



Australian Government

Tertiary Education Quality and Standards Agency

TEQSA compliance report 2021

March 2022



TEQSA

TEQSA Compliance Report 2021 – March 2022

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Foreword



I am pleased to present TEQSA's 2021 compliance report. This report provides a summary of our compliance activities and showcases the many ways in which we safeguarded the interest of students and enhanced and protected the reputation of the higher education system in 2021.

In 2021 the Commission, who are responsible for setting the agency's regulatory approach and monitoring risks in the sector, approved our Compliance Monitoring Framework. This framework sets out overarching principles and key elements that support the agency's regulatory oversight of higher education providers. TEQSA's compliance activities during 2021 were underpinned

by these principles, including promoting voluntary compliance and building the capability of providers to better understand, and therefore meet, their obligations.

We released a new *Compliance and enforcement policy* that sets out TEQSA's compliance function and enforcement powers and our risk-reflective approach to addressing non-compliance. We also updated the *Material change notification policy* and guidance to assist providers to make their own judgement on the types of changes that invoke the obligation to report to TEQSA.

We made progress in testing new legislation to address the risks posed by commercial academic cheating services to the integrity of Australian higher education. We successfully obtained a Federal Court injunction requiring 51 internet service providers to block access to two identified contract cheating websites. The sector has been highly engaged in our work to address contract cheating services, with an increase of 82 per cent in referrals to TEQSA in 2021.

During 2021, we recorded a total of 289 concerns about higher education providers. Of these, 30 resulted in compliance assessments to assess providers' compliance with their obligations under the *Higher Education Standards Framework (Threshold Standards) 2021* (HES Framework). We also completed 174 assessments of providers' compliance with conditions imposed on their registration or course accreditation, revoked or removed 76 conditions and varied 3 conditions.

In this report, we explain our work with the Fair Work Ombudsman on underpayment of casual academic staff. We also share two case studies drawn from compliance matters in 2021 to highlight important lessons for the sector. One case study focuses on identifying students at academic risk of not progressing in their course and the other focuses on professional accreditation.

In 2022, we will continue to support the sector as it adjusts to the changed environment arising from the COVID-19 pandemic. We will work with the sector to revise our approach to address sector risks. We will pursue enforcement powers under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) that allow us to prosecute suppliers of contract cheating services. We will also finalise our first annual compliance program focussing on management of offshore third party arrangements, particularly in the COVID-19 context.

Alistair Maclean

Chief Executive Officer
TEQSA

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Compliance priorities

Each year, TEQSA sets its compliance priorities for the year ahead, to ensure we focus our attention on those areas that reflect the greatest risks to students and the reputation of the higher education sector.

The compliance priorities are an important element of our Compliance Monitoring Framework as they underpin our triage process for concerns and complaints and guide our compliance work. While we have a defined set of annual compliance priorities, TEQSA retains discretion to respond to risks that fall outside the scope of these priorities.

Our compliance priorities for 2022 are:



Ensuring academic quality

Issues affecting academic quality, with a focus on:

- systemic deterioration or failure of academic quality (including quality of online delivery)
- admission of students that are ill-equipped to succeed
- failure to obtain, or loss of, professional accreditation
- third party mismanagement (onshore and offshore)



Upholding wellbeing and safety

Issues relating to wellbeing and safety of students, including those who are vulnerable or under 18, in particular systemic issues with:

- failure to adequately prevent and address sexual assault and sexual harassment
- failure to provide adequate mental health support for students
- failure to address barriers for students with a disability



Protecting sector integrity

Issues that put the integrity of the sector at risk, with a focus on fraud and criminality, including:

- awarding courses that have not been completed
- representing to offer higher education awards when unregistered
- facilitating non-genuine students
- unethical conduct of overseas agents
- unethical competitive behaviours
- contract cheating services



Maintaining information security

Issues with information security, including those related to cyber security, inadequate system protection, research data, technology development and use, and intellectual property.



Monitoring financial standing

Issues that affect a provider's financial sustainability and viability, with a particular focus on insolvency, significant financial mismanagement, and lack of resilience to shifts in revenue sources.

Snapshot of compliance activities from 1 January to 31 December 2021



43 ▲ compliance assessments initiated



36 – cease and desist letters to contract cheating websites



54 ▲ compliance assessments finalised



9 ▲ warning letters to unregistered entities



1 ▲ investigations finalised



4 – publication of unregistered entities



174 ▲ condition assessments



1 ▲ rejection of CRICOS registration



3 ▲ conditions varied



1 ▲ rejection of course accreditation



76 ▲ conditions revoked or removed



47 ▲ conditions imposed*



289 ▼ concerns received



19 ▲** voluntary undertakings



458 ▼ material change notifications

▲ ▼ The arrows above indicate an increase/decrease from the totals recorded in 2020.

* This includes 45 conditions imposed as a result of TEQSA registration or course accreditation assessments, one imposed on TEQSA registration as a result of a provider category change and one imposed on course accreditation as a result of a material change notification.

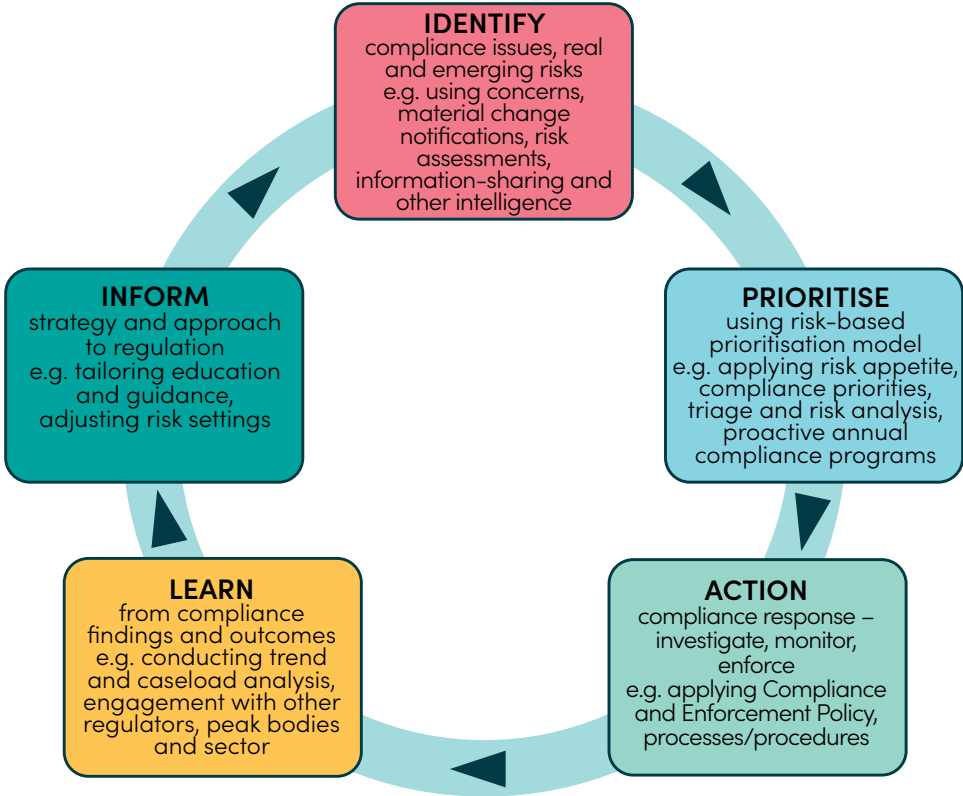
** 19 voluntary undertakings across 18 providers.

