision of this Act (except Part 5A); or

(iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and

(b) each HESA investigator and authorised officer is an authorised person in relation to evidential material that relates to:

(i) an offence against Part 5A; or

(ii) a civil penalty provision of Part 5A; or

(iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A.

Issuing officer

(5) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

Authorised Version C2022C00004 registered 04/01/2022

Relevant chief executive

(6) For the purposes of Part 3 of the Regulatory Powers Act:
  (a) the Chief Executive Officer is a relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1); and
  (b) the Secretary is also a relevant chief executive in relation to evidential material that relates to:
    (i) an offence against Part 5A; or
    (ii) a civil penalty provision of Part 5A; or
    (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

Relevant court

(10) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
  (a) the Federal Court;
  (b) the Federal Circuit and Family Court of Australia (Division 2).

Person assisting

(11) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Extension to external Territories

(12) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Authorised Version C2022C00004 registered 04/01/2022

Division 5—Civil penalty provisions

117 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act:

(a) each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act (except a civil penalty provision of Part 5A):

(i) a Commissioner;

(ii) the Chief Executive Officer; and

(b) the Higher Education Tuition Protection Director is an authorised applicant in relation to the civil penalty provisions of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2).

Relevant court

(5) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2).

Authorised Version C2022C00004 registered 04/01/2022

Maximum penalties

(6) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty in relation to a contravention of a civil penalty provision of this Act (except subsection 114A(3) or 114B(2)) must not be more than the applicable pecuniary penalty specified for the provision.

Note: If a court is satisfied that a body corporate has contravened subsection 114A(3) or 114B(2) of this Act (about academic cheating services), under subsection 82(5) of the Regulatory Powers Act the court may determine a pecuniary penalty not exceeding an amount equal to 5 times the pecuniary penalty specified for the civil penalty provision.

Extension to external Territories

(7) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Authorised Version C2022C00004 registered 04/01/2022

Division 6—Infringement notices

118 Infringement notices

Provisions subject to an infringement notice

(1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act:
(a) an authorised officer is an infringement officer in relation to the provisions mentioned in subsection (1) (except a provision of Part 5A); and
(b) the Higher Education Tuition Protection Director is an infringement officer in relation to a civil penalty provision of Part 5A.

Relevant chief executive

(3) For the purposes of Part 5 of the Regulatory Powers Act:
(a) the Chief Executive Officer is the relevant chief executive in relation to the provisions mentioned in subsection (1) (except a provision of Part 5A); and
(b) the Higher Education Tuition Protection Director is the relevant chief executive in relation to a civil penalty provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2).

Authorised Version C2022C00004 registered 04/01/2022

Division 7—Enforceable undertakings

119 Enforceable undertakings

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act:

(a) each of the following persons is an authorised person in relation to a provision of this Act (except Part 5A):

(i) a Commissioner;

(ii) the Chief Executive Officer; and

(b) the Secretary is an authorised person in relation to a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

Relevant court

(5) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2).

Authorised Version C2022C00004 registered 04/01/2022

Publication of undertakings

(6) An authorised person in relation to a provision mentioned in subsection (1) may publish an undertaking, given in relation to the provision by a regulated entity, on the Register.

Extension to external Territories

(7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Authorised Version C2022C00004 registered 04/01/2022

Division 8—Injunctions

127 Injunctions—general

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act:

(a) each of the following persons is an authorised person in relation to a provision of this Act (except Part 5A):

(i) a Commissioner;

(ii) the Chief Executive Officer; and

(b) the Secretary is an authorised person in relation to a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

Relevant court

(5) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2).

Authorised Version C2022C00004 registered 04/01/2022

Extension to external Territories

(6) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

127A Injunctions relating to online locations that facilitate provision of, or advertising of, academic cheating services

Application for an injunction

(1) TEQSA may apply, on behalf of the Commonwealth, to the Federal Court to grant an injunction that requires a carriage service provider to take such steps as the Court considers reasonable to disable access to an online location that contravenes, or facilitates a contravention of, section 114A or 114B.

(2) The application under subsection (1) may also request that the injunction require an online search engine provider (other than a provider that is covered by a declaration under subsection (11)) to take such steps as the Court considers reasonable so as not to provide a search result that refers users to the online location.

Granting the injunction

(3) The Court may grant the injunction in the terms, and subject to the conditions, that the Court considers appropriate.

Note 1: For the matters that the Court may take into account when determining whether to grant the injunction, see subsection (7).

Note 2: The terms and conditions of the injunction that apply to a carriage service provider under subsection (1) may be different from those that apply to an online search engine provider under subsection (2).

(4) Without limiting subsection (3), the injunction may:

(a) require the carriage service provider to take reasonable steps to do either or both of the following:

(i) block domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;

Authorised Version C2022C00004 registered 04/01/2022

(ii) block domain names, URLs and IP addresses that the carriage service provider and TEQSA agree, in writing, have started to provide access to the online location after the injunction is made; and

(b) require the online search engine provider to take reasonable steps to do either or both of the following:

(i) not provide search results that include domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;

(ii) not provide search results that include domain names, URLs and IP addresses that the online search engine provider and TEQSA agree, in writing, have started to provide access to the online location after the injunction is made.

Parties

(5) The parties to an action under subsection (1) are:

(a) TEQSA; and

(b) the carriage service provider; and

(c) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

(d) the person who operates the online location if, but only if, that person makes an application to be joined as a party to the proceedings.

Service

(6) TEQSA must notify:

(a) the carriage service provider; and

(b) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

(c) the person who operates the online location;

of the making of an application under subsection (1), but the Court may dispense, on such terms as it sees fit, with the notice required

Authorised Version C2022C00004 registered 04/01/2022

to be sent under paragraph (c) if the Court is satisfied that TEQSA is unable, despite reasonable efforts, to determine the identity or address of the person who operates the online location, or to send notices to that person.

Matters to be taken into account

(7) In determining whether to grant the injunction, the Court may take the following matters into account:

(a) whether disabling access to the online location is a proportionate response in the circumstances;

(b) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—whether not providing search results that refer users to the online location is a proportionate response in the circumstances;

(c) the impact on any person, or class of persons, likely to be affected by the grant of the injunction;

(d) whether it is in the public interest to disable access to the online location;

(e) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—whether it is in the public interest not to provide search results that refer users to the online location;

(f) whether TEQSA complied with subsection (6);

(g) any other remedies available under this Act;

(h) any other matter prescribed by the regulations;

(i) any other relevant matter.

Rescinding and varying injunctions

(8) The Court may:

(a) limit the duration of; or

(b) upon application, rescind or vary;

an injunction granted under this section.

(9) An application under subsection (8) may be made by:

Authorised Version C2022C00004 registered 04/01/2022

(a) any of the persons referred to in subsection (5); or
(b) any other person prescribed by the regulations.

(10) An application under subsection (8) must not request the Court to vary the injunction so that it applies to an online search engine provider that is covered by a declaration under subsection (11).

Declarations excluding online search engine providers

(11) The Minister may, by legislative instrument, declare that:
(a) a particular online search engine provider; or
(b) an online search engine provider that is a member of a particular class;
must not be specified in an application under subsection (1) or (8).

Costs

(12) A carriage service provider or, if applicable, an online search engine provider is not liable for any costs in relation to the proceedings unless the provider enters an appearance and takes part in the proceedings.

Application of the Regulatory Powers Act

(13) Sections 122 to 125 of the Regulatory Powers Act apply in relation to an application under this section for the grant of an injunction, or to the grant of an injunction under this section, in a corresponding way to the way in which they apply to an application under section 121 of that Act for the grant of an injunction or to the grant of an injunction under section 121 of that Act.

Authorised Version C2022C00004 registered 04/01/2022

Part 8—Tertiary Education Quality and Standards Agency

Division 1—Establishment, functions and powers of TEQSA

132 Establishment

(1) The Tertiary Education Quality and Standards Agency (***TEQSA***) is established by this section.

(2) Each State and Territory Minister who is responsible for higher education must be consulted if TEQSA is to be abolished.

(3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
  (a) TEQSA is a listed entity; and
  (b) the Commissioners are the accountable authority of TEQSA; and
  (c) the following persons are officials of TEQSA:
    (i) the Commissioners;
    (ii) the Chief Executive Officer;
    (iii) the staff of TEQSA referred to in section 156; and
  (d) the purposes of TEQSA include the functions of TEQSA referred to in section 134.

133 Constitution

TEQSA consists of:
  (a) a Chief Commissioner; and
  (b) at least one, but not more than 4, other Commissioners.

Note: TEQSA does not have a legal identity separate from the Commonwealth.

