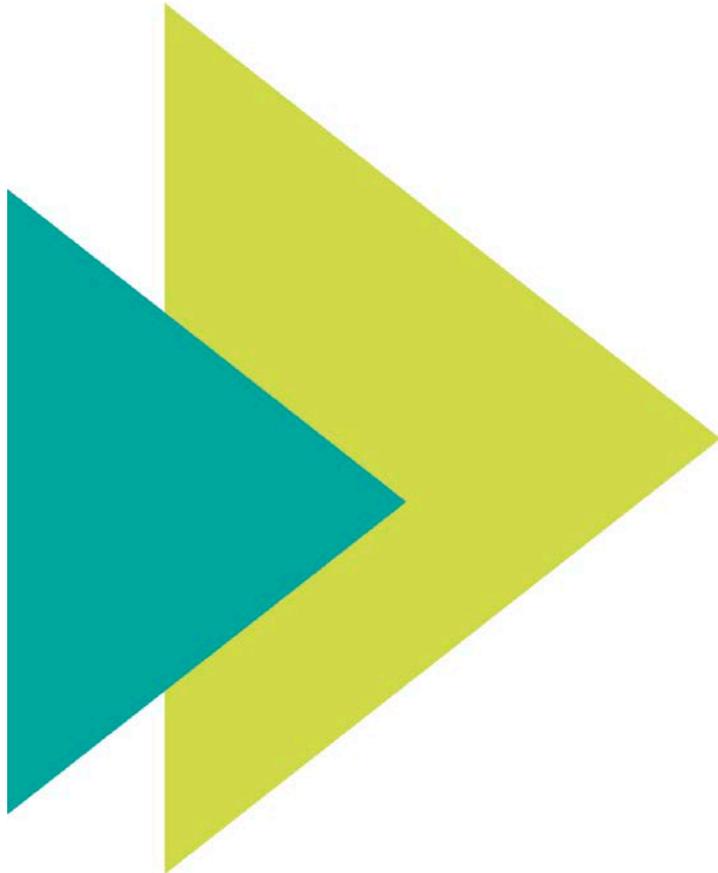




**Australian Government**  
**Tertiary Education Quality and Standards Agency**



**Information  
Guidelines –  
Consultation paper**  
**March 2013**

## 1. Purpose

There is a broad public interest in TEQSA being able to share information with other government authorities about compliance issues and other matters relevant to the functions of those authorities. However TEQSA is subject to statutory obligations of confidentiality in relation to 'higher education information', which is defined in section 5 of the Tertiary Education Quality and Standards Agency Act (the Act) as information relating to a regulated entity which is obtained by TEQSA, relates to TEQSA's functions and is not personal information within the meaning of the *Privacy Act 1988*.

Subdivision B of Division 2 of Part 10 of the Act sets out various exceptions to the restrictions on TEQSA disclosing higher education information. Section 204 of the Act states that TEQSA may, by legislative instrument, make 'Information Guidelines' to provide for the sharing of higher education information under section 189 of the Act, which deals with disclosures about breaches of regulatory requirements. Section 194 of the Act also allows TEQSA to share information with a government authority specified in the Information Guidelines where the information is necessary to enable or assist the authority to perform or exercise any of the authority's functions or powers.

This paper outlines the bodies TEQSA proposes to specify in the Information Guidelines and also the type of higher education information that it proposes to share with bodies specified in the Guidelines. This paper has been developed as a basis for consultation with government agencies, regulators, professional bodies, peak bodies and other key stakeholders in the higher education sector to ensure that comments and feedback can inform TEQSA's decisions on what bodies it shares information with – and the type of higher education information that it may share. This paper does not address the sharing of personal information within the meaning of the *Privacy Act 1988* as issues associated with disclosures of that information will be addressed outside the context of the framework in the TEQSA Act.

## 2. Consultation timeframe

The paper is made available on TEQSA's website.

Responses to the questions posed in this paper, and other relevant feedback, is sought by 5pm on 28 March 2013.

Responses should be sent to:

Michael Carpenter  
Director, Regulation and Review  
E: [Consultation@teqsa.gov.au](mailto:Consultation@teqsa.gov.au)  
T: 03 8306 2438

TEQSA will consider the responses by 25 April 2013.

Please contact the Consultation Mailbox (above) with any queries about this consultation paper or clarification of the questions it poses.