Overview of Compliance Monitoring Framework

In August 2021, we published an overview of our [Compliance Monitoring Framework](#). The framework sets out the overarching principles and key elements that support our regulatory oversight of higher education providers' compliance with their obligations under TEQSA's remit.

The framework draws together the various interconnected and complementary activities we undertake to monitor compliance and address risks.

Figure 1: Key elements of TEQSA's compliance monitoring cycle



The framework ensures our compliance activities are coordinated and prioritised according to transparent and established processes and procedures and has both proactive and forward-looking capability, through annual compliance planning and programs, as well as addressing current risks.

A key element of the Compliance Monitoring Framework is the [Compliance and enforcement policy](#). The policy guides how we undertake our compliance and investigation activities and the tools we use.

Through our comprehensive compliance monitoring framework, we aim to provide the community with confidence that risks in the sector are being effectively managed. At the same time, we aim to build sector self-assurance by increasing understanding of obligations through education and guidance.

We review the framework annually, or when there are significant changes to the sector, to ensure it reflects changing regulatory risks and remains effective.



In focus – Working with Fair Work Ombudsman on underpayment of casual academic staff

Throughout 2021, TEQSA continued to work closely with the Fair Work Ombudsman (FWO) on the issue of large-scale underpayment of staff by a number of Australian universities.

While the FWO is the lead agency responsible for investigating breaches of the *Fair Work Act 2009*, this is a key issue for TEQSA. In particular, the historic and widespread underpayment of casual academic staff by many universities goes to the reputation of the sector, and of individual providers, in terms of upholding the quality of teaching, learning and the student experience.

In respect to TEQSA's remit, these practices put providers at risk of non-compliance with the HES Framework, principally:

- **Standard 6.2.1a** which requires governing bodies ensure that the entity '*comply with the requirements of the legislation under which the provider is established, recognised or incorporated, any other legislative requirements*' (for instance, national workplace laws)
- **Standard 6.2.1e** which requires governing bodies ensure that risks to higher education operations have been identified and material risks are being managed and mitigated effectively
- **Standard 3.2.5** which requires that teaching staff are accessible to students seeking individual assistance with their studies, at a level consistent with the learning needs of the student cohort
- **Section 5.2** which requires providers take action to mitigate foreseeable risks to academic and research integrity.

Since our first engagement with providers in relation to underpayments in August 2020, we have engaged closely with 15 universities who were either named in the media, self-reported to the FWO, or provided information to TEQSA as part of the material change notification obligation. The purpose of our engagement was to understand the extent of the issue and identify any underlying issues, and what the relevant universities were doing to address the non-compliance and ensure ongoing compliance.

We observed that the response to the underpayment issue has been mixed.



Some universities have been proactive in addressing the issue, including engaging external professionals to undertake a comprehensive review of payroll practices and provide advice on the interpretation and application of relevant enterprise agreements and legislation, as well as implementing contemporaneous record-keeping systems.

On the other hand, a number of universities either do not appear to recognise the seriousness of the issue or are not responding in the way TEQSA would expect of a well governed and well managed quality higher education provider. For example, some providers have undertaken only limited, internal reviews of identified problem areas.

In responding to this issue, TEQSA expects to see that providers:

- have undertaken a comprehensive review of payroll, time and record-keeping practices
- have clear steps in place to mitigate and manage identified risks
- have rectified any instances of underpayments and demonstrated how underlying issues will be addressed
- are embedding ongoing monitoring to ensure continued compliance with workplace laws and reporting to the audit and risk committee
- are cooperating fully with the FWO in its investigations.

We also expect providers to notify TEQSA under their material change obligations if they identify material issues through their review process.

TEQSA and the FWO shared these observations with provider peak body representatives in a [webinar](#) in September 2021. This was followed by a plenary session with Universities Australia.

We will continue to work closely with the FWO in 2022, meeting bi-monthly and sharing information, where the law permits, to ensure a coordinated regulatory response.

Contract cheating

Under the TEQSA Act, it is an offence to provide or advertise academic cheating services relating to the delivery of higher education in Australia. There are associated civil and criminal penalties and TEQSA may also apply to the Federal Court for an injunction to block access to websites that advertise or provide these services.


In 2021, we received 137 concerns about commercial academic cheating services (contract cheating). Most concerns about cheating services were referred to TEQSA by higher education providers. This is a significant increase on the number received in 2020 (23), and reflects TEQSA's increased engagement with the sector about the integrity risk posed by commercial academic cheating services following the establishment of the Higher Education Integrity Unit in 2021 and the commencement of new laws enabling TEQSA to investigate commercial academic cheating services in late 2020.

Our activities in 2021

Injunction to block access to websites advertising academic cheating services

In late 2020, we identified that a website 'Assignmenthelp4you' was advertising academic cheating services to Australian students and was targeting its advertisement towards students at a number of specific Australian higher education providers. On this basis, we concluded that the website was contravening section 114B of the TEQSA Act.

In February 2021, we applied to the Federal Court of Australia for an injunction requiring internet service providers (ISPs) to take steps to block access to the website. We amended the application in July 2021 to include a second iteration of the same website, titled 'Assignmenthelp2u'.

 **The application was successful in October 2021, with Justice Abraham finding “there is an obvious public interest in granting the injunction.”**

In granting the injunction, the Court ordered that specified ISPs must disable access to the websites within 15 business days of the Orders. Additionally, that the specified ISPs must redirect any users who attempt to access the site to a webpage hosted by TEQSA, explaining that the website has been blocked as it was in contravention of the relevant provisions of the TEQSA Act. These Orders are in place for 5 years, and TEQSA may request an extension to the Orders to any additional web addresses found to host the same website.

Issuing cease and desist letters

In 2021, we undertook a project targeting high-traffic websites advertising academic cheating services. We identified approximately 300 websites that appeared to be targeting Australian students. We analysed web traffic data and prioritised the most visited websites. Thirty-six cease and desist letters were issued to websites where contraventions were identified, requesting they cease advertising academic cheating services to Australian students, and provided information on actions we may take if they continue to contravene the TEQSA Act. We monitored the responses of these websites to determine where further action is necessary.

Unregistered entities

Under the TEQSA Act, it is an offence for a regulated entity to offer, or advertise, a regulated higher education award if not registered with TEQSA. It is also an offence under the TEQSA Act to falsely advertise that an entity provides a course leading to a regulated higher education award.

There is a serious risk to students who unwittingly undertake courses offered by unregistered entities and expect to receive a recognised higher education award upon completion.

Concerns about unregistered entities

In 2021, we received 9 concerns about unregistered entities. Concerns were raised through a number of sources, including students, registered higher education providers and other government agencies.