Authorised Version C2022C00004 registered 04/01/2022

134 Functions and powers

(1) TEQSA has the following functions:

(a) to register regulated entities as registered higher education providers in accordance with this Act;

(b) to accredit courses of study in accordance with this Act;

(c) to investigate whether this Act or this Act's associated provisions have been or are being complied with, including by:

(i) conducting compliance assessments and quality assessments; and

(ii) conducting accreditation assessments of accredited courses;

(d) to advise and make recommendations to the Minister on matters relating to the quality or regulation of higher education providers, if requested by the Minister or on its own initiative;

(da) to protect and enhance academic integrity by:

(i) gathering, providing and sharing information, and providing education, in relation to the conduct prohibited by sections 114A and 114B; and

(ii) conducting research relating to academic cheating services; and

(iii) taking action to prevent access to online sources of academic cheating services;

(e) to collect, analyse, interpret and disseminate information relating to:

(i) higher education providers; and

(ii) regulated higher education awards; and

(iii) quality assurance practice, and quality improvement, in higher education; and

(iv) the Higher Education Standards Framework;

(f) to advise and make recommendations to a higher education provider on matters relating to the Threshold Standards, if requested by the provider in the approved form;

Authorised Version C2022C00004 registered 04/01/2022

(g) to conduct training to improve the quality of higher education;

(h) to make resources and facilities available to the Panel for the purposes of enabling the Panel to perform its functions;

(i) to give the Secretary an independent assessment of information the Secretary provides about higher education providers, that uses assessment criteria provided by the Secretary;

(j) to cooperate with its counterparts in other countries;

(k) to develop service standards that TEQSA must meet in performing its functions;

(l) any function determined under subsection (5);

(m) such other functions as are conferred on TEQSA by or under this Act or any other Commonwealth law.

Note: An example for paragraph (m) is TEQSA's functions under the *Education Services for Overseas Students Act 2000*.

(2) Without limiting paragraph (1)(m), that paragraph includes a function conferred on TEQSA by an authorisation made for the purposes of a Commonwealth law.

Note: An example would be if the Minister authorised TEQSA to consider whether to consent to a company using "university" in its name for the purposes of section 147 of the *Corporations Act 2001*.

(3) TEQSA may perform its functions within or outside Australia.

(4) TEQSA has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(5) The Minister may, by legislative instrument, determine other functions for TEQSA that relate to higher education.

135 Independence of TEQSA

Subject to section 136 of this Act and section 170C of the *Education Services for Overseas Students Act 2000*, TEQSA is not

Authorised Version C2022C00004 registered 04/01/2022

subject to direction from anyone in relation to the performance of its functions or the exercise of its powers.

136 Minister may give directions to TEQSA

(1) The Minister may, by legislative instrument, give directions to TEQSA in relation to the performance of its functions and the exercise of its powers.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

(2) A direction under subsection (1) must be of a general nature only.

(2A) Subsection (2) does not apply to a direction that relates to the power conferred by subsection 158(1).

Note: Subsection 158(1) confers a power to determine fees.

(2B) Regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003* do not apply in relation to a direction under subsection (1) of this section.

Note: This means that section 42 (disallowance) of the *Legislation Act 2003* applies to the direction.

(3) TEQSA must comply with a direction given under subsection (1).

137 TEQSA has privileges and immunities of the Crown

TEQSA has the privileges and immunities of the Crown in right of the Commonwealth.

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Appointment of Commissioners

138 Appointment

(1) Each Commissioner is to be appointed by the Minister by written instrument.

(2) A Commissioner may hold office on either a full-time or a part-time basis.

(3) A person may only be appointed as a Commissioner if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

Note: A Commissioner is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

139 Term of appointment

A Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

140 Remuneration and allowances

(1) A Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is determined, in writing, by the Minister.

(2) A Commissioner is to be paid the allowances that are determined, in writing, by the Minister.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Authorised Version C2022C00004 registered 04/01/2022

141 Leave of absence

(1) A full-time Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The Chief Commissioner may grant leave of absence to a part-time Commissioner (other than the Chief Commissioner) on the terms and conditions that the Chief Commissioner determines.

(4) If the Chief Commissioner is a part-time Commissioner, the Minister may grant leave of absence to the Chief Commissioner on the terms and conditions that the Minister determines.

142 Outside employment

(1) A full-time Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's approval.

(2) A part-time Commissioner must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

143 Disclosure of interests to the Minister

(1) A Commissioner must give written notice to the Minister of all interests, pecuniary or otherwise, that the Commissioner has or acquires that conflict or could conflict with the proper performance of the Commissioner's functions.

(2) The notice must be given to the Minister as soon as practicable after the Commissioner becomes aware of the potential for conflict of interest.

Authorised Version C2022C00004 registered 04/01/2022

144 Other terms and conditions

A Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

145 Resignation

(1) A Commissioner may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

146 Termination of appointment

(1) The Minister may terminate the appointment of a Commissioner:
  (a) for misbehaviour; or
  (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.

(1A) The Minister may terminate the appointment of a Commissioner if:
  (a) the Commissioner:
    (i) becomes bankrupt; or
    (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with one or more of his or her creditors; or
    (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  (b) the Commissioner is a full-time Commissioner and is absent, except on leave of absence, for 14 consecutive days or for 30 days in any 12 months; or
  (c) the Commissioner is a part-time Commissioner and is absent, except on leave of absence, from 3 consecutive TEQSA meetings; or

Authorised Version C2022C00004 registered 04/01/2022

(d) the Commissioner engages in paid employment contrary to section 142; or

(e) the Commissioner fails, without reasonable excuse, to comply with section 143 or 150.

(2) The Minister must terminate the appointment of a Commissioner if the Commissioner becomes an executive officer of a higher education provider.

147 Acting appointments

Acting Chief Commissioner

(1) The Minister may, by written instrument, appoint a Commissioner to act as the Chief Commissioner:

(a) during a vacancy in the office of the Chief Commissioner (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Chief Commissioner:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Acting Commissioner

(2) The Minister may, by written instrument, appoint a person to act as a Commissioner (other than the Chief Commissioner):

(a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Commissioner:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Authorised Version C2022C00004 registered 04/01/2022

Requirements before appointing a person to act

(3) A person may only be appointed to act as the Chief Commissioner, or as a Commissioner, if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Authorised Version C2022C00004 registered 04/01/2022

Division 3—TEQSA procedures

Subdivision A—Meetings

148 Times and places of meetings

(1) The Chief Commissioner must ensure that such meetings are held as are necessary for the efficient performance of TEQSA's functions.

(2) Meetings are to be held at such times and places as the Chief Commissioner decides.

(3) The Chief Commissioner must convene a meeting if requested, in writing, by at least 2 of the other Commissioners.

149 Conduct of meetings

Presiding at meetings

(1) The Chief Commissioner presides at all meetings at which he or she is present.

(2) If the Chief Commissioner is not present at a meeting, a Commissioner:

(a) nominated by the Chief Commissioner; and

(b) present at the meeting;

must preside.

Quorum

(3) At a meeting of TEQSA, a quorum is constituted by a majority of Commissioners.

Rules of procedure

(4) TEQSA may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Authorised Version C2022C00004 registered 04/01/2022

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

Voting

(5) The person presiding at a meeting of TEQSA has a deliberative vote but, if the votes are equal, does not have a casting vote.

Minutes

(6) TEQSA must ensure that minutes of its meetings are kept.

150 Disclosure of interests

(1) If a Commissioner has an interest, pecuniary or otherwise, in a matter being considered, or about to be considered, at a meeting, the Commissioner must disclose the nature of that interest to the other Commissioners.

(2) The disclosure must be made as soon as possible after the relevant facts have come to the Commissioner's knowledge.

(3) The disclosure must be recorded in the minutes of the meeting.

(4) Unless TEQSA otherwise determines, the Commissioner:
   (a) must not be present during TEQSA's deliberation on the matter; and
   (b) must not take part in TEQSA's decision on the matter.

(5) For the purposes of TEQSA making a determination under subsection (4), the Commissioner:
   (a) must not be present during any of TEQSA's deliberations for the purpose of making the determination; and
   (b) must not take part in making the determination.

(6) A determination under subsection (4) must be recorded in the minutes of the meeting.

Authorised Version C2022C00004 registered 04/01/2022

Subdivision B—Decisions without meetings

151 Decisions without meetings

(1) A decision is taken to have been made at a meeting of TEQSA if:

(a) without meeting, a majority of Commissioners indicate agreement with the proposed decision in accordance with the method determined by TEQSA under subsection (2); and

(b) all Commissioners were informed of the proposed decision, or reasonable efforts were made to inform all Commissioners of the proposed decision.

(2) Subsection (1) applies if TEQSA:

(a) has determined that it applies; and

(b) has determined the method by which Commissioners are to indicate agreement with proposed decisions.

152 Record of decisions

TEQSA must keep a record of decisions made in accordance with section 151.

Authorised Version C2022C00004 registered 04/01/2022

Division 4—Chief Executive Officer

Subdivision A—Office and functions of the Chief Executive Officer

153 Chief Executive Officer

There is to be a Chief Executive Officer of TEQSA.

154 Functions and powers of the Chief Executive Officer

(1) The Chief Executive Officer is responsible for the management and administration of TEQSA.

(2) All acts and things done in the name of, or on behalf of, TEQSA by the Chief Executive Officer are taken to have been done by TEQSA.

Subdivision B—Appointment of the Chief Executive Officer

154A Appointment of the Chief Executive Officer

(1) The Chief Executive Officer is to be appointed by the Minister by written instrument.

(2) A person may only be appointed as the Chief Executive Officer if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

(3) The Chief Executive Officer may hold office on either a full-time or a part-time basis.

154B Period of appointment for the Chief Executive Officer

The Chief Executive Officer holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Chief Executive Officer may be reappointed: see the *Acts Interpretation Act 1901*.

