



Compliance and enforcement policy

Purpose

TEQSA regulates all registered providers that offer higher education qualifications in or from Australia. TEQSA's regulatory functions and powers are set out in the TEQSA's legislative framework that includes:

- [Tertiary Education Quality and Standards Agency Act 2011](#) (TEQSA Act)
- [Regulatory Powers \(Standard Provisions\) Act 2014](#) (Regulatory Powers Act)
- [Education Services for Overseas Students Act 2000](#) (ESOS Act)
- [Higher Education Standards Framework \(Threshold Standards\) 2021](#) (Threshold Standards)
- [National Code of Practice for Providers of Education and Training to Overseas Students 2018](#) (National Code)

TEQSA also regulates some standalone ELICOS providers.

TEQSA also has powers under the TEQSA Act to take action against other types of regulated entities, including unregistered entities that offer or confer higher education awards when not registered to do so, and entities that advertise or offer contract cheating services.

These functions and powers enable TEQSA to undertake compliance and enforcement action to protect student interests and the quality, integrity and reputation of Australia's higher education sector.

This policy sets out:

- the scope of TEQSA's compliance function and enforcement powers
- the principles that guide TEQSA's compliance and enforcement activities
- TEQSA's general approach to identifying and addressing non-compliance, including how TEQSA may use its powers.

This policy sits within TEQSA's Compliance Monitoring Framework and complements [TEQSA's approach to compliance and enforcement](#).

Scope

This policy applies to all compliance and enforcement activities undertaken in response to suspected or identified non-compliance.



Principles

TEQSA has discretion in how it exercises its range of powers to address non-compliance. TEQSA cannot investigate every regulatory concern that is brought to its attention and it uses its discretion to prioritise and allocate resources to address the greatest risks.

Compliance and enforcement activities are prioritised for action based on TEQSA's compliance priorities set by the TEQSA Commission, with resources targeted toward specific groups or behaviours that pose the greatest risk of harm to students and the quality, integrity and reputation of the higher education sector.

TEQSA is guided by three basic principles set out in the TEQSA Act when exercising our compliance function or using our enforcement powers: regulatory necessity, reflecting risk and proportionate regulation. TEQSA's [Overview of Compliance Monitoring Framework](#) sets out these and other overarching principles that guide TEQSA's compliance and enforcement activities.

TEQSA acts swiftly and firmly where there is significant risk to students or the higher education sector, or where there is evidence of serious mismanagement, or a serious or deliberate breach of TEQSA's legislative framework.

In determining the most appropriate compliance and enforcement action to take, TEQSA considers:

- the severity and scale of the potential or actual harm
- the likelihood of harm occurring or reoccurring
- the regulated entity's regulatory history as set in section 15(1a) of the TEQSA Act
- the ability of the entity to adequately mitigate the specific risks
- whether the burden associated with a particular response is greater than reasonably necessary
- the culpability of those offending, such as whether it was accidental or wilful
- the wider relevance of the event, such as serious public concern and broad sector relevance.

Identifying and assessing non-compliance

TEQSA becomes aware of potential non-compliance through a range of sources including:

- voluntary disclosure by the regulated entity
- cyclical assessments for renewal of TEQSA and CRICOS registration or course accreditation
- the annual provider risk assessment process
- sector-wide thematic analyses
- monitoring of compliance with conditions imposed on TEQSA or CRICOS registration or course accreditation
- intelligence gained from media monitoring or from other sources, including other government departments



- the investigation of complaints by students, the community or other providers.

All information in relation to potential non-compliance is subject to a preliminary risk analysis to prioritise the concern and determine next steps. As part of this preliminary assessment, TEQSA may make further enquiries to ensure it has enough information to understand and assess the suspected non-compliance.

Compliance assessments and investigations

If a concern is assessed as warranting further consideration, TEQSA will commence an assessment of compliance. This is a detailed examination of a regulated entity's compliance with the TEQSA Act, the ESOS Act or the relevant standards¹.

TEQSA takes care only to commence compliance assessments where there is a reasonable basis to a concern about non-compliance with the Threshold Standards.

Where an assessment of a possible contravention of the TEQSA Act or ESOS Act may lead to court proceedings, this may take the form of an investigation. An investigation is undertaken in accordance with the [Australian Government Investigations Standards](#) for the purpose of gathering admissible evidence to support court proceedings.

TEQSA will notify a regulated entity that a compliance assessment or investigation has commenced and will describe the nature of the concerns and the scope of the assessment.