There are a range of regulatory responses we may take to protect student interests and the reputation of the sector.

Publication on website

In 2021, TEQSA began publishing the details of unregistered entities on TEQSA's website. This makes the registration status of these entities clear and transparent and enables current and prospective students to make well-informed decisions when selecting a course of study.

The webpage provides details of the unregistered entities' business names, websites, courses advertised and the date the details were published, together with information that the entities are not registered with TEQSA to offer higher education awards.

Our activities in 2021

In 2021, we issued warning letters to 9 unregistered entities. The warning letters outlined our concerns; advised we may publish their details, and requested the entities take action.

This led to:

- 3 unregistered entities taking appropriate remedial action
- the [publication of 4 unregistered entities](#) on TEQSA's website.

Engagement with the 2 remaining entities is ongoing.

We also referred 7 matters to another government agency (for example ASQA or DESE) and closed 3 matters with no further action as we determined these matters were outside our jurisdiction (for example, the entity was not delivering higher education or not based in Australia).

Concerns about providers

We refer to the complaints and allegations of non-compliance we receive about higher education providers as *concerns*. Concerns are an important source of intelligence to identify risks of non-compliance with a provider's obligations under TEQSA's legislative framework.

Concerns may come from students, staff, professional accreditation bodies, government departments and agencies, or the general community. We also monitor media reporting to identify potential compliance issues, and record these as concerns.

We apply a robust, risk-based triage process to all concerns, guided by our compliance priorities (see page 1).

 Generally, we only take action on concerns where there is a serious risk to students or to the quality or reputation of the higher education sector, and the concerns relate to the provider's compliance with its obligations under our remit.

If our preliminary assessment of a concern identifies risks that a provider is not complying with its obligations, we may engage with the provider to ask for information or commence a compliance assessment. For lower risk matters, we may provide regulatory guidance to a provider or take no action but keep a record of the matter to inform future monitoring and assessment activities, including renewal of registration and course accreditation.

In 2021, we continued to make improvements to the information we provide, both on our website and in direct communications with complainants, to better explain our role in receiving concerns. We also achieved a significant reduction in the median time for finalising concerns, from 36.5 days in 2020 to 11 days in 2021.

In October 2021, we updated our [Concerns and complaints about providers policy](#), to provide greater clarity about how we manage concerns. The revised policy sets out 4 overarching principles to ensure we apply a consistent, efficient and respectful approach to managing concerns.

Key observations in 2021

- We received a total of 332 concerns, a decrease of 36 per cent from the previous year (522 received in 2020). 289 were within our jurisdiction and 43 were outside our jurisdiction.
- The most common source of concerns was current students (55 per cent) followed by former students (13 per cent). See Figure 3 for details.
- We received concerns about 91 higher education providers (48 per cent of all higher education providers).

- Most providers were the subject of one to 3 concerns, but 29 providers were the subject of 4 or more concerns.
- 70 per cent were about universities and 30 per cent were about other higher education providers. Given universities account for 92 per cent of higher education students, concerns about other higher education providers was disproportionately high.
- Of the 289 concerns about providers within our jurisdiction, the most common were about:
 - delivery (teaching and courses) (this included COVID-19 related online delivery issues) (27 per cent)
 - student services/learning environment (for example, inadequate complaints handling) (21 per cent)
 - admission (for example, not adhering to published admissions policies, or admission of students who are ill-equipped to succeed) (13 per cent)
- There was a significant decrease (49 per cent) in concerns about delivery (teaching and courses) in 2021 compared to 2020. This is not unexpected, given concerns about delivery increased 300 per cent in 2020 with the sudden move to online delivery during the COVID-19 pandemic.
- We recorded 35 concerns related to COVID-19 across 21 providers (compared to 98 in 2020). The most common COVID-19 related concern was in relation to delivery (teaching and courses), including quality of online delivery (54 per cent).
- For 17 concerns, we decided it was appropriate to bring the concern to the providers' attention to inform their internal quality assurance and make improvements where appropriate.