### **3. Criteria for including bodies in the Information Guidelines**

External bodies (aside from higher education providers) with whom TEQSA may wish to share information fall into four distinct categories:

- A: Statutory regulators
- B: Accrediting bodies established under statute
- C: Professional bodies with no formal statutory basis
- D: Government departments and agencies

Under section 189 of the TEQSA Act bodies under Categories A and B may be included in the Information Guidelines. Subject to the provisions of the TEQSA Act, TEQSA proposes that for categories A and B those bodies that should be included in the Information Guidelines should be those that:

- a) interact directly with higher education providers through the accreditation or quality assurance of higher education courses *or*
- b) bodies that accept the accreditation of the bodies mentioned in a) as meeting their own requirements for professional registration

Under section 194 of the Act bodies that fall under category D – Government departments and agencies – may be included in the Information Guidelines. It is recommended that those departments or agencies that are included are those that have a direct interest in the regulation of higher education, the business activities of higher education providers or in the welfare of students (both national and international) studying, or planning to study at a higher education provider in Australia.

The bodies that TEQSA considers meet these criteria are set down in Schedule A of the Information Guidelines. See Section 6 of this paper for details of how TEQSA will share information with bodies not covered by the Information Guidelines, including those that fall under Category C.

#### **Consultation questions 1 and 2:**

1. Is the list of bodies included in Schedule A of the Information Guidelines appropriate?
2. Are there any other bodies, that satisfy the requirements for inclusion in the Information Guidelines under the Act, that should be included? If so, please provide a rationale for their inclusion.

### **4. Information that TEQSA may share with bodies specified in the Information Guidelines**

Higher education information is defined in section 5 of the Act as information relating to a regulated entity that:

- a. is obtained by TEQSA
- b. relates to TEQSA's functions; and
- c. is not personal information (within the meaning of the *Privacy Act 1988*).

Subsection 189 (2) of the TEQSA Act sets out the kinds of higher education information that TEQSA may share with bodies specified in the Information Guidelines about breaches of regulatory requirements:

- a) information that relates to an offence, or possible offence against the TEQSA Act, the TEQSA 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. the TEQSA Act; or
  - ii. the *Education Services for Overseas Students Act 2000*; or
  - iii. the *Higher Education Support Act 2003*; or
  - iv. legislative instruments made under any of those Acts

The Information Guidelines will also set out the Commonwealth authorities and the state or territory authorities that TEQSA may disclose higher education information to under section 194 of the Act, if 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.

Examples of the kinds of higher education information TEQSA proposes to share with bodies specified in the Information Guidelines include:

- Information about the basis for regulatory decisions
- Information necessary to undertake cooperation with regulatory or accrediting bodies in relation to TEQSA's regulatory processes about particular regulated entities.
- Information that enables or assists regulating or accrediting bodies for higher education courses, or professional bodies established under statute, to perform their functions in relation to particular regulated entities.
- Information that deals with potential contraventions or offences under legislation or legislative instruments administered by other agencies.

### **Consultation questions 3 and 4:**

3. Is the type of information that TEQSA proposes to share under the provisions of the Information Guidelines appropriate? If not, please explain why not?
4. Is there any other type of higher education information that you believe TEQSA should be sharing with bodies specified in Schedule A of the Information Guidelines?

## **5. Arrangements for the sharing of information**

The Information Guidelines will not specify the arrangements that TEQSA may enter into with individual bodies for the sharing of information. This will be determined on a case by case basis, in agreement with the body in question, but may include a Memorandum of Understanding or the exchange of letters.

## **6. Bodies not included in the Information Guidelines**

A large number of professional, and other, bodies with whom TEQSA may consider sharing information have not been included in Schedule A of the Information Guidelines as they do not satisfy the requirements for inclusion set down in sections 189 or 194 of the TEQSA Act.

Section 193 of the Act covers disclosure of information to professional bodies. A number of bodies not included in the Information Guidelines, including those that fall under Category C set out in Section 3 of this paper, may be covered under this Section of the Act.

The bodies covered by section 193 of the Act will be subject to separate arrangements which are outside the scope of this consultation.

### **Consultation question 5:**

5. Are there any other comments that you would like to make about TEQSA's proposed Information Guidelines?

Thank you for taking the time to provide feedback to TEQSA on this important matter. Your comments will be used to inform TEQSA's decisions about the content of the Information Guidelines. A summary of the comments received through the consultation process will be published on the TEQSA website as part of the consultative process.

February 2013

## Appendix A

### Relevant Provisions under the TEQSA Act

#### Section 5 - Definitions

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).

#### Section 188 - Offence of unauthorised disclosure or use of information

(1) A person commits an offence if:

- (a) the person obtains higher education information because he or she is, or has been, any of the following (an entrusted person):
  - (i) a Commissioner;
  - (ii) a Panel member;
  - (iii) the Chief Executive Officer;
  - (iv) a member of the staff of TEQSA;
  - (v) a person performing a service for TEQSA; 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 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.

#### Section 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 Fund Manager, or the operator of an applicable tuition assurance scheme, 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
  - (iv) legislative instruments made under any of those Acts

**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.

**Section 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.