Evidence to support a compliance assessment or investigation may be obtained through a number of mechanisms including, but not limited, to:

- **Statutory and non-statutory requests for information.** TEQSA may seek information voluntarily or may rely on statutory powers to require the production of information.
- **Provider visits.** These are conducted by consent and with advance notice. They serve a range of functions, including engagement, observation, information gathering and inspection.
- **Searches of premises.** TEQSA may need to gain access to premises, either with the consent of the occupier or under a warrant. Where access to premises is necessary, TEQSA will primarily seek to enter with consent where necessary. A warrant will only be considered in limited circumstances, for example, where a regulated entity has demonstrated serious, deliberate or ongoing non-compliance.

¹ Note that s59 of the TEQSA Act specifically refers to reviews or examinations of compliance with the Threshold Standards.



- **Monitoring and investigation powers.** TEQSA can enter premises either with the consent of the occupier or with a warrant. Whilst on the premises TEQSA, in using its monitoring or investigation powers, and depending whether it enters the premises with the consent of the occupier or a warrant, TEQSA may search the premises or anything on the premises, examine or observe any activities conducted on the premises, inspect and / or make copies of documents on the premises, take photographs of the premises or things on the premises and seize evidential material.

The TEQSA and ESOS Acts, supported by the enforcement framework provided in the Regulatory Powers Act, detail how statutory powers are to be exercised, including the obligations of authorised officers, and the rights and responsibilities of occupiers.

Compliance assessments and investigations may:

- inform an application-based assessment where there is a concurrent or impending assessment
- result in enforcement action being undertaken, for example, where non-compliance has been established
- conclude with no further action being taken, for example, where TEQSA is satisfied that a provider is meeting the Standards identified as part of a compliance assessment.

When TEQSA has completed a compliance assessment or investigation, TEQSA will notify the regulated entity of the outcome of that assessment. TEQSA endeavours to clearly explain its concerns, the actions required or decisions taken, and the reasons for these.

Responding to non-compliance

TEQSA will calibrate its treatment of compliance and enforcement matters on an escalation basis, where minor issues are dealt with using less serious administrative resolutions and serious matters or non-compliances are dealt with using more serious enforcement powers.

Tools available under the TEQSA, ESOS and Regulatory Powers Acts

TEQSA has a range of compliance and enforcement tools to help achieve compliance, build capability for self-assurance, and address non-compliance.

Informal resolution

In some matters, TEQSA may decide not to pursue further action but may instead provide regulatory guidance to promote self-assurance, build capability and prevent broader non-compliance. This may be appropriate in instances of minor and/or technical non-compliance, or where the regulated entity has promptly corrected a possible contravention and implemented measures to prevent recurrence. Guidance may include the provision of information or tools to support regulated entities to gain a better understanding of their obligations, and to encourage rectification and future compliance.



Warning letter

TEQSA may issue a warning letter where it reasonably believes a regulated entity has not complied with TEQSA's legislative framework. A warning letter is not a formal enforcement power under the TEQSA Act. A warning letter places the regulated entity on notice about TEQSA's concerns and the possibility of future action should the conduct continue or re-emerge. It provides the entity with the opportunity to address compliance issues itself. This may be appropriate where TEQSA has confidence that the entity is willing and able to address the concerns and the risks to students and the quality and reputation of the sector are low.

Voluntary undertaking

A voluntary undertaking is an action plan that empowers regulated providers to take greater responsibility for their own regulatory compliance in developing and agreeing upon tailored solutions to address concerns. A voluntary undertaking does not involve the use of formal enforcement power under the TEQSA Act. It involves an agreement developed in partnership between a regulated provider and TEQSA. In a voluntary undertaking, the regulated entity commits to take specific action, or cease specific conduct, to address identified non-compliances within a specified timeframe.

Conditions

Under section 32 and section 53 of the TEQSA Act and section 10B and section 83 of the ESOS Act, TEQSA may impose conditions on a regulated entity's registration or accreditation to mitigate a material risk associated with its operations. A condition can direct a regulated entity to act or not to do a particular act to address non-compliance or to prevent non-compliance.

Conditions may be imposed:

- where the nature and circumstances of the non-compliance presents a moderate to significant risk
- where TEQSA is not confident that a provider is meeting its obligations or managing risks effectively
- when lower level informal responses have not been successful
- where targeted action is needed to address the non-compliance.