Authorised Version C2022C00004 registered 04/01/2022

154C Acting appointments

(1) The Minister may appoint a person to act as the Chief Executive Officer:

(a) during a vacancy in the office of the Chief Executive Officer (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Chief Executive Officer:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

(2) A person may only be appointed to act as the Chief Executive Officer if the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

Subdivision C—Terms and conditions for the Chief Executive Officer

154D Remuneration and allowances

(1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is determined, in writing, by the Minister.

(2) The Chief Executive Officer is to be paid the allowances that are determined, in writing, by the Minister.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Authorised Version C2022C00004 registered 04/01/2022

154E Leave of absence

(1) The Chief Executive Officer has the recreation leave entitlements that are determined by the Remuneration Tribunal. If no determination of those entitlements by the Tribunal is in operation, the Chief Executive Officer is to have the recreation leave entitlements that are determined, in writing, by the Minister.

(2) The Minister may grant the Chief Executive Officer leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

154F Outside employment

The Chief Executive Officer must not engage in paid employment outside the duties of his or her office without the Minister's approval.

154G Disclosure of interests to the Minister

The Chief Executive Officer must give written notice to the Minister of all interests, pecuniary or otherwise, that the Chief Executive Officer has or acquires and that conflict or could conflict with the proper performance of the Chief Executive Officer's functions.

154H Resignation

(1) The Chief Executive Officer may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

154J Termination of appointment

(1) The Minister may terminate the appointment of the Chief Executive Officer:

Authorised Version C2022C00004 registered 04/01/2022

(a) for misbehaviour; or
(b) if the Chief Executive Officer is unable to perform the duties of his or her office because of physical or mental incapacity.

(2) The Minister may terminate the appointment of the Chief Executive Officer if:
(a) the Chief Executive Officer:
(i) becomes bankrupt; or
(ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
(iii) compounds with one or more of his or her creditors; or
(iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
(b) the Chief Executive Officer is absent, except on leave of absence, for 14 consecutive days or for 30 days in any 12 months; or
(c) the Chief Executive Officer engages in paid employment contrary to section 154F; or
(d) the Chief Executive Officer fails, without reasonable excuse, to comply with section 154G.

154K Other terms and conditions

The Chief Executive Officer holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Subdivision D—Delegation

154L Delegation by the Chief Executive Officer

(1) The Chief Executive Officer may, by writing, delegate any or all of his or her functions and powers under this Act to a member of the staff of TEQSA who holds:
(a) the classification of APS Executive Level 1 or higher; or
(b) an equivalent classification.

Authorised Version C2022C00004 registered 04/01/2022

(2) The Chief Executive Officer may, in writing, delegate the Chief Executive Officer's powers and functions under the Regulatory Powers Act as it applies in relation to this Act, to a member of the staff of TEQSA who is:

(a) an SES employee or an acting SES employee; or

(b) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.

(3) Before delegating a function or power under subsection (1) or (2), the Chief Executive Officer must have regard to:

(a) if the function or power is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the employee to perform the function or exercise the power; or

(b) otherwise—whether the employee has appropriate qualifications or expertise to perform the function or duty or exercise the power.

(4) A delegate must comply with any written directions of the Chief Executive Officer.

Subdivision E—Directions by Minister

155 Minister may give directions to Chief Executive Officer

(1) The Minister may, by legislative instrument, give written directions to the Chief Executive Officer about the performance of his or her functions and the exercise of his or her powers.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction (see regulations made for the purposes of paragraph 54(2)(b) of that Act).

(1A) Regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003* do not apply in relation to a direction under subsection (1) of this section.

Note: This means that section 42 (disallowance) of the *Legislation Act 2003* applies to the direction.

Authorised Version C2022C00004 registered 04/01/2022

(2) The Chief Executive Officer must comply with a direction under subsection (1).

(3) Subsection (2) does not apply to the extent that the direction relates to the Chief Executive Officer's performance of functions, or exercise of powers, under the *Public Service Act 1999* in relation to TEQSA.

Subdivision F—Other matters

155A Chief Executive Officer not subject to direction by TEQSA on certain matters

To avoid doubt, the Chief Executive Officer is not subject to direction by TEQSA in relation to the Chief Executive Officer's performance of functions, or exercise of powers, under:

(a) the *Public Governance, Performance and Accountability Act 2013*; or

(b) the *Public Service Act 1999*;

in relation to TEQSA.

Authorised Version C2022C00004 registered 04/01/2022

Division 5—Staff

156 Staff

(1) The staff of TEQSA are to be persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:
  (a) the Chief Executive Officer and the staff of TEQSA together constitute a Statutory Agency; and
  (b) the Chief Executive Officer is the Head of that Statutory Agency.

157 Staff to be made available to TEQSA

(1) TEQSA is to be assisted by:
  (a) officers and employees of Commonwealth authorities whose services are made available to TEQSA in connection with the performance of TEQSA's functions or the exercise of its powers; and
  (b) persons whose services are made available under arrangements made under subsection (2).

(2) The Chief Executive Officer may arrange for officers or employees of an appropriate State or Territory authority to be made available to TEQSA to perform services in connection with the performance of TEQSA's functions or the exercise of its powers.

(3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person to whom the arrangement relates.

(4) When performing services for TEQSA under this section, a person is subject to the directions of the Chief Executive Officer.

Authorised Version C2022C00004 registered 04/01/2022

Division 6—Fees

158 Fees

(1) TEQSA may, by legislative instrument, determine fees that TEQSA may charge for things done in the performance of its functions.

(2) TEQSA may, in the determination under subsection (1), determine the way in which a fee is to be worked out.

(3) TEQSA may, in the determination under subsection (1), determine other matters relating to the payment of fees, including:
  (a) the circumstances in which fees may be paid in instalments; and
  (b) the circumstances in which fees may be set off against another amount payable; and
  (c) the circumstances in which fees may be waived.

(4) The fees determined under subsection (1) must not be such as to amount to taxation.

Ministerial approval

(5) TEQSA must not make an instrument under subsection (1) unless the Minister has given written approval to the making of the instrument.

(6) TEQSA must give the Minister such information as the Minister reasonably requires for the purposes of making a decision under subsection (5).

Authorised Version C2022C00004 registered 04/01/2022

Division 7—Planning

160 Approving corporate plans

(1) The Commissioners must give a copy of a corporate plan prepared under section 35 of the *Public Governance, Performance and Accountability Act 2013* to the Minister for approval before:
  (a) 30 April before the first reporting period to which the plan relates; or
  (b) such later day as the Minister allows.

(2) Subsection (1) does not apply to a corporate plan if the Minister decides the plan does not need approval.

(3) A corporate plan comes into force on:
  (a) if the plan needs Ministerial approval—the later of:
    (i) the day it is approved by the Minister; and
    (ii) the first day of the period to which it relates; or
  (b) otherwise—the first day of the period to which it relates.

161 Varying corporate plans

Varying plans with Ministerial approval

(1) The Commissioners may, with the Minister's approval, vary a corporate plan prepared under section 35 of the *Public Governance, Performance and Accountability Act 2013*.

(3) The Minister may, at any time, request the Commissioners to vary the corporate plan. The Commissioners must comply with the request.

(4) A variation approved by the Minister takes effect on the day it is approved.

Ministerial approval not required for minor variations

Authorised Version C2022C00004 registered 04/01/2022

(5) Despite subsection (1), the Commissioners may vary the corporate plan without the approval of the Minister if the variation is of a minor nature. The variation takes effect on the day it is made.

(6) If the Commissioners make a variation of a minor nature, the Commissioners must inform the Minister of the variation as soon as is practicable.

Authorised Version C2022C00004 registered 04/01/2022

Part 9—Higher Education Standards Panel

Division 1—Establishment and functions

166 Establishment

The Higher Education Standards Panel is established by this section.

167 Constitution

(1) The Panel consists of:
  (a) a Panel Chair; and
  (b) at least 4, and up to 10, other members.

Note: The Panel does not have a legal identity separate from the Commonwealth.

(2) When appointing the Panel members, the Minister must:
  (a) ensure the Panel members collectively possess an appropriate balance of professional knowledge and demonstrated expertise, including in higher education and the development of quality standards; and
  (aa) ensure the Panel members collectively have contemporary experience in the provision of higher education by higher education providers that are universities and that are not universities; and
  (b) have regard to the interests of:
    (i) the States and Territories; and
    (ii) students undertaking, or proposing to undertake, higher education; and
    (iii) the staff of higher education providers.

168 Functions

(1) The functions of the Panel are:

Authorised Version C2022C00004 registered 04/01/2022

(a) to advise and make recommendations to the Minister:
(i) on making and varying; and
(ii) on other matters relating to;
the Higher Education Standards Framework, if requested by the Minister or on the Panel's own initiative; and
(b) to advise and make recommendations to TEQSA on matters relating to the Higher Education Standards Framework, if requested by TEQSA or on the Panel's own initiative; and
(c) to advise and make recommendations to TEQSA about:
(i) TEQSA's strategic objectives, corporate plan, performance against that plan, reform agenda, streamlining of activities and resourcing requirements; or
(ii) approaches to deregulation, including by the application of principles relating to regulatory necessity, risk and proportionality in respect of different types of higher education providers;
if requested by TEQSA or on the Panel's own initiative.

(2) The Panel must consult interested parties when performing its functions.

(3) The Panel may, by writing, establish advisory committees to assist it in performing any of its functions.