Figure 2: Type of concerns received

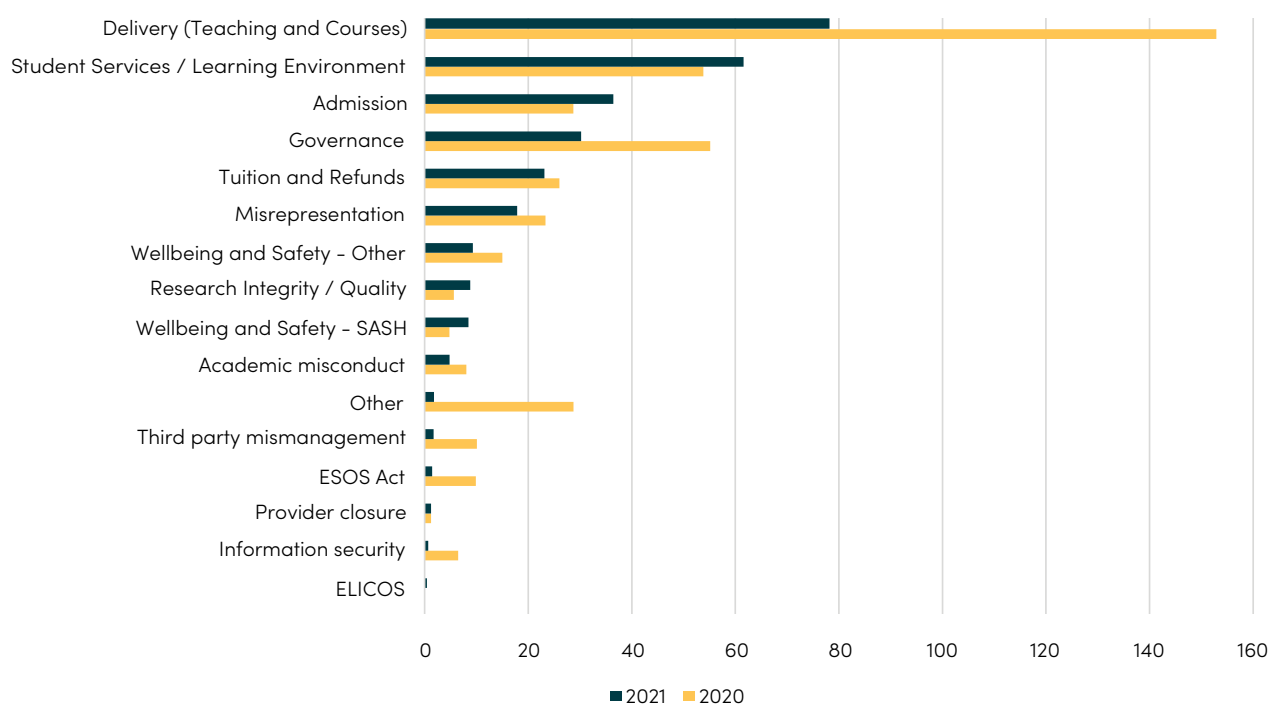
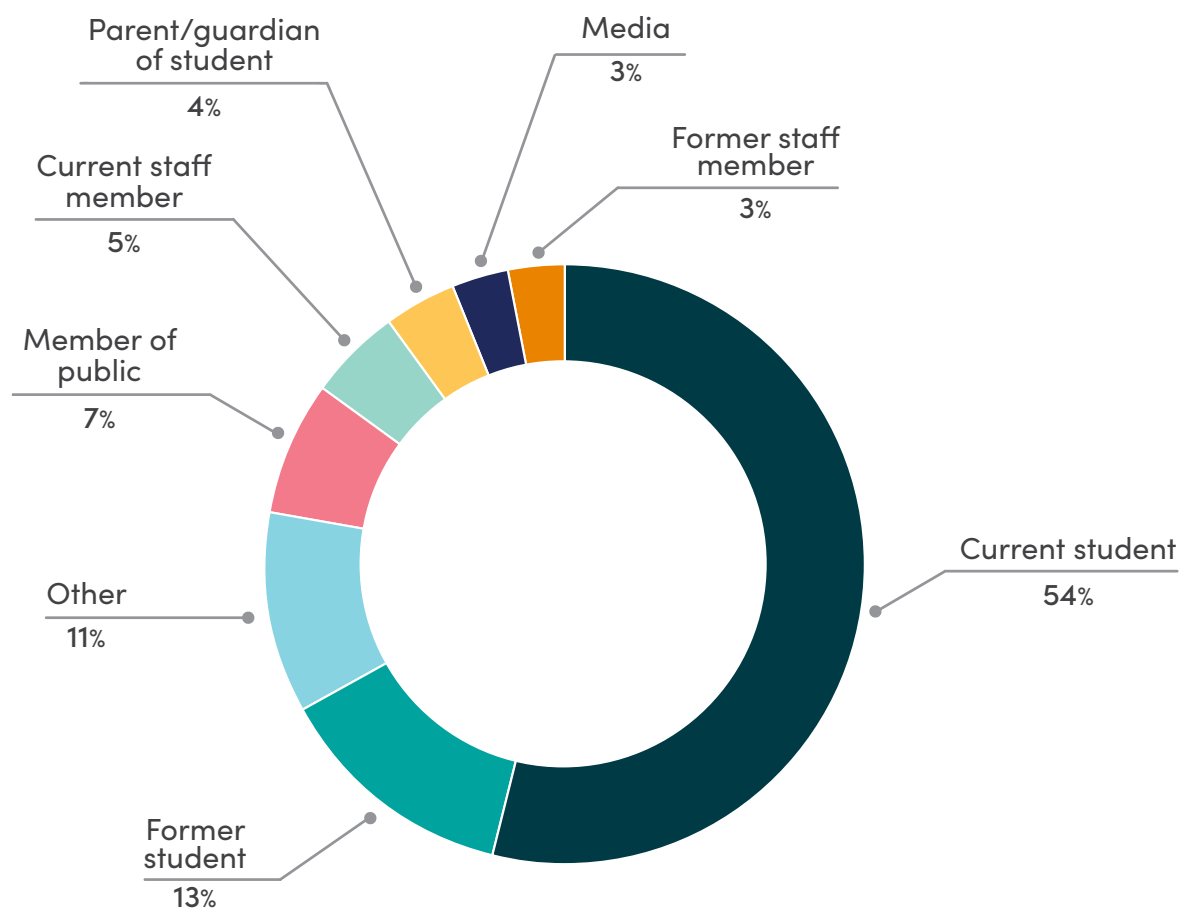


Figure 3: Source of concerns received in 2021



Concerns about sexual assault and sexual harassment

Ensuring providers uphold the wellbeing and safety of students is a priority for TEQSA.

TEQSA's work on sexual assault and sexual harassment (SASH) is in relation to the HES Framework regarding student wellbeing and safety (Section 2.3 and Standard 6.1.4) and student grievances and complaints (Section 2.4).

We do not verify the validity or investigate individual allegations of SASH. Our assessment of these matters focuses on ensuring providers have appropriate systems and processes for responding to allegations, reports or incidents of SASH in a timely and effective way, and in a manner that protects the rights of all parties. This includes access to support for individuals.

In 2021, we recorded 7 concerns about SASH. These were identified through a combination of media monitoring and concerns received from staff or students. Our assessments in 2021 found that providers generally had a good understanding of their student safety and wellbeing obligations. While none of the providers assessed by TEQSA were found not to be compliant with the HES framework, our assessments did identify a number of areas for improvement. For 3 matters across 2 providers, we issued regulatory guidance to the provider to promote improvement in preventing and responding to SASH. For 2 matters, we are monitoring the providers' implementation of key initiatives via reporting. Two other matters remain under assessment.



Case study – professional accreditation

The circumstances

In 2021 TEQSA investigated several concerns relating to courses that require professional accreditation. These included instances where providers were delivering courses that were not accredited by the relevant professional accreditation bodies and delivering courses in breach of conditions imposed on the course accreditation.

This is a significant concern for TEQSA as the absence or loss of course professional accreditation may prevent a student from progressing in a course or practising in their chosen profession upon graduation.

Our role

Professional accreditation of courses is specifically referenced in the HES Framework:

- **Standard 1.4.2c** requires that the learning outcomes of a course of study include knowledge and skills required to be eligible to seek registration to practice where applicable
- **Standard 3.1.5** requires that courses are professionally accredited by relevant bodies if such accreditation is required for graduates to be eligible to practise
- **Paragraph 6.2.1i** requires providers to have credible business continuity plans and adequately resourced financial and tuition safeguards to mitigate disadvantage to students who are unable to progress in a course of study due to unexpected changes such as the loss of professional accreditation
- **Standards 7.1.1, 7.1.2 and 7.1.5** require that the representation of a course is accurate and not misleading, for example, not describing a course as accredited for the purpose of professional registration until such accreditation has been obtained.

In addition, section 29(1) of the TEQSA Act requires providers to notify TEQSA of an event that happens or is likely to happen that will significantly affect the provider's ability to meet the HES Framework. The loss of, or failure to obtain, professional accreditation would trigger this notification requirement, as the provider is no longer compliant with the HES Framework and there is a heightened risk to students and possible reputational damage.

The cases

When TEQSA becomes aware that a course does not have, or loses, professional accreditation, we actively engage with the provider. The level of engagement varies according to the willingness and capability of providers to identify risks to their higher education operations and demonstrate that material risks are managed and mitigated effectively.

- **Case 1:** The provider informed TEQSA through a material change notification that a course they were offering was provisionally re-accredited with conditions by the professional accreditation body. The provider subsequently informed TEQSA that, after addressing the concerns set out in the conditions, the course had been granted full accreditation. No students were disadvantaged and TEQSA did not take further action.
- **Case 2:** TEQSA was informed by a professional accrediting body that it had conducted a re-accreditation assessment of a suite of courses and one course had not been re-accredited. The provider had not informed TEQSA of this outcome. TEQSA engaged with the provider and it submitted a material change notification with information about course assurance arrangements for affected students, including transfers to other providers and refund of fees. TEQSA was satisfied the provider had suitable arrangements in place and did not take further action.
- **Case 3:** TEQSA became aware that a provider was delivering a course that required, but did not have, professional accreditation, with students graduating or about to graduate. TEQSA engaged with the provider intensively, because of our significant concerns about the impact on affected students. The provider voluntarily suspended all new admissions into the course while the application for professional accreditation was resolved. TEQSA asked for detailed arrangements to mitigate any disadvantage for all affected students. In response, the provider submitted a tailored solution for each student, including transfer to another provider, coverage of tuition fees if extra study was required, refund of costs for lost units and financial support where necessary. TEQSA was satisfied suitable arrangements had been put in place and did not take further action.