Common conditions include requirements to not accept enrolments beyond a set maximum cap and to provide TEQSA with specific information on a determined regular basis.

Conditions are imposed for specific periods of time. Regulated entities can request TEQSA remove or vary conditions prior to the expiration pursuant to the relevant statutory regime (TEQSA Act or ESOS Act) under which the conditions were imposed.



Enforceable undertakings

An enforceable undertaking is a written undertaking made by a regulated entity. An enforceable undertaking is accepted and enforced pursuant to Part 6 of the Regulatory Powers Act. Under an enforceable undertaking, a regulated entity commits to take particular action or refrain from taking particular action to ensure it meets relevant legislative obligations.

TEQSA may seek enforcement of an enforceable undertaking in a court if an entity has breached or failed to comply with an enforceable undertaking.

Injunctions

Pursuant to Part 7 of the Regulatory Powers Act, TEQSA can apply to a court for an injunction restraining a person (including a regulated entity) from engaging in conduct that contravenes a provision of the TEQSA Act. TEQSA can also apply for an injunction requiring a person to do something in relation to compliance with the TEQSA Act.

Generally, injunctions will only be sought where the conduct, or proposed conduct, that contravenes the TEQSA Act is of a serious and persistent nature, or where urgent action is required such as where there is an immediate or direct risk to students' welfare. An injunction may also be sought where less serious enforcement measures have been ineffective.

Shortened registration or accreditation period

TEQSA may shorten the registration or accreditation of a regulated entity where the provider has failed to meet the Threshold Standards or breached a condition imposed on its registration or course accreditation.

Cancellation of registration

TEQSA can cancel a provider's registration if a provider has failed to meet Threshold Standards or breached a condition of its registration. Cancellation of a registered provider's registration is a serious action and will only be exercised in the most serious cases.

TEQSA is required to give the regulated entity and relevant Ministers written notice of, and a reasonable opportunity to respond to, the reasons for proposing cancellation.

Civil and criminal sanctions

Civil and criminal sanctions are one of the most serious enforcement actions TEQSA might undertake and may be considered in cases involving deliberate and/or repeated non-compliance.

TEQSA can apply for orders imposing pecuniary penalties under Part 4 of the Regulatory Powers Act where a regulated entity has contravened a civil penalty provision of the TEQSA Act. The TEQSA and ESOS Acts also have a number of offence provisions (including offences covering the same conduct as most civil penalty provisions in the TEQSA Act).



Infringement notice

TEQSA may issue an infringement notice under Part 5 of the Regulatory Powers Act where TEQSA believes on reasonable grounds that a person has contravened a civil penalty provision of the TEQSA Act or certain provisions of the ESOS Act (see s 132 of the ESOS Act).

Tools available under the ESOS Act only

Suspension of registration under the ESOS Act

TEQSA may suspend the registration of a CRICOS provider for a broad range of reasons specified under section 83 of the ESOS Act, including non-compliance with the ESOS Act and National Code.

Suspension of registration will only be exercised where there is evidence of non-compliance and urgent action is required to address or prevent the non-compliance.

Publication of compliance and enforcement decisions

TEQSA publishes compliance and enforcement decisions made under the TEQSA Act related to regulated entities on the [National Register](#). TEQSA also publishes some decisions, such as the decision to enter into a Voluntary Undertaking, on the TEQSA website. Further information about TEQSA's approach to public reporting, including information about the content and timing of publication of reports is [available on TEQSA's website](#).

Monitoring and evaluating TEQSA's compliance and enforcement approach

TEQSA's approach to improving its regulatory functions is informed by the Australian Government's [Regulator Performance Guide](#), which provides a common set of performance measures for increased accountability and greater transparency in the way regulators perform their role. Under the Framework, all regulators are required to undertake annual self-assessments of their performance against their agreed evidence metrics. The results of self-assessments are validated by stakeholder consultation mechanisms and certified by TEQSA's Accountable Authority.

Internal and external review

Some decisions made by TEQSA are reviewable. TEQSA's procedures for internal and external review are on the [TEQSA website](#). When communicating a compliance decision, TEQSA will outline the availability of internal or external review rights.



Complaints about TEQSA's compliance and enforcement actions

Complaint about TEQSA's actions can be made in writing via TEQSA's complaints handling process. Information about how to make a complaint is available on the [TEQSA website](#).

Contact

Any enquiries about this policy can be directed to: compliance@teqsa.gov.au

Document information

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