(4) An instrument under subsection (3) is not a legislative instrument.

169 Panel has privileges and immunities of the Crown

The Panel has the privileges and immunities of the Crown in right of the Commonwealth.

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Appointment of Panel members

170 Appointment

(1) A Panel member is to be appointed by the Minister, by written instrument, on a part-time basis.

Note: A Panel member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

(2) A Commissioner cannot be appointed:
(a) as a Panel member; or
(b) to act as a Panel member.

(3) The Minister must appoint one of the Panel members to be the Panel Chair.

171 Term of appointment

(1) A Panel member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

(2) A Panel member cannot be appointed for more than 3 consecutive periods.

172 Remuneration and allowances

(1) A Panel member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Panel member is to be paid the remuneration that is determined, in writing, by the Minister.

(2) A Panel member is to be paid the allowances that are determined, in writing, by the Minister.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Authorised Version C2022C00004 registered 04/01/2022

173 Leave of absence

(1) The Minister may grant leave of absence to the Panel Chair on the terms and conditions that the Minister determines.

(2) The Panel Chair may grant leave of absence to a Panel member on the terms and conditions that the Panel Chair determines.

174 Outside employment

A Panel member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

175 Disclosure of interests to the Minister

(1) A Panel member must give written notice to the Minister of all interests, pecuniary or otherwise, that the Panel member has or acquires that conflict or could conflict with the proper performance of the Panel member's functions.

(2) The notice must be given to the Minister as soon as practicable after the Panel member becomes aware of the potential for conflict of interest.

176 Other terms and conditions

A Panel member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

177 Resignation

(1) A Panel member may resign his or her appointment by giving the Minister a written resignation.

Note: If the Panel Chair resigns, he or she also resigns his or her position as a Panel member. This does not prevent him or her from being reappointed only as a Panel member.

Authorised Version C2022C00004 registered 04/01/2022

(2) A resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

178 Termination of appointment

The Minister may terminate the appointment of a Panel member:

(a) for misbehaviour or physical or mental incapacity; or

(b) if the Panel member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(c) if the Panel member is absent, except on leave of absence, from 3 consecutive meetings of the Panel; or

(d) if the Panel member engages in paid employment contrary to section 174; or

(e) if the Panel member fails, without reasonable excuse, to comply with section 175 or subsection 182(4).

179 Acting appointments

(1) The Minister may, by written instrument, appoint a person to act as a Panel member:

(a) during a vacancy in the office of the Panel member (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Panel member:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

(2) When appointing a person to act as a Panel member, the Minister must have regard to the matters in subsection 167(2).

Authorised Version C2022C00004 registered 04/01/2022

Note 1: A Commissioner cannot be appointed to act as a Panel member (see subsection 170(2)).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Authorised Version C2022C00004 registered 04/01/2022

Division 3—Panel meetings

180 Holding meetings

(1) The Panel Chair may convene such meetings as are necessary for the efficient performance of the Panel's functions.

(2) The Panel Chair must convene a meeting of the Panel if requested to do so by TEQSA.

(3) A Commissioner may attend all or part of a Panel meeting.

181 Quorum

At a meeting of the Panel, a quorum is constituted by a majority of the Panel members.

182 Procedure of meetings

(1) The Minister may, by writing, determine matters relating to the operation of the Panel.

(2) If no determination is in force for the purposes of subsection (1), the Panel may operate in the way it determines.

(3) The Panel Chair must ensure that minutes of meetings are kept.

Disclosure of interest by a member

(4) If:

(a) a Panel member has an interest, pecuniary or otherwise, in a matter being considered, or about to be considered, at a meeting; and

(b) the interest could conflict with the proper performance of the Panel member's functions;

the Panel member must disclose that interest to the other Panel members as soon as practicable.

Authorised Version C2022C00004 registered 04/01/2022

Disclosure to be recorded in the minutes of the meeting

(5) Any disclosure under subsection (4), and any decision made by the Panel in relation to the disclosure, must be recorded in the minutes of the meeting.

Determination not a legislative instrument

(6) A determination made under subsection (1) is not a legislative instrument.

Authorised Version C2022C00004 registered 04/01/2022

Part 10—Administrative law matters

Division 1—Review of decisions

Subdivision A—Review of TEQSA decisions

183 Reviewable decisions of TEQSA

For the purposes of this Act, each of the following decisions of TEQSA is a ***reviewable decision***:

Note 1: Reviewable decisions of delegates of TEQSA may be reviewed by the Administrative Appeals Tribunal following a process of internal review by TEQSA.

Note 2: Reviewable decisions not made by delegates may be reviewed by the Administrative Appeals Tribunal (see section 187).

Reviewable decisions
A decision under paragraph 19(1)(a) that an application for registration in a particular provider category is inappropriate
A decision under paragraph 19(1)(a) that it would be appropriate for an application for registration to be in a particular provider category, when that provider category differs from that sought by the applicant
A decision under subsection 21(3) to extend the time within which TEQSA may decide an application for registration
A decision under section 21 to register an applicant for registration in a particular provider category
A decision under section 21 to reject an application for registration
A decision under subsection 32(1) to impose a condition on a registration
A decision under subsection 32(2) to vary a condition imposed on a registration
A decision under section 36 to refuse to renew a registration
A decision under section 37A to extend the period of a registered higher education provider's registration
A decision under section 37A not to extend the period of a registered higher education provider's registration

Authorised Version C2022C00004 registered 04/01/2022

Reviewable decisions
A decision under section 38 to change the category in which a registered higher education provider is registered
A decision under section 38 not to change the category in which a registered higher education provider is registered
A decision under section 41 to refuse to authorise a registered higher education provider to self-accredit one or more courses of study
A decision under section 43 to reject an application to withdraw a registration
A decision under subsection 49(3) to extend the time within which TEQSA may decide an application for accreditation
A decision under section 49 to reject an application for accreditation
A decision under subsection 53(1) to impose a condition on an accreditation
A decision under subsection 53(2) to vary a condition imposed on an accreditation
A decision under section 56 to refuse to renew an accreditation
A decision under section 57A to extend the period of the accreditation of a course of study
A decision under section 57A not to extend the period of the accreditation of a course of study
A decision under section 99 to shorten the period of an accreditation
A decision under section 99 to cancel an accreditation
A decision under section 100 to shorten the period of a registration
A decision under section 101 to cancel a registration
A decision under subsection 198(4) to enter details on the Register

184 Applying for internal review of reviewable decisions made by delegates of TEQSA

(1) This section applies to a reviewable decision if the decision is made by a delegate of TEQSA.

(2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to TEQSA for TEQSA to review the decision.

(3) The application must:

Authorised Version C2022C00004 registered 04/01/2022

(a) be in the approved form; and
(b) set out the reasons for the application; and
(c) be accompanied by the fee (if any) determined under section 158 for a review under section 185.

Note: The approved form could, for example, require verification by statutory declaration of certain statements.

(4) The application must be made within:
(a) 30 days after the applicant is informed of the decision; or
(b) such longer period as TEQSA allows.

185 Internal review by TEQSA

(1) Upon receiving an application under section 184, TEQSA must review the reviewable decision.

(2) TEQSA may:
(a) affirm, vary or revoke the reviewable decision; and
(b) if TEQSA revokes the decision, make such other decision as TEQSA thinks appropriate.

(3) TEQSA's review must be done by:
(a) if the reviewable decision was made by a delegate who was a member of the staff of TEQSA—another delegate who:
(i) is a Commissioner; or
(ii) occupies a position senior to that occupied by the first-mentioned delegate; and
(b) otherwise—TEQSA.

(4) TEQSA's decision on review has effect (except for the purposes of section 183) as if it were made under the provision under which the reviewable decision was made.

(5) TEQSA must, within 30 days of making its decision on review, notify the applicant, in writing, of:
(a) the decision; and
(b) the reasons for the decision.

Authorised Version C2022C00004 registered 04/01/2022

186 Deadline for internal review

(1) TEQSA must make its decision on review of a reviewable decision within 90 days after receiving the application for review.

(2) TEQSA is taken, for the purposes of this Part, to have made a decision under subsection 185(2) affirming the reviewable decision if it has not notified the applicant of its decision on review before the end of that 90-day period.

187 Review by the Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal for review of:

(a) a reviewable decision if the decision was not made by a delegate of TEQSA; or

(b) a decision of TEQSA under subsection 185(2).

Subdivision B—Review of tuition protection decisions

187A Reviewable decisions relating to tuition protection

The table sets out:

(a) the ***reviewable decisions*** in relation to tuition protection; and

(b) the ***decision-maker*** for each of those decisions.

Reviewable decisions

Item	Decision	Provision under which decision is made	Decision-maker
1	A decision that Part 5A applies to a registered higher education provider	Paragraph 62B(2)(a)	The Minister
2	A decision that Part 5A does not apply to a registered higher	Paragraph 62B(2)(b)	The Minister

Authorised Version C2022C00004 registered 04/01/2022

Reviewable decisions			
Item	**Decision**	**Provision under which decision is made**	**Decision-maker**
	education provider		
3	A decision that the Higher Education Tuition Protection Director is satisfied that there are one or more suitable replacement courses for a student	Paragraph 62J(2)(a)	The Higher Education Tuition Protection Director
4	A decision that the Higher Education Tuition Protection Director is not satisfied that there is a suitable replacement course for a student	Paragraph 62J(2)(b)	The Higher Education Tuition Protection Director

187B Reviewer of decisions

(1) The ***reviewer*** of a reviewable decision relating to tuition protection is the decision-maker unless subsection (2) applies.