What providers can do

Providers should have robust governance processes in place to ensure that courses of study have the required professional accreditation and are not misrepresented. This includes:

- robust course development and review processes to ensure the course design meets the relevant professional body requirements
- periodic external referencing and other benchmarking activities
- the risk register clearly identifies the risk to reputation and the potential disadvantage to students if professional accreditation of a course is not obtained or is lost
- adequately resourced financial and tuition safeguards are in place to mitigate disadvantage to students if professional accreditation is not obtained or is lost

- all representations of a course in respect to professional accreditation are accurate and not misleading, particularly for those courses that require professional accreditation for graduates to practise. Where professional accreditation is pending, students should be clearly informed of this status and understand the impact if professional accreditation is not successfully obtained
- regular and transparent communication with professional accreditation bodies to keep abreast of any changes to requirements and ensure continued compliance
- if the status of professional accreditation changes, fully inform affected students of the potential impact on their studies and future employment outcomes.

Material changes

Under the TEQSA Act, providers are required to disclose any events or changes that will significantly affect their ability to comply with the HES Framework via a material change notification (MCN). These notifications provide good insight into how providers identify, respond to, and mitigate risk, and the effectiveness and maturity of their risk management frameworks.

While notifications do not constitute an application for approval, we consider each notification carefully to identify potential areas of risk. Where we identify material concerns with the provider's risk mitigation strategies and/or risk of non-compliance with the HES Framework, we seek further information from the provider. We may also provide further advice or guidance to ensure continued compliance with the HES Framework.

In 2021, we updated the [Material change notification policy](#) and published [Guidance on material change notifications](#), in response to sector feedback on the need for further policy advice and guidance on what constitutes a material change and when notification is required.

We also published [TEQSA's approach to changes of control or ownership of a higher education provider](#). It explains our interest in changes of control and ownership and outlines the types of information we expect providers to include in notifications about such changes.

Key observations in 2021

In 2021, we received 458 MCNs, which represents a 24 per cent decrease on the previous year (605 received in 2020). This decline is not unexpected, given we observed an unprecedented number of MCNs in 2020 as providers reported COVID-19 related changes, for example a temporary move to online delivery. Of the notifications received in 2021:

- 174 notifications (38 per cent) were about changes to Executive, Principal Executive Officer (PEO) and/or board membership.
- 121 notifications (26 per cent) were about campus changes and major course changes such as change in course design, learning outcomes, structure, and delivery mode, specialisation or major, and suspension and discontinuation of courses.
- 64 notifications (14 per cent) were in relation to COVID-19, including changes to delivery mode, campus changes, the establishment of new offshore learning centres and study hubs, and the closure of offshore learning centres and study hubs.
- 30 notifications (7 per cent) were about new third party arrangements (TPAs) or changes to existing TPAs.

We also received 5 notifications about change of ownership or control. These notifications are a high priority given the potential risks and impacts on a provider's governance arrangements and management. In each case, we sought further information about the change to ensure the provider could continue to meet the HES Framework, and that potential risks to the quality of student experience and financial sustainability were mitigated.

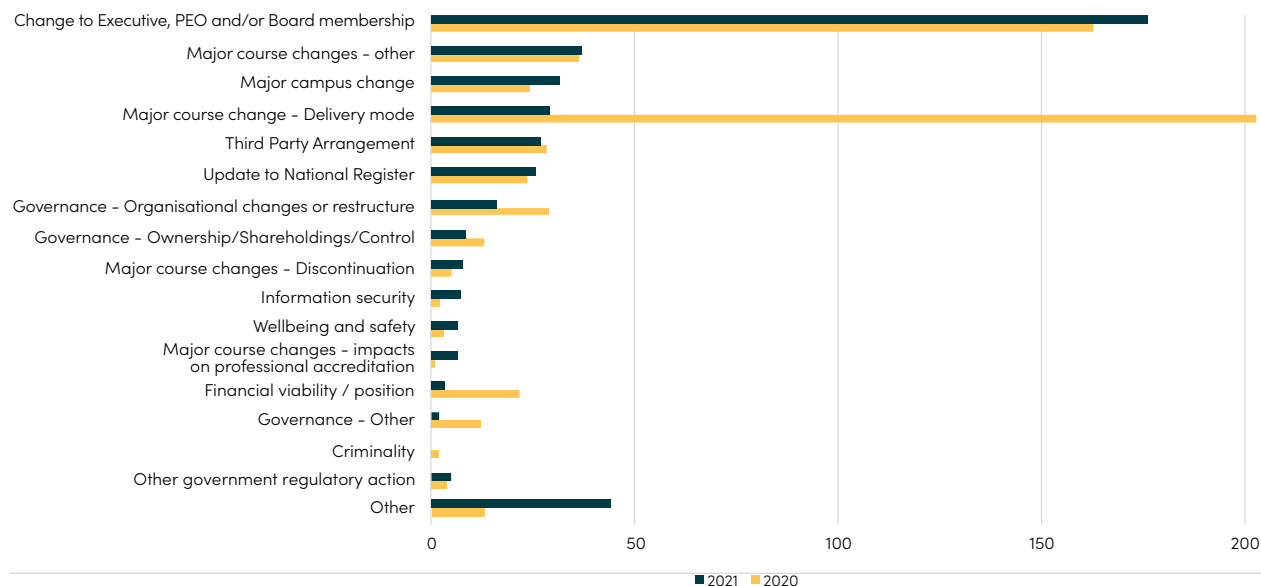
We observed a large number of notifications received in 2021 did not contain sufficient information to assure us that the provider had considered the associated risks with the relevant change and had adequate mitigation measures in place. For example:

- notifications about major course changes that did not include the rationale for the change, transition arrangements for current students and the extent to which these changes will impact the course learning outcomes and professional accreditation status
- notifications about changes to executive, PEO and/or board membership that did not include fit and proper person declarations using TEQSA’s template.

We also identified a small number of providers who failed to submit notifications within 14 days of the reportable event as required under Section 29(2) of the TEQSA Act.

Consistent with our regulatory principles, when reviewing MCNs, we followed up with providers on the basis of risk, proportionality and regulatory necessity.

Figure 4: Type of material change notifications received in 2021



'Other' represents notifications about admission, staffing, criminality, theft and other operational matters.

Compliance assessments

Where we identify risks of non-compliance with a provider's obligations under TEQSA's legislative framework that warrant further consideration, we may initiate a compliance assessment. This detailed assessment may:

- inform an application-based assessment where there is a concurrent or impending assessment
- result in regulatory action where TEQSA has identified non-compliance
- conclude with no further action where TEQSA is satisfied the provider is complying with its obligations.

