Australian Government

Tertiary Education Quality and Standards Agency

Compliance report 2022

May 2023

TEQSA

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More information about the Tertiary Education Quality and Standards Agency, including electronic versions of this report, is available at teqsa.gov.au

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Foreword

TEQSA's core purpose is to assure the quality of Australian higher education and, in particular, to protect the interests of students. A key part of TEQSA's work is monitoring and assessing the extent to which providers of higher education comply with the *Higher Education Standards Framework (Threshold Standards) 2021* (HES Framework).

This report provides a summary of our compliance activity for the year, illustrating where our regulatory effort is directed to the areas of greatest risk, impact and consequence. In 2022, our focus was on the management of offshore third-party arrangements (TPAs). The findings and observations of our work have given us a better understanding of how providers manage their offshore TPAs, and has informed the Transnational educational toolkit (TNE) developed to guide best practice.

In 2023, our compliance program will address online delivery of higher education courses of study. Our focus will be on determining whether providers are maintaining the quality of education and learning outcomes in online delivery, and the adequacy of accompanying governance arrangements.

An ongoing compliance priority for TEQSA is addressing the harm posed by commercial academic cheating services to students, and maintaining the integrity of Australian higher education.

TEQSA has collaborated with internet service providers to block access to 150 websites offering academic cheating services, and we will continue to work with social media companies to report and remove advertisements of academic cheating services. TEQSA is also considering prosecuting the suppliers of academic cheating services.

In this report, we share 3 scenarios representative of our compliance activity in 2022 to highlight important new and emerging issues for the sector. These examples focus on academic integrity, governance and data security.

TEQSA now recovers the cost of most of its regulatory activities, including investigations, compliance assessments and monitoring of conditions on provider registrations or course accreditations. We are working closely with the sector to ensure that our cost recovery reflects regulatory effort, and our principles of being risk-based, proportionate and necessary in our activity.

Alistair Maclean
Chief Executive Officer
TEQSA

Contents

Compliance priorities

TEQSA's compliance and investigation work is guided by a set of compliance priorities that reflects the greatest risks to students and the quality, integrity and reputation of the higher education sector. The compliance priorities are informed by emerging trends observed in the sector, and TEQSA's own compliance assessments and investigations. Our compliance priorities for 2023 are detailed below.

Ensuring academic quality

Issues affecting academic quality, focusing on:

- systemic deterioration or failure of academic quality (including quality of online delivery)
- admission of students who are ill-equipped to succeed
- inadequate oversight of third-party delivery.

Upholding wellbeing and safety

Issues relating to the wellbeing and safety of students - including those who are vulnerable or under 18 - in particular systemic failures to:

- adequately prevent and address sexual assault and sexual harassment
- provide adequate mental health support for students
- address barriers for students with a disability
- adequately inform staff and students about support and assistance available.

Protecting sector integrity

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

- not implementing policies and procedures relating to academic integrity
- representing to offer higher education awards when unregistered
- facilitating non-genuine students
- unethical conduct of overseas agents
- commercial academic 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 present and projected 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 2022

COMPLIANCE ACTIVITIES	2022		2021
Material change notifications received and assessed	532	▲	458
Concerns about registered higher education providers received and assessed	305	▲	289
Condition assessments undertaken	159	▼	174
Conditions imposed*	27	▼	47
Conditions varied	1	▼	3
Conditions revoked or removed	70	▼	76
Cheating websites blocked	150	▲	0
Warning letters issued to unregistered entities	12	▲	9
Satisfactory resolution to investigations of unregistered entities issued with warning letters	12	▲	0
Voluntary undertakings entered into with providers	13	▼	19

COMPLIANCE ASSESSMENTS**	2022		2021
Preliminary assessments initiated	28	▼	34
Compliance assessments initiated	4	▼	9
Preliminary assessments finalised	20	▼	44
Compliance assessments finalised	7	▼	10
Warning letters issued to registered providers	2	▲	0

* This includes conditions imposed as a result of TEQSA registration or course accreditation assessments.

** Please refer to the compliance assessments section on page 14 for further information.

▲ ▼ The arrows above indicate an increase/decrease from the totals recorded in 2021.

Concerns about providers

In 2022, we received 342 complaints or allegations of non-compliance about higher education providers. Concerns are an important source of intelligence to identify the risks of providers not complying with their obligations under TEQSA's legislative framework.

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

We apply a risk-based triage process that is guided by our compliance priorities, pursuing issues that pose the greatest risks to students or to the integrity, quality and reputation of the higher education sector.

Upon receipt of a concern, we first determine whether it relates to TEQSA's legislative functions and powers. If not, and where appropriate, we provide advice to the complainant on how to best progress the concern.

For concerns triaged as a priority, we undertake a preliminary assessment to determine the level of risk and the potential harm, impact and consequence. As part of this assessment, we may seek further information from the provider.