(2) If:

(a) a reviewable decision relating to tuition protection was made by a delegate of a decision-maker; and

(b) the decision is to be reconsidered by a delegate of the decision-maker;

then the delegate who reconsiders the decision must be a person who:

(c) was not involved in making the decision; and

(d) occupies a position that is senior to that occupied by any person involved in making the decision.

Authorised Version C2022C00004 registered 04/01/2022

187C Reviewer may reconsider reviewable decisions

(1) The reviewer of a reviewable decision relating to tuition protection may reconsider the decision if the reviewer is satisfied that there is sufficient reason to do so.

(2) The reviewer may reconsider the decision even if:
  (a) an application for reconsideration of the decision has been made under section 187D; or
  (b) the decision has been confirmed, varied or set aside under section 187D and an application has been made under section 187E for review of the decision.

(3) After reconsidering the decision, the decision-maker must:
  (a) confirm the decision; or
  (b) vary the decision; or
  (c) set the decision aside and substitute a new decision.

(4) The reviewer's decision (the ***decision on review***) to confirm, vary or set aside the decision takes effect:
  (a) on the day specified in the decision on review; or
  (b) if a day is not specified—on the day on which the decision on review was made.

(5) The reviewer must give written notice of the decision on review to the person to whom that decision relates.

(6) The notice:
  (a) must be given within a reasonable period after the decision on review is made; and
  (b) must contain a statement of the reasons for the reviewer's decision on review.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

Authorised Version C2022C00004 registered 04/01/2022

187D Reconsideration of reviewable decisions on request

(1) A person whose interests are affected by a reviewable decision relating to tuition protection may request the reviewer to reconsider the decision.

(2) The person's request must be made by written notice given to the reviewer within 28 days, or such longer period as the reviewer allows, after the day on which the person first received notice of the decision.

(3) The notice must set out the reasons for making the request.

(4) After receiving the request, the reviewer must reconsider the decision and:
  (a) confirm the decision; or
  (b) vary the decision; or
  (c) set the decision aside and substitute a new decision.

(5) Despite subsection (4), the reviewer is not required to reconsider the decision if:
  (a) the decision was made under paragraph 62J(2)(b); and
  (b) the person gave notice in writing, under paragraph 62J(8)(c), that the person would not seek reconsideration of the decision.

(6) The reviewer's decision (the ***decision on review***) to confirm, vary or set aside the decision takes effect:
  (a) on the day specified in the decision on review; or
  (b) if a day is not specified—on the day on which the decision on review was made.

(7) The reviewer must give the person written notice of the decision on review.

(8) The notice:
  (a) must be given within a reasonable period after the decision on review is made; and

Authorised Version C2022C00004 registered 04/01/2022

(b) must contain a statement of the reasons for the reviewer's decision on review.

(9) The reviewer is taken to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

187E AAT review of reviewable decisions

(1) An application may be made to the Administrative Appeals Tribunal for the review of a reviewable decision relating to tuition protection that has been confirmed, varied or set aside under section 187C or 187D.

(2) Despite subsection (1), an application cannot be made for the review of a decision made under paragraph 62J(2)(a) or (b) (about suitable replacement courses).

Authorised Version C2022C00004 registered 04/01/2022

Division 2—Management of higher education information

Subdivision A—Restriction on disclosure or use of information

188 Offence of unauthorised disclosure or use of information

(1) A person commits an offence if:

(a) the person obtains higher education information in the person's capacity as an entrusted person; and

(b) the person:

(i) discloses the information to another person; or

(ii) uses the information.

Penalty: Imprisonment for 2 years.

Exceptions

(2) Subsection (1) does not apply if:

(a) the disclosure or use is made for the purposes of this Act or the *Education Services for Overseas Students Act 2000*, or otherwise in connection with the performance of the person's duties as an entrusted person; or

(b) the disclosure or use is required or authorised by or under a law of the Commonwealth or a State or Territory.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) Subsection (1) does not apply if the regulated entity in respect of whom the higher education information relates has consented, in writing, to the disclosure or use.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Authorised Version C2022C00004 registered 04/01/2022

Subdivision B—Information sharing

189 Disclosing information about breaches of regulatory requirements

(1) TEQSA may disclose the kinds of higher education information referred to in subsection (2) to:

(a) a person who holds any office or appointment under a law of the Commonwealth, or under a law of a State or Territory; or

(b) a member, or special member, of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(c) a member of the police force, or police service, of a State or Territory; or

(d) an employee:

(i) of a Commonwealth authority or of a State or Territory authority; and

(ii) of a kind specified in the Information Guidelines for the purposes of this section; or

(e) in the case of a registered provider (within the meaning of the *Education Services for Overseas Students Act 2000*)—the TPS Director, within the meaning of that Act; or

(f) a regulatory authority of another country that has responsibility relating to the quality or regulation of higher education.

(2) The kinds of higher education information are as follows:

(a) information that relates to an offence, or possible offence, against this Act, this Act's associated provisions or the *Education Services for Overseas Students Act 2000*;

(b) information that relates to a contravention, or possible contravention, of:

(i) this Act; or

(ii) the *Education Services for Overseas Students Act 2000*; or

(iii) the *Higher Education Support Act 2003*; or

Authorised Version C2022C00004 registered 04/01/2022

(iv) legislative instruments made under any of those Acts.

190 Disclosing information about proposed cancellations of registration

(1) TEQSA may advise the Minister of a State or Territory responsible for higher education if:

(a) TEQSA has serious concerns about a registered higher education provider for whom an accredited course is being provided in the State or Territory; or

(b) TEQSA proposes to cancel the registration of a registered higher education provider for whom an accredited course is being provided in the State or Territory.

(2) If TEQSA advises the Minister of the State or Territory under subsection (1), TEQSA may also advise:

(a) a person who holds any office or appointment under a law of the Commonwealth, or under a law of the State or Territory concerned; or

(b) employees of the Commonwealth of a kind specified in regulations made for the purposes of this paragraph; or

(c) employees of the State or Territory of a kind specified in regulations made for the purposes of this paragraph.

191 Disclosing information to Tertiary Admission Centres

TEQSA may advise a Tertiary Admission Centre if:

(a) TEQSA cancels the accreditation of a course of study; or

(b) TEQSA imposes a condition on the registration of a higher education provider that restricts the number of students that may enrol in a particular course of study accredited in relation to the provider; or

(c) TEQSA cancels the registration of a registered higher education provider.

Authorised Version C2022C00004 registered 04/01/2022

192 Disclosing information to the Minister and Department

(1) For the purposes of administering laws relating to higher education, TEQSA may disclose information covered by subsection (2) to:

(a) the Minister; or

(b) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; or

(c) the Secretary; or

(ca) the Higher Education Tuition Protection Director; or

(d) an APS employee in the Department.

(2) This subsection covers the following information:

(a) higher education information;

(b) information, relating to a regulated entity, that is obtained by TEQSA, that relates to TEQSA's functions and that is personal information (within the meaning of the *Privacy Act 1988*).

193 Disclosing information to professional bodies etc.

TEQSA may disclose higher education information to a body responsible for the regulation of an occupation in a State or Territory.

194 Disclosing information to certain government bodies etc.

TEQSA may disclose higher education information to:

(a) a Commonwealth authority, or a State or Territory authority, if:

(i) the authority is of a kind specified in the Information Guidelines for the purposes of this section; and

(ii) TEQSA is satisfied that the disclosure is necessary to enable or assist the authority to perform or exercise any of the authority's functions or powers; or

(b) a Royal Commission.

Authorised Version C2022C00004 registered 04/01/2022

195 Disclosing information under international cooperative arrangements

TEQSA may disclose higher education information to a regulatory authority of another country if:

(a) cooperative arrangements exist with that other authority or country that relate to the assessment or regulation of higher education; and

(b) the release of the information is consistent with those arrangements.

195A Disclosing information to other persons

Disclosure

(1) TEQSA may disclose higher education information to a person referred to in subsection (3) for the purposes of research relating to the provision of higher education, including research relating to:

(a) quality assurance; or

(b) planning the provision of higher education.

(2) However, if the information was provided by a regulated entity, TEQSA may disclose the information under subsection (1) only if the entity has consented, in writing, to that disclosure.

Persons to whom information may be disclosed

(3) For the purposes of subsection (1), the persons are the following:

(a) a person who is employed or engaged by a higher education provider;

(b) a person who is employed or engaged by a body determined in an instrument under subsection (4).

(4) TEQSA may, by legislative instrument, determine a body for the purposes of paragraph (3)(b).

Authorised Version C2022C00004 registered 04/01/2022

195B Disclosing information to complainants

TEQSA may disclose higher education information to a person if:

(a) the person has made a complaint to TEQSA relating to a regulated entity's compliance with:
  (i) this Act; or
  (ii) the *Education Services for Overseas Students Act 2000*; or
  (iii) a legislative instrument under either of those Acts; and

(b) TEQSA is satisfied that the information relates to the matter the subject of the complaint.

196 Disclosing information to the public

TEQSA may disclose to the public higher education information that relates to anything done, or omitted to be done, under this Act.