Our regulatory response is guided by our [Compliance and Enforcement Policy](#) which sets out principles for undertaking compliance activities and supporting processes and procedures.

Key observations in 2021

In 2021, TEQSA initiated 43 compliance assessments and finalised 54 compliance assessments. The average assessment duration was 5 months and 13 days.

At 31 December 2021, TEQSA had 21 current compliance assessments.

Of the 43 compliance assessments commenced in 2021:

- 30 were initiated in response to concerns
- 4 were initiated as a result of an internal referral
- 8 were initiated as a result of media reports
- 1 was initiated as a result of other intelligence

The main areas of focus of compliance assessments initiated and finalised in 2021 were:

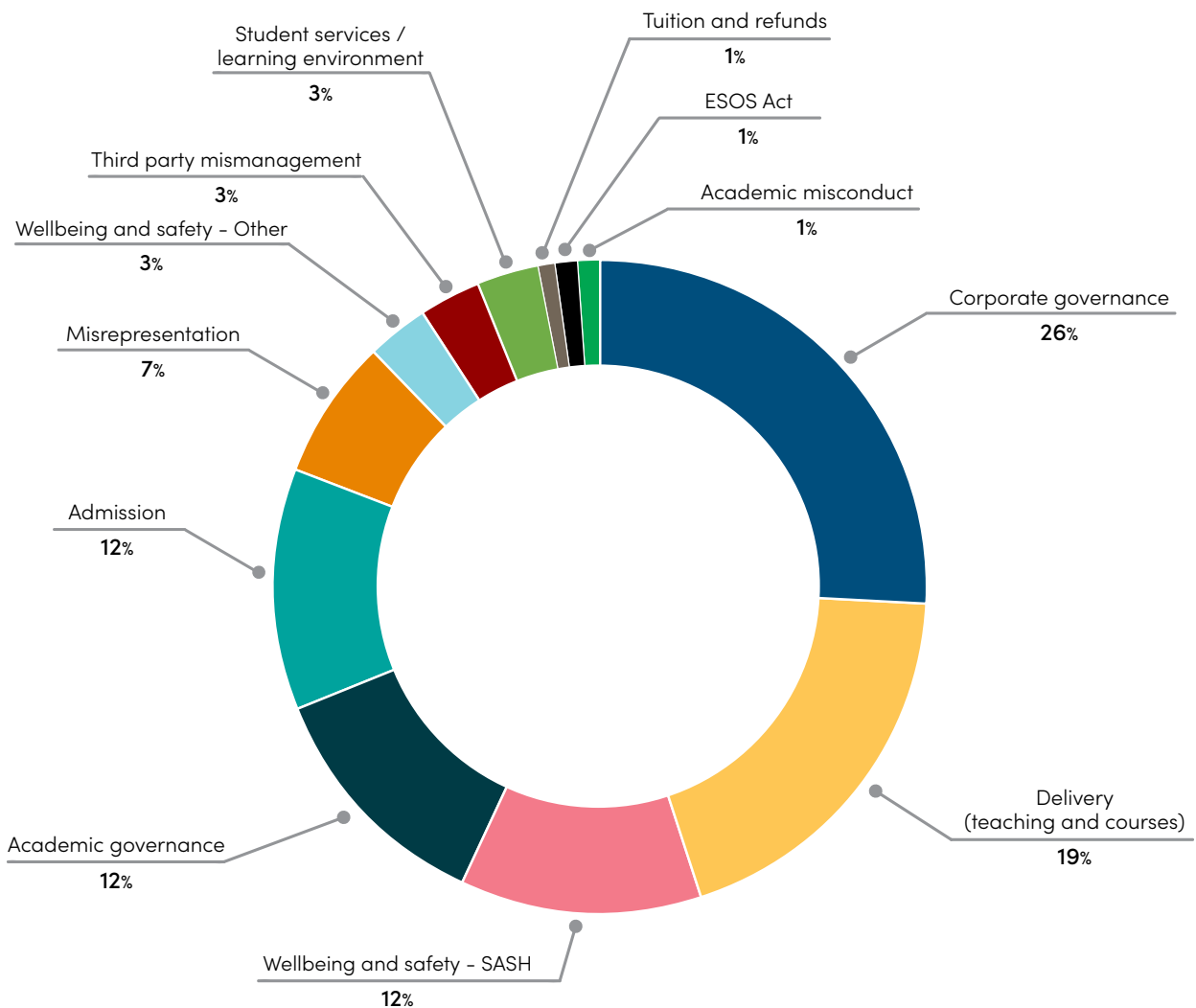
- corporate governance in relation to the underpayment of staff (see 'In Focus' page 4) and change of ownership
- issues with professional accreditation (see Case Study page 11) and misrepresentation of course information
- academic governance in relation to the delivery of courses by unqualified staff
- the admission of non-genuine students or students who do not meet the entry criteria
- providers' responses to allegations of sexual harassment and sexual assault on campus or at college residences, including support for impacted individuals.

Of the 54 compliance assessments finalised in 2021:

- in 25 cases, we closed the compliance assessment with no further regulatory action. For most cases, our intervention led to providers taking action to address identified issues and mitigate the risk of future non-compliance. In a small number of cases, providers satisfied us that there was not significant non-compliance and the matter was closed

- 8 cases informed other regulatory assessment activity within the agency
- in 6 cases, we issued regulatory education and guidance to the provider
- in 15 cases we made a decision to maintain watching briefs to monitor risks of future non-compliance.

Figure 5: Focus of compliance assessments initiated and/or finalised in 2021



Annual Compliance Program 2021-22

A key element of our Compliance Monitoring Framework is a proactive and forward-looking Annual Compliance Program that targets a specific cohort of providers each year to assess areas of identified risk. The program is an out-of-cycle compliance activity reviewed on an annual basis to ensure it aligns with TEQSA's compliance priorities and high-level strategic objectives.

The Annual Compliance Program for 2021-22 is focused on providers' oversight of offshore third party arrangements (TPAs).

Since the beginning of the COVID-19 pandemic, we observed an increased number of providers expanding their offshore operations with third party providers. Given the continuing border closures and ongoing pandemic, we identified increased risks for registered providers in managing their offshore TPAs, for example unexpected major changes to the operations of a third party and capacity to maintain sufficient oversight of the third party remotely.

The purpose of the program is to assess the measures taken by sampled providers during the pandemic to ensure that providers' management of offshore TPA operations comply with the HES Framework. This will assist us to better understand how these providers are managing risks associated with offshore TPAs. We expect to identify good practice examples and opportunities for improvement. The findings will be aggregated to feed into guidance and resources, to be developed in 2022, to support providers to comply with their obligations.



Case study – identifying students at academic risk

The circumstances

Providers have obligations under TEQSA's legislative framework to monitor students' progress within or between units of study. The purpose is to identify students who are at risk of not progressing. This could be an anticipated risk or an observed risk. This enables providers to intervene early, and provide targeted support to these students, if required.