Where there is a reasonable basis for a concern regarding compliance with a provider's obligations under TEQSA's legislative framework, and the matter poses a serious risk, we may decide to commence a compliance assessment under section 59 of the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act). 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.

> ◤◤ The median time for finalising concerns in 2022 was 6 business days, almost half the median for 2021 (11 days) and a significant improvement on 2020 (36.5 days).

Key observations in 2022

- The number of concerns received (342) was similar to the number of concerns received in 2021 (332). Of these 342 concerns, 305 were within our remit.

- The most common source of concerns was current students (57 per cent), followed by internal referrals (9 per cent) and former students (8 per cent). See Figure 1 for details.

- We received concerns about 88 higher education providers (45 per cent of all higher education providers). Of the 88 providers, 53 per cent were the subject of one or two concerns and 32 per cent were the subject of 3 to 5 concerns. Only 4 providers were the subject of 10 or more concerns.

- Of the 298 concerns received where a specific provider was identified, 64 per cent were about universities and 36 per cent were about other higher education providers.

- Similar to 2021, the most common types of concerns received (see Figure 2) were related to:
  - delivery (teaching and courses) (24 per cent)
  - student services/learning environment (17 per cent)
  - admission (11 per cent).

Figure 1: Source of concerns received in 2022

Member of public
5%

Current staff member
5%

Former student
8%

Internal referral
9%

Other
12%

Former staff member
4%

Current student
57%
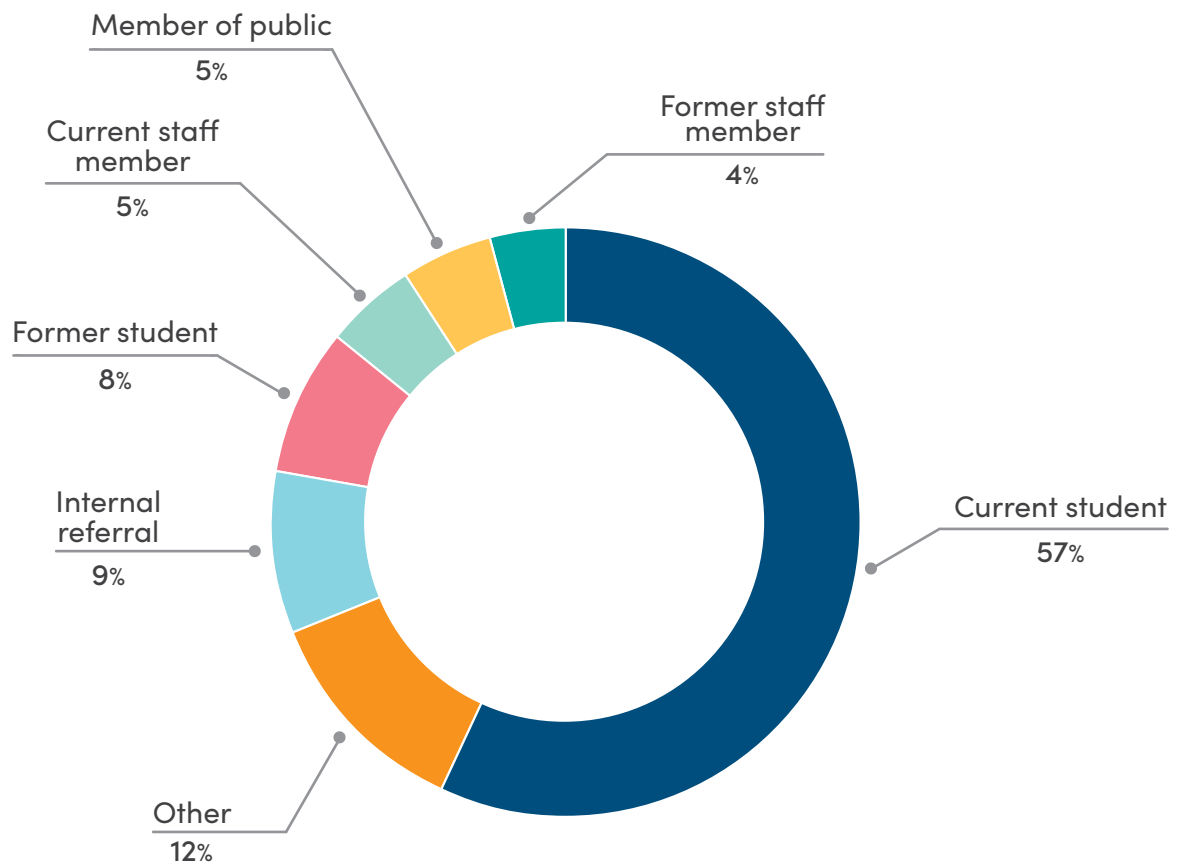
Figure 2: Type and number of concerns received

Delivery (teaching and courses)
Student services / learning environment
Admission
Governance
Misrepresentation
Tuition and refunds
Wellbeing and safety – other
Third party mismanagement
Information security
ESOS Act
Wellbeing and safety –
sexual assault and sexual harassment
Academic misconduct
Research integrity/quality
Other
Provider closure

0   10   20   30   40   50   60   70   80

■ 2021   ■ 2022

Concerns about wellbeing and safety

The wellbeing and safety of students is a priority for TEQSA. Our assessment of these matters focuses on whether providers are taking appropriate action to foster and promote safe environments.