197 Information about national security

Paragraph 192(1)(d) and sections 193, 194, 195, 195A, 195B and 196 do not apply to national security information.

Subdivision C—Higher education student records

197AA Higher education student records to be provided to TEQSA

(1) If:

(a) an entity that is a registered higher education provider has effectively ceased to operate; or

(b) an entity's registration as a registered higher education provider is cancelled;

TEQSA may, by written notice given to a person who is, or was, an executive officer of the entity, require the person to provide to TEQSA a copy of such of the higher education student records relating to the entity as are specified in the notice within the period specified in the notice.

Authorised Version C2022C00004 registered 04/01/2022

(2) The period specified in the notice must be at least 14 days after the notice is given.

Offence

(3) A person commits an offence if:
  (a) the person is given a notice under subsection (1); and
  (b) the person possesses or controls the higher education student records specified in the notice; and
  (c) the person fails to comply with the notice.

Penalty: 150 penalty units.

Civil penalty

(4) A person contravenes this subsection if:
  (a) the person is given a notice under subsection (1); and
  (b) the person possesses or controls the higher education student records specified in the notice; and
  (c) the person fails to comply with the notice.

Civil penalty: 300 penalty units.

197AB TEQSA may request higher education student records

If:
  (a) either:
    (i) an entity that is a registered higher education provider has effectively ceased to operate; or
    (ii) an entity's registration as a registered higher education provider is cancelled; and
  (b) TEQSA considers that a person (the ***holder***) may hold higher education student records relating to the entity; and
  (c) the holder is not a person who is, or was, an executive officer of the entity;

Authorised Version C2022C00004 registered 04/01/2022

TEQSA may, by notice in writing, request the holder to provide to TEQSA a copy of such of those records as are specified in the notice.

197AC Provision of higher education student records to another registered higher education provider

If:

(a) a person (the ***student***) is enrolled in an accredited course provided by an entity (the ***first entity***) that is a registered higher education provider; and

(b) the student transfers to another registered higher education provider (the ***second entity***);

then:

(c) the student may request the first entity to provide to the second entity a copy of the higher education student records relating to the student; or

(d) the second entity may request, in writing, the first entity to provide to the second entity a copy of the higher education student records relating to the student.

197AD TEQSA's management of higher education student records

TEQSA may provide a copy of a higher education student record it holds to a registered higher education provider if:

(a) the person to whom the record relates has enrolled, or is seeking to enrol, in an accredited course provided by the provider and the person requests TEQSA, in writing, to provide the copy; or

(b) with the consent of the person to whom the record relates, the provider requests TEQSA, in writing, to provide the copy because that person has enrolled, or is seeking to enrol, in an accredited course provided by the provider.

Authorised Version C2022C00004 registered 04/01/2022

197AE Compensation

(1) If the operation of section 197AA would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Authorised Version C2022C00004 registered 04/01/2022

Division 3—Management of academic cheating services information

197A Offence of unauthorised disclosure or use of academic cheating services information

(1) A person commits an offence if:

(a) the person obtains academic cheating services information in the person's capacity as an entrusted person; and

(b) the person:

(i) discloses the information to another person; or

(ii) uses the information.

Penalty: Imprisonment for 2 years.

Exception

(2) Subsection (1) does not apply if:

(a) the disclosure or use is made for the purposes of this Act or the *Education Services for Overseas Students Act 2000*, or otherwise is in connection with the performance of the person's duties as an entrusted person; or

(b) the disclosure or use is authorised by section 197B.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

197B Authorised disclosure and use of academic cheating services information

Disclosing etc. information relating to providers of academic cheating services

(1) TEQSA may disclose or use academic cheating services information if the disclosure or use is of information that a person provides, or is reasonably suspected by TEQSA of providing, an academic cheating service.

Authorised Version C2022C00004 registered 04/01/2022

Disclosing information relating to users of academic cheating services

(2) TEQSA may disclose academic cheating services information to a higher education provider if:

(a) the disclosure is of information that a person has used, or is reasonably suspected by TEQSA of using, an academic cheating service; and

(b) TEQSA knows, or reasonably suspects, that the person is or has been enrolled in a course of study with the higher education provider.

(3) TEQSA may disclose academic cheating services information to a regulatory authority of another country if:

(a) cooperative arrangements exist with that authority or country that relate to the regulation of higher education; and

(b) the disclosure is consistent with those arrangements.

197C Obtaining academic cheating services information

A person may disclose academic cheating services information to TEQSA to assist TEQSA in performing its functions under paragraph 134(1)(c), (da) or (j).

197D Information about national security

Section 197B does not apply to national security information.

Authorised Version C2022C00004 registered 04/01/2022

Part 11—National Register of Higher Education Providers

198 National Register of Higher Education Providers

(1) TEQSA must establish and maintain a register of:

(a) registered higher education providers; and

(b) each entity that was a registered higher education provider and whose registration has been cancelled other than because of a reason set out in the Register Guidelines.

(2) The register is to be known as the National Register of Higher Education Providers.

(3) The Register Guidelines may set out details that TEQSA must enter on the Register in respect of each registered higher education provider.

(4) Subsection (3) does not prevent TEQSA from entering other details on the Register in respect of a registered higher education provider.

(5) The Register is to be made available for inspection on the internet.

Authorised Version C2022C00004 registered 04/01/2022

Part 12—Miscellaneous

199 Delegation by TEQSA

(1) TEQSA may, by writing, delegate any or all of TEQSA's functions and powers to:

(a) a Commissioner; or

(ab) the Chief Executive Officer; or

(b) a member of the staff of TEQSA who holds the classification of APS Executive Level 1 or higher, or an equivalent classification.

Note 1: This subsection extends, for example, to TEQSA's functions and powers under the *Education Services for Overseas Students Act 2000*.

Note 2: TEQSA may also subdelegate powers delegated to TEQSA under section 170 of the *Education Services for Overseas Students Act 2000*.

(2) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

201 Delegates must comply with directions

In exercising functions or powers under a delegation under section 199, the delegate must comply with any written directions of TEQSA.

201A Delegation by Secretary

(1) The Secretary may, in writing, delegate all or any of the Secretary's functions or powers under this Act (other than paragraph 134(1)(i)) to an APS employee who holds or performs the duties of an APS Level 6 position, or an equivalent or higher position, in the Department.

(2) The Secretary may, in writing, delegate the Secretary's functions or powers under the Regulatory Powers Act as it applies in relation

Authorised Version C2022C00004 registered 04/01/2022

to Part 5A of this Act, to an SES employee, or an acting SES employee, in the Department.

(3) Before delegating a function or power under subsection (1) or (2), the Secretary must have regard to:

(a) if the function or power is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the employee to perform the function or exercise the power; or

(b) otherwise—whether the employee has appropriate qualifications or expertise to perform the function or duty or exercise the power.

(4) In performing functions or exercising powers under a delegation under subsection (1) or (2), the delegate must comply with any directions of the Secretary.

201B Delegation by the Minister

(1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under Part 5A to the Secretary.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing functions or exercising powers under a delegation under subsection (1), the Secretary must comply with any directions of the Minister.

202 Protection from criminal or civil actions

(1) No action, suit or proceeding (whether criminal or civil) lies against a protected person in relation to anything done, or omitted to be done, in good faith by the person:

(a) in accordance, or purportedly in accordance, with this Act; or

(b) in the performance, or purported performance, of TEQSA's functions; or

(c) in the exercise, or purported exercise, of TEQSA's powers.

Authorised Version C2022C00004 registered 04/01/2022

Note: This section extends to, for example, a thing done in good faith in accordance with a delegation under section 199.

(2) The ***protected persons*** are as follows:

(a) the Minister;

(b) a Commissioner;

(c) a member of the staff of TEQSA;

(d) a Commonwealth authority;

(e) a person who holds any office or appointment under a law of the Commonwealth;

(f) a person performing a service for TEQSA.

203 Review of impact of Act

The Minister must, before 1 January 2016, cause a review to be started of the impact on the higher education sector of this Act.

203A Review of operation of tuition protection

(1) Before 1 July 2021, the Minister must commence a review of the operation of Part 5A (about tuition protection).

Note: The review must be conducted at the same time as a review of the operation of Parts 5 and 5A of the *Education Services for Overseas Students Act 2000*, Parts 5-1A and 5-1B of the *Higher Education Support Act 2003* and Parts 5A and 5B of the *VET Student Loans Act 2016*.

(2) The Minister must cause to be prepared a report of a review under subsection (1).

(3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

204 Guidelines

TEQSA may, by legislative instrument, make Guidelines, specified in the second column of the table, providing for matters:

Authorised Version C2022C00004 registered 04/01/2022

(a) required or permitted by the corresponding provision mentioned in the third column of the table to be provided; or

(b) necessary or convenient to be provided for carrying out or giving effect to that provision.

Guidelines

Item	Guidelines	Provision
1A	Registered Higher Education Provider Charge Guidelines	section 26C
1	Information Guidelines	section 189
2	Register Guidelines	section 198

204A Use of Australian domain names with the word "university" etc.

(1) A person must not use a domain name:

(a) with either:

(i) the word "university" in the domain name; or

(ii) a word or expression, that has the same or a similar meaning to the word "university" and that is determined in an instrument under subsection (3), in the domain name; and

(b) where the domain name includes an Australian top-level domain;

unless there is an approval in force under subsection (4) in relation to the person's use of that domain name.