While most providers adequately monitor student performance, we have observed some instances where there is lack of early identification and engagement with students at risk of unsatisfactory progress, and lack of or inadequate support to meet the needs of students.

Many students at risk of not progressing, who do not receive early support, are at higher risk of experiencing disconnection from learning. This has led to some students discontinuing their studies.

It is particularly relevant in the context of the COVID-19 pandemic where face-to-face on campus delivery has been suspended, that providers have robust systems in place to monitor student engagement in their tuition activities, identify students at risk of not progressing, and intervene early to provide appropriate and tailored support.

Our role

Both the HES Framework and National Code 2018 require providers to have systems to monitor student progress and engagement, and promptly support students at risk of not progressing. This includes:

- **HES Framework Standards 1.3.3–1.3.6** which require providers to conduct early assessment of student progress, detect students at risk of poor progress and provide early feedback on student performance, and provide targeted support programs to students at risk of unsatisfactory progress.

- **Standard 8 of the National Code 2018** which sets out that providers must safeguard the integrity of Australia's migration laws by monitoring student progress, identify at risk students and support overseas students to complete their course within the required duration and fulfil their visa requirements for course attendance and course progress.

Compliance with these standards ensures that students have every opportunity to succeed in their studies.

Our focus

In 2021, TEQSA considered concerns about several providers' practices for international students, and their ability to detect non-engaging students or students at academic risk of not progressing in their course of study, in order to provide these students with support.

Our review of these matters identified the following issues:

- inadequate policies and procedures for monitoring student progress and engagement in tuition activities
- lack of staff training on how to monitor and identify early a non-engaging student
- failure to follow through on the implementation of intervention strategies for at risk students.

Our review also identified concerns with the application of student admission policies and recognition of prior learning protocols, which may result in providers admitting international students who are not appropriately qualified and applying of credit without an adequate basis.

In the course of these assessments, we conducted detailed analysis of large volumes of information submitted by the providers and cross-referenced these with enrolment data on the Provider Registration and International Student Management System (PRISMS).



We paid close attention to providers' documented policies and procedures to determine whether they met the requirements of the legislative framework, whether these policies and procedures were being applied consistently, and whether they were operating as intended.

Our assessments identified non-compliance with a number of obligations under the ESOS Act and National Code 2018 which have serious implications for international students and the integrity of awards offered. In these cases, we are taking firm regulatory action to protect students and the integrity and reputation of the sector.

What providers can do

We encourage providers to:

- have policies and procedures that support early detection of non-engaging students and students at risk of not progressing, with strategies to support students to meet course requirements throughout their course
- consider best practice when setting institutional policy for detecting unsatisfactory progress, for example applying 'failure of 50% or more of enrolled units in a study period', to ensure early detection and intervention
- ensure staff and students understand their responsibilities and are notified of any updates/changes to relevant policies
- monitor and track student engagement throughout a course of study using a variety of means such as assessment submissions, participation in class and frequency of access to the learning management system
- ensure staff are trained in identifying non-engaging students and students at risk of not progressing and are aware of strategies to support students
- have regular check points with students, such as at the beginning or mid semester
- ensure progress monitoring procedures are regularly reviewed, benchmarked, and improved, to identify which policies are effective in achieving their intent and inform decision-making in relation to what, if anything, needs adjusting
- if things go wrong, ensure a prompt, comprehensive, and documented response
- maintain accurate and comprehensive records about students at risk
- accurately report student non-progression status on PRISMS
- report on student admissions, progression and retention rates to the academic and governing boards regularly throughout the academic year.

Resources

- [Guidance note: Monitoring and analysis of student performance](#)

Conditions

One of the administrative actions we may take to address non-compliance, or risks of non-compliance, under sections 32 and 53 of the TEQSA Act and sections 10B and 83 of the ESOS Act, is to impose conditions to ensure and monitor providers' compliance.

Conditions may be imposed as a result of an assessment of a course (re)accreditation or a provider's (re)registration, compliance assessment, or other out-of-cycle assessments.

Conditions envisage building the provider's capability in areas where non-compliance or material risks of non-compliance is identified. The goal is ultimately to rectify non-compliance, increase self-assurance and embed processes of benefit to providers as well as students.

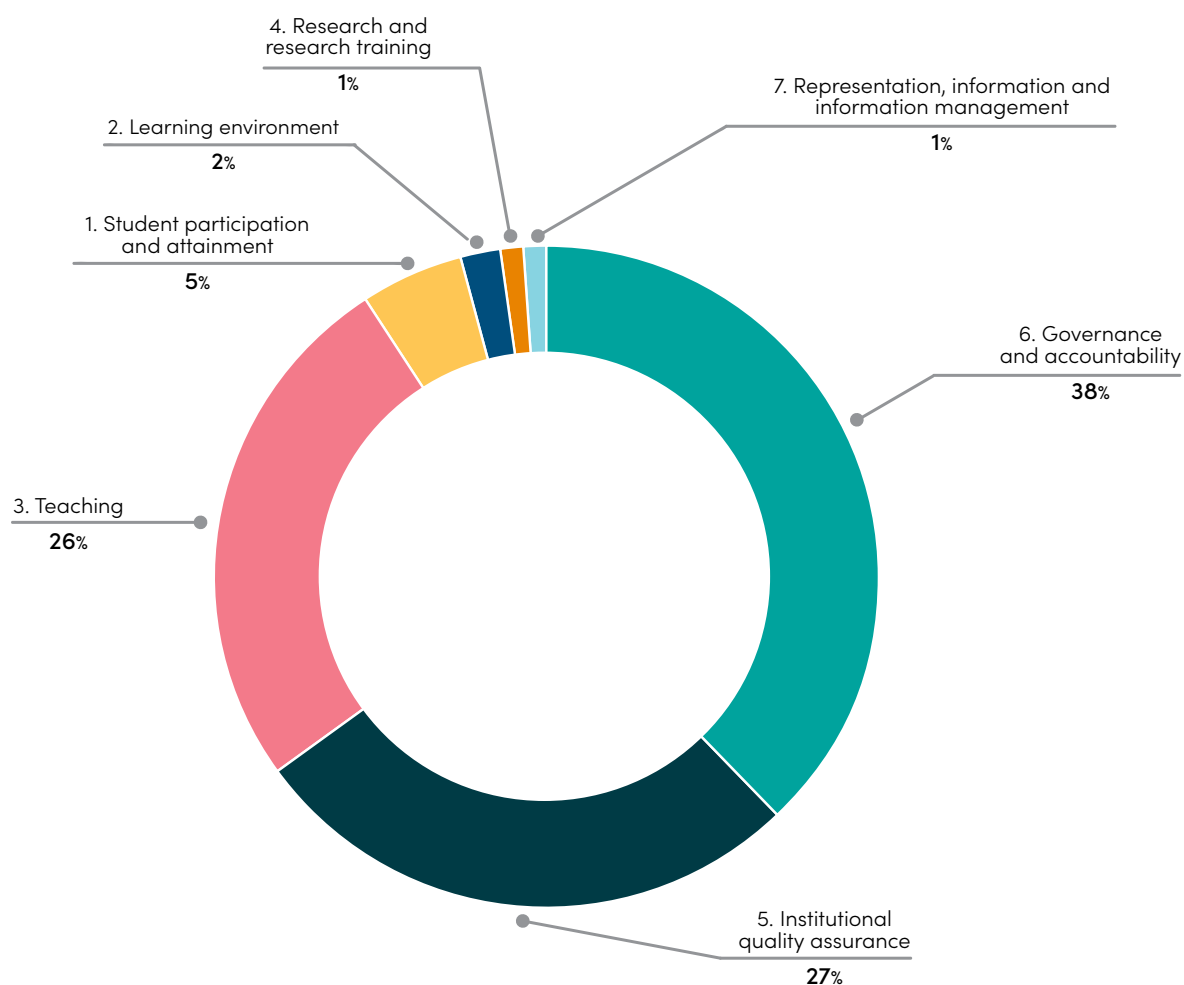
Providers should be mindful of changes in their operational context that may be relevant to any current conditions, as those could impact the assessment of such conditions. Providers should consider their material change notification obligation in these circumstances to report such changes to TEQSA. For example, if TEQSA has imposed a condition in relation to the appointment of suitably qualified academic leaders, changes to the nature of these appointments must be reported to TEQSA as a material change until the condition is revoked.