In 2022, TEQSA recorded:

- 14 concerns about student wellbeing and safety. These related to a range of issues, including resourcing of support services and administrative processes for disability accommodation. Of these:
    - 6 were identified as priorities for further assessment
    - the findings of the preliminary investigation of 2 concerns did not identify material risks of non-compliance with the HES Framework
    - 4 other matters remain under assessment.
- One concern about the provision of a safe work environment for staff of a higher education provider. This concern was identified as a priority for further investigation and remains under assessment.

Incidents of sexual assault and sexual harassment

In 2022, we recorded 7 concerns related to sexual assault and sexual harassment, in addition to the 14 other concerns about student wellbeing and safety. The concerns were identified through a combination of media monitoring and concerns received from staff and students.

Our assessment of these matters focuses on whether providers have appropriate systems and processes for responding to allegations, reports or incidents of sexual assault and sexual harassment in a timely and effective way, and in a manner that protects the rights of all parties. This includes access to support for individuals.

The findings of the preliminary investigations of all 7 concerns did not identify material risks of non-compliance with the HES Framework.

During the year, we improved our communication to complainants in relation to sexual assault and sexual harassment, to ensure our responses are appropriately trauma-informed and provide relevant information of support available.

Compliance in focus – academic integrity

The circumstances

In 2022, TEQSA investigated complaints about several providers' handling of academic integrity matters.

Our role

TEQSA expects that providers maintain vigilance over academic integrity across all areas of educational operations, including admissions, delivery, assessment and credentialling of graduates. Further, providers are expected to take a proactive approach to identify risks or breaches to integrity and take action to mitigate these risks and prevent recurrence of identified breaches.

The HES Framework requires providers to take action to mitigate risks to academic integrity:

- standards 1.4.3 and 1.4.4 require providers to ensure that methods of assessment can confirm that specified learning outcomes have been achieved, and that upon completion of their course, students have demonstrated all learning outcomes prescribed for their course.

- section 5.2 requires providers to implement procedures and policies that uphold academic integrity and address misconduct or allegations of misconduct. Preventative action must be taken to mitigate foreseeable risks or to prevent the recurrence of identified breaches. Guidance on integrity must be provided to students, and providers are responsible for ensuring that third-party delivery of teaching does not compromise academic integrity.

- standard 6.2.1 requires that the corporate governing body of a provider ensures that qualifications are awarded legitimately.

- standards 6.3.1 and 6.3.2 require that processes and structures are established, and responsibilities assigned, to achieve effective academic governance and oversight which will ensure the quality of teaching, learning and research.

Our focus

Our review focused on providers' academic integrity policy and procedure suites, and how these were implemented in practice.

Our review identified the following themes:

- failure to take adequate action when academic misconduct was identified, e.g. the imposition of penalties
- poorly documented and opaque practices for adjusting marks, particularly from *fail* to *pass* grades
- lack of systematic recording of academic integrity breaches and limited evidence that governing entities were regularly reviewing changes to academic integrity settings
- inadequate implementation of technology solutions as barriers to plagiarism.

What providers can do

We encourage providers to:

- implement and maintain thorough records of academic integrity breaches and engage in regular data analysis to mitigate academic integrity risks
- review aggregate trends in academic cheating and integrity matters regularly at the academic and/or corporate board level, ensuring that approaches are consistent, proportionate and effectively tailored to current integrity threats
- ensure that academic integrity policies are easily accessible and that integrity content is embedded throughout courses of study
- identify underlying causes of academic integrity breaches and provide additional support to students where needed
- ensure that software used to detect plagiarism is used systematically to authenticate student submissions and that relevant staff are trained to assess the authenticity of student work
- develop and implement clear rules, delegations and documentation protocols for moderation processes, especially for cases where moderation results in the upgrade of a *fail* grade to a *pass*.

Resources

- Academic integrity – top 10 tips
- Academic integrity toolkit
- Academic integrity in the creative arts
- Guidance note: Academic integrity
- Substantiating contract cheating for symbol-dense, logical responses in any discipline, particularly mathematics
- Understanding academic integrity
- Translated academic integrity resources for students
- What is academic