Scope of prohibition

(2) Subsection (1) applies in relation to a person's use of a domain name on or after the commencement of this section if:

(a) the licence for the use of that domain name was issued on or after that commencement; and

(b) no licence for the use of that domain name had been issued before that commencement to the licensee of the licence referred to in paragraph (a).

Authorised Version C2022C00004 registered 04/01/2022

List of words or expressions

(3) The Minister may, by legislative instrument, determine words or expressions for the purposes of subparagraph (1)(a)(ii).

Approval of use of domain names

(4) The Minister may, in writing, approve a person's use of a specified domain name. The Minister may give an approval on the Minister's own initiative or on application.

(5) The Minister must give a copy of the approval to:
  (a) the person; and
  (b) the licensor that issues licences for the use of a domain name to which paragraphs (1)(a) and (b) apply.

(6) An approval under subsection (4) comes into force at the time it is given.

(7) If a person makes an application for an approval and the Minister refuses to give the approval, the Minister must give written notice of the refusal and of the reasons for the refusal to:
  (a) the person; and
  (b) the licensor that issues licences for the use of a domain name to which paragraphs (1)(a) and (b) apply.

(8) In deciding whether or not to give an approval under subsection (4), the Minister must have regard to:
  (a) whether the person is a registered higher education provider; and
  (b) the matters determined in an instrument under subsection (10).

(9) Subsection (8) does not limit the matters to which the Minister may have regard.

(10) The Minister must, by legislative instrument, determine matters for the purposes of paragraph (8)(b).

Authorised Version C2022C00004 registered 04/01/2022

Licence details to be given to the Minister

(11) The Minister may, in writing, request the licensor that issues licences for the use of a domain name to which paragraphs (1)(a) and (b) apply to give the Minister the following details in relation to the period specified in the request:

(a) the name of each person to whom such a licence has been issued;

(b) the domain name covered by the licence;

(c) contact details for the person to the extent known by the licensor.

(12) The licensor must comply with a request under subsection (11).

Delegation

(13) The Minister may, in writing, delegate the Minister's functions and powers under this section (except subsections (3) and (10)) to an SES employee, or acting SES employee, in the Department.

Approval not a legislative instrument

(14) An approval under subsection (4) is not a legislative instrument.

205 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Authorised Version C2022C00004 registered 04/01/2022

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2022C00004 registered 04/01/2022

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2022C00004 registered 04/01/2022

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2022C00004 registered 04/01/2022

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tertiary Education Quality and Standards Agency Act 2011	73, 2011	29 June 2011	s 3–8, 10–12, 58, 132–197 and 199–205: 29 July 2011 s 9, 13–57, 59–131 and 198: 29 Jan 2012 Remainder: 29 June 2011	
Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011	74, 2011	29 June 2011	Sch 2 (item 43): 29 July 2011 (s 2(1) item 11)	—
Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012	9, 2012	20 Mar 2012	Sch 1 (items 39, 44, 62): 1 July 2012	Sch 1 (items 44, 62)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 4 (items 45–50): 22 Sept 2012	Sch 4 (item 50)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 515–550): 12 Apr 2013 (*see* s. 2(1)) Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3)	Sch 1 (item 550)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 43): 24 June 2014	—

Authorised Version C2022C00004 registered 04/01/2022

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 74), Sch 12 (items 213–229) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Tertiary Education Quality and Standards Agency Amendment Act 2014	130, 2014	12 Dec 2014	Sch 1: 13 Dec 2014 (s 2(1) items 2–5) Remainder: 12 Dec 2014 (s 2(1) item 1)	Sch 1 (items 11, 12, 36, 44, 45, 51–53, 56, 58)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 636–642): 5 Mar 2016 (s 2(1) item 2)	—

Authorised Version C2022C00004 registered 04/01/2022

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Higher Education Legislation Amendment (Miscellaneous Measures) Act 2015	160, 2015	30 Nov 2015	Sch 5: 1 Dec 2015 (s 2(1) item 3)	Sch 5 (item 6)
Education Services for Overseas Students Amendment (Streamlining Regulation) Act 2015	171, 2015	11 Dec 2015	Sch 1 (item 285), Sch 3 (item 3) and Sch 6 (items 2–6, 8–13): 1 July 2016 (s 2(1) items 2, 6, 8) Sch 6 (items 1, 7): 12 Dec 2015 (s 2(1) items 5, 7)	Sch 6
Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017	83, 2017	16 Aug 2017	Sch 2: 17 Aug 2017 (s 2(1) item 1)	Sch 2 (item 13)
Public Governance and Resources Legislation Amendment Act (No. 1) 2017	92, 2017	23 Aug 2017	Sch 2 (item 88) and Sch 4: 23 Aug 2017 (s 2(1) item 1)	Sch 4
Tertiary Education Quality and Standards Agency Amendment Act 2019	98, 2019	30 Oct 2019	31 Oct 2019 (s 2(1) item 1)	Sch 1 (item 31)
Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020	78, 2020	3 Sept 2020	4 Sept 2020 (s 2(1) item 1)	—
Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020	101, 2020	20 Nov 2020	Sch 1: 1 Jan 2021 (s 2(1) item 1)	Sch 1 (items 24, 25)

Authorised Version C2022C00004 registered 04/01/2022

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 763–772): 1 Sept 2021 (s 2(1) item 5)	—
Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Act 2021	14, 2021	1 Mar 2021	Sch 1 (items 1–19): 1 July 2021 (s 2(1) item 2) Sch 1 (items 20–28, 30): 2 Mar 2021 (s 2(1) items 3, 3B) Sch 1 (item 29): 8 Mar 2021 (s 2(1) item 3A)	Sch 1 (items 19, 30)
Regulatory Powers (Standardisation Reform) Act 2021	32, 2021	26 Mar 2021	Sch 5 (items 1–23, 25, 29–36, 38–48): 26 Sept 2021 (s 2(1) items 9, 10, 12, 15, 17, 18) Sch 5 (items 24, 26–28, 37): never commenced (s 2(1) items 11, 13, 14, 16)	Sch 5 (items 17–22)
Tertiary Education Quality and Standards Agency Amendment (Cost Recovery) Act 2021	80, 2021	13 Aug 2021	1 Jan 2022 (s 2(1) item 1)	—

Authorised Version C2022C00004 registered 04/01/2022

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 2	
s 3	am No 78, 2020
s 4	am No 78, 2020; No 14, 2021
Division 3	
s 5	am No 74, 2011; No 13, 2013; No 31, 2014; No 62, 2014; No 130, 2014; No 160, 2015; No 83, 2017; No 98, 2019; No 78, 2020; No 101, 2020; No 13, 2021; No 14, 2021; No 32, 2021; No 80, 2021
s 7A	ad No 83, 2017
Division 4	
Division 4 heading	rs No 78, 2020
s 8	rep No 78, 2020
Part 3	
Division 1	
s 19	am No 14, 2021
s 20	am No 14, 2021
s 21	am No 130, 2014; No 83, 2017; No 101, 2020
s 22	am No 130, 2014
s 23	am No 130, 2014
Division 2	
s 25A	ad No 83, 2017
s 26A	ad No 101, 2020
s 26B	ad No 101, 2020
s 26C	ad No 80, 2021
s 33	am No 14, 2021
s 34	am No 130, 2014
Division 3	
s 36	am No 130, 2014; No 83, 2017; No 14, 2021

Authorised Version C2022C00004 registered 04/01/2022

Endnote 4—Amendment history

Provision affected	How affected
Division 3A	
Division 3A	ad No 130, 2014
s 37A	ad No 130, 2014
	am No 14, 2021
Division 4	
s 38	am No 14, 2021
s 39	am No 14, 2021
s 40	am No 14, 2021
Part 4	
Division 1	
s 45	am No 14, 2021
Division 2	
s 49	am No 130, 2014; No 14, 2021
s 51	am No 130, 2014
Division 4	
s 56	am No 14, 2021
Division 5	
Division 5	ad No 130, 2014
s 57A	ad No 130, 2014
	am No 14, 2021
Part 5	
Division 1	
s 58	am No 126, 2015; No 98, 2019; No 14, 2021
Division 2	
s 59A	ad No 14, 2021
s 60	am No 98, 2019
s 61	am No 14, 2021
Part 5A	
Part 5A	ad No 101, 2020
Division 1	
s 62A	ad No 101, 2020

Authorised Version C2022C00004 registered 04/01/2022

Provision affected	How affected
s 62B	ad No 101, 2020
s 62C	ad No 101, 2020
Division 2	
Subdivision A	
s 62D	ad No 101, 2020
s 62E	ad No 101, 2020
s 62F	ad No 101, 2020
s 62G	ad No 101, 2020
s 62H	ad No 101, 2020
Subdivision B	
s 62J	ad No 101, 2020
s 62K	ad No 101, 2020
s 62L	ad No 101, 2020
s 62M	ad No 101, 2020
Subdivision C	
s 62N	ad No 101, 2020
s 62P	ad No 101, 2020
s 62Q	ad No 101, 2020
Subdivision D	
s 62R	ad No 101, 2020
s 62S	ad No 101, 2020
s 62T	ad No 101, 2020
s 62U	ad No 101, 2020
Part 6	
Part 6 heading	rs No 32, 2021
Division 1	
s 63	am No 78, 2020
Division 2	rep No 32, 2021
s 70	rep No 32, 2021
s 71	am No 13, 2013
	rep No 32, 2021