Conditions snapshot for 2021

In 2021, we imposed 34 conditions on TEQSA registrations across 12 providers and 13 conditions on course accreditation across 9 providers (20 Institutes of Higher Education and 1 Australian University). TEQSA also revoked or removed 76 conditions and varied 3 conditions.

As of 31 December 2021, there were 131 active conditions in place across 54 providers, imposed under the TEQSA Act.

Figure 6: Relevant domains under the HES Framework for active conditions



The risk areas/common themes for us imposing conditions remained consistent with the last several years, outlined below. The majority of conditions on re-registration related to Section 6.2, whereas the majority of conditions on accreditation related to Section 5.3.

Domain 3 Teaching, in particular Section 3.2 Staffing

Conditions were imposed to address risk areas such as ensuring courses have appropriate and qualified academic staff, especially those in teaching and supervisory responsibilities (including the criteria for determining equivalency to a qualification in a relevant discipline at least one level higher than is awarded for the course, in compliance with Standard 3.2.3 paragraph (c)). Other risk areas that formed the basis for conditions imposed in relation to Section 3.2 were, ensuring the provider has effective policies in place for qualifications and scholarly engagement of academic staff (in contrast to professional development activities), that academic staff are engaging in scholarly activity, and that the provider's governing bodies monitor this.

Domain 5 Institutional Quality Assurance, in particular Section 5.3 Monitoring, Review and Improvement

The majority of conditions imposed in relation to Section 5.3 required engagement with an independent reviewer and regular reporting with the implementation of the recommendations arising from the review. Although the nature of the engagement varied and was specific to the provider's unique context, an external professional perspective aims to assist a provider's monitoring and reviewing activities, heightening its quality assurance mechanisms. This includes identifying blind spots, areas for improvement, and recommendations to direct providers to ensure the adequacy of assessment methods and achievement of the learning outcomes of the course, and overall improvements in monitoring student performance.

Domain 6 Governance and Accountability, in particular Section 6.2 Corporate Monitoring and Accountability

Competent governance is imperative for the sustainability of a provider's operations and quality of education. During 2021, conditions imposed in relation to Section 6.2 were to ensure that the governing body has appropriate oversight of strategic plans and is accountable for the resourcing and achievement of goals against its strategic direction. Providers should turn their minds to ensuring realistic student projections, as monitoring both student numbers and student load is crucial to financial performance and viability.

Key points for providers preparing for future submissions/reporting on conditions

- If a condition requires regular reporting, keep a summary of actions taken against each condition and reflect on whether the condition has improved the provider's capability to comply with its obligations. This will assist in the preparation of a quality submission.
- Outline the actions taken by the provider in chronological order and remember that the response should not only fulfil the wording of the condition, but also the risk underlying its imposition. This is a good time to re-read the Assessment Report.
- Do not hesitate to present adverse findings. For example, an external review of a newly registered provider may show issues that appear unfavourable. However, this is part of the development process and maturity of a provider's operation. We expect providers to proactively review their processes and identify areas for improvement.
- Depending on the condition, we look for evidence of effective implementation of measures (i.e. rather than simply describing measures), for example evidence of embedding of continuous improvement and quality assurance processes.
- Consider the level of detail in meeting minutes and whether, as a stand-alone piece of evidence, they demonstrate adequate consideration of a particular topic. If this is not the case, the submission should also include supporting documents or items relevant to the condition.
- Avoid unnecessary information – documents submitted should be relevant to the condition.

For more information on conditions, see [TEQSA's Guide to conditions](#), updated in January 2021.



Our focus for 2022

In 2022, we will continue to focus our efforts on our five compliance priorities that guide our compliance and investigation work (page 1). Other key initiatives include:

Contract cheating

Our efforts to combat commercial academic cheating services will continue in 2022. TEQSA will use the full range of enforcement mechanisms available to us for those who provide or advertise academic cheating services, in contravention of sections 114A or 114B of the TEQSA Act. Further, TEQSA is exploring the use of section 313(3) of the *Telecommunications Act 1997* as a mechanism to block access to websites that contravene sections 114A or 114B of the TEQSA Act without a formal application to the Federal Court for an injunction.

Oversight of offshore third party arrangements

We will finalise our 2021-22 compliance program to assess how selected providers are managing their offshore third party arrangements and complying with their relevant obligations under the HES Framework. The findings of this program, along with desktop research and stakeholder interviews, will inform the development of a transnational education and offshore delivery toolkit for the sector to be published later in the year. In 2022, we will also continue to monitor activity and risks in the sector relating to offshore third party arrangements via material change notifications and concerns we receive.

Beyond COVID-19

The pandemic has normalised online learning over a short period of time. Given the speed of the change from on-campus to online learning environments, TEQSA is conscious of the need to continue monitoring the quality of online learning for students. Our research indicates academic interaction, examinations, and academic issues associated with specific disciplines of study are among the most critical issues that need to be addressed. In 2022, TEQSA will undertake a range of activities to ensure providers are maintaining quality of education and learning outcomes and have adequate governance arrangements to support this.

Increase intelligence holdings

TEQSA recognises the importance of information-sharing and collaboration in achieving its regulatory outcomes. To better inform our understanding of sector risks, TEQSA will engage with professional accrediting authorities, sector peaks and other regulatory agencies in 2022 to establish stronger and more effective data-sharing arrangements.

Implementation of cost recovery for quality assurance and regulation

On 30 April 2021, TEQSA released the TEQSA Fees and Charges Consultation Paper for feedback from the sector. The consultation paper outlined the details of TEQSA's proposed approach for transitioning to the new cost recovery arrangements, including costs for compliance and investigation work. We have reviewed all feedback and will be further refining the proposal to best support the transition to full cost recovery, scheduled for 1 January 2023.

TEQSA