Authorised Version C2022C00004 registered 04/01/2022

Endnote 4—Amendment history

Provision affected	How affected
s 72	rep No 32, 2021
s 73	rep No 32, 2021
s 74	rep No 32, 2021
s 75	rep No 32, 2021
s 76	rep No 32, 2021
Division 3	rep No 32, 2021
s 77	rep No 32, 2021
s 78	rep No 32, 2021
s 79	am No 13, 2013
	rep No 32, 2021
s 80	am No 13, 2013
	rep No 32, 2021
s 81	am No 13, 2013
	rep No 32, 2021
s 82	rep No 32, 2021
Division 4	rep No 32, 2021
s 83	rep No 32, 2021
s 84	rep No 32, 2021
Division 5	rep No 32, 2021
s 85	rep No 32, 2021
s 86	rep No 32, 2021
s 87	rep No 32, 2021
s 88	am No 13, 2013
	rep No 32, 2021
s 89	rep No 32, 2021
Division 6	rep No 32, 2021
s 90	am No 13, 2013
	rep No 32, 2021
s 91	am No 13, 2013
	rep No 32, 2021
s 92	am No 13, 2013

Authorised Version C2022C00004 registered 04/01/2022

Provision affected	How affected
	rep No 32, 2021
s 93	am No 13, 2013
	rep No 32, 2021
Division 7	
Division 7 heading	rs No 32, 2021
s 95	rep No 32, 2021
Division 8 heading	rs No 13, 2013
	rep No 32, 2021
Division 8	rep No 32, 2021
s 96	am No 13, 2013; No 13, 2021
	rep No 32, 2021
Part 7	
Division 1A	
Division 1A	ad No 32, 2021
s 97	am No 13, 2013; No 13, 2021
	rs No 32, 2021
Division 1	
Subdivision A	
s 98	am No 14, 2021
s 101A	ad No 130, 2014
Division 2	
Subdivision A heading	rep No 32, 2021
Subdivision A	am No 101, 2020
s 104	rep No 101, 2020
s 108	am No 98, 2019; No 14, 2021
s 114A	ad No 78, 2020
s 114B	ad No 78, 2020
s 114C	ad No 78, 2020
Subdivision B	rep No 32, 2021
Division 3	
Division 3	rs No 32, 2021

Authorised Version C2022C00004 registered 04/01/2022

Endnote 4—Amendment history

Provision affected	How affected
s 115	am No 13, 2013; No 78, 2020; No 101, 2020; No 13, 2021
	rs No 32, 2021
	am No 32, 2021
Division 4	
Division 4	rs No 32, 2021
s 116	rs No 32, 2021
	am No 32, 2021
Division 5	
Division 5	ad No 101, 2020
	rs No 32, 2021
s 117	rs No 32, 2021
	am No 32, 2021
Division 6	
Division 6	ad No 32, 2021
s 118	am No 13, 2013; No 13, 2021
	rs No 32, 2021
	am No 32, 2021
Division 7	
Division 7	ad No 32, 2021
s 119	am No 13, 2013; No 13, 2021
	rs No 32, 2021
	am No 32, 2021
s 120	rep No 32, 2021
Subdivision C	rep No 32, 2021
s 121	am No 13, 2013; No 13, 2021
	rep No 32, 2021
s 122	rep No 32, 2021
s 123	rep No 32, 2021
s 124	rep No 32, 2021
s 125	am No 78, 2020; No 101, 2020
	rep No 32, 2021

Authorised Version C2022C00004 registered 04/01/2022

Endnote 4—Amendment history

Provision affected	How affected
s 126	am No 13, 2013; No 78, 2020; No 13, 2021
	rep No 32, 2021
Division 4 heading	rep No 32, 2021
Division 8	
Division 8 heading	ad No 32, 2021
s 127	am No 13, 2013; No 78, 2020; No 101, 2020; No 13, 2021
	rs No 32, 2021
	am No 32, 2021
s 127A	ad No 78, 2020
	am No 32, 2021
s 128	am No 13, 2013; No 78, 2020; No 13, 2021
	rep No 32, 2021
s 129	am No 13, 2013; No 13, 2021
	rep No 32, 2021
s 130	am No 13, 2013; No 78, 2020; No 13, 2021
	rep No 32, 2021
s 131	am No 13, 2013; No 13, 2021
	rep No 32, 2021
Division 5	ad No 101, 2020
	rep No 32, 2021
s 131A	ad No 101, 2020
	rep No 32, 2021
s 131B	ad No 101, 2020
	rep No 32, 2021
s 131C	ad No 101, 2020
	rep No 32, 2021
s 131D	ad No 101, 2020
	rep No 32, 2021
s 131E	ad No 101, 2020
	rep No 32, 2021
s 131F	ad No 101, 2020

Authorised Version C2022C00004 registered 04/01/2022

Endnote 4—Amendment history

Provision affected	How affected
	rep No 32, 2021
Part 8	
Division 1	
s 132	am No 62, 2014
s 133	am No 130, 2014
s 134	am No 78, 2020
s 135	am No 171, 2015
s 136	am No 130, 2014; No 126, 2015
Division 2	
s 138	am No 130, 2014; No 98, 2019
s 141	am No 130, 2014
s 145	am No 130, 2014
s 146	am No 130, 2014
s. 147	am. No. 136, 2012; No 98, 2019
Division 3	
Subdivision A	
Subdivision A heading	rs No 62, 2014
s 149	am No 130, 2014; No 98, 2019
Division 4	
Subdivision A	
Subdivision A heading	ad No 130, 2014
s 153	am No 130, 2014
Subdivision B	
Subdivision B	ad No 130, 2014
s 154A	ad No 130, 2014
s 154B	ad No 130, 2014
s 154C	ad No 130, 2014
Subdivision C	
Subdivision C	ad No 130, 2014
s 154D	ad No 130, 2014
s 154E	ad No 130, 2014

Authorised Version C2022C00004 registered 04/01/2022

Provision affected	How affected
s 154F	ad No 130, 2014
s 154G	ad No 130, 2014
s 154H	ad No 130, 2014
s 154J	ad No 130, 2014
s 154K	ad No 130, 2014
Subdivision D	
Subdivision D	ad No 130, 2014
s 154L	ad No 130, 2014
	am No 101, 2020; No 32, 2021
Subdivision E	
Subdivision E heading	ad No 130, 2014
s 155	am No 130, 2014; No 126, 2015
Subdivision F	
Subdivision F	ad No 130, 2014
s 155A	ad No 130, 2014
	am No 92, 2017
Division 6	
s 158	am No 130, 2014
Division 7	
Subdivision A heading	rs No 62, 2014
	rep No 160, 2015
s 159	rep No 62, 2014
s 160	rs No 62, 2014
	am No 160, 2015
s 161	am No 62, 2014; No 160, 2015
Subdivision B	rep No 160, 2015
s 162	am No 62, 2014
	rep No 160, 2015
s 163	am No 62, 2014
	rep No 160, 2015
s 164	am No 62, 2014

Authorised Version C2022C00004 registered 04/01/2022

Endnote 4—Amendment history

Provision affected	How affected
	rep No 160, 2015
Division 8	rep No 62, 2014
s 165	rep No 62, 2014
Part 9	
Division 1	
s 167	am No 98, 2019
s 168	am No 98, 2019
Division 2	
s 170	am No 98, 2019
s 179	am No 136, 2012
Part 10	
Division 1	
Subdivision A	
Subdivision A heading	ad No 101, 2020
s 183	am No 130, 2014; No 101, 2020; No 14, 2021
Subdivision B	
Subdivision B	ad No 101, 2020
s 187A	ad No 101, 2020
s 187B	ad No 101, 2020
s 187C	ad No 101, 2020
s 187D	ad No 101, 2020
s 187E	ad No 101, 2020
Division 2	
Division 2 heading	rs No 78, 2020
Subdivision A	
s 188	am No 171, 2015; No 98, 2019; No 78, 2020
Subdivision B	
s 189	am No 9, 2012
s 192	rs No 98, 2019
	am No 101, 2020
s 195A	ad No 98, 2019

Authorised Version C2022C00004 registered 04/01/2022

Provision affected	How affected
s 195B	ad No 98, 2019
s 197	am No 98, 2019; No 78, 2020
Subdivision C	
Subdivision C	ad No 14, 2021
s 197AA	ad No 14, 2021
s 197AB	ad No 14, 2021
s 197AC	ad No 14, 2021
s 197AD	ad No 14, 2021
s 197AE	ad No 14, 2021
Division 3	
Division 3	ad No 78, 2020
s 197A	ad No 78, 2020
s 197B	ad No 78, 2020
s 197C	ad No 78, 2020
s 197D	ad No 78, 2020
Part 12	
s 199	am No 130, 2014; No 83, 2017
s 200	rep No 130, 2014
s 201	am No 130, 2014
s 201A	ad No 101, 2020
	am No 32, 2021
s 201B	ad No 101, 2020
s 202	am No 130, 2014
s 203A	ad No 101, 2020
s 204	am No 80, 2021
s 204A	ad No 14, 2021

Authorised Version C2022C00004 registered 04/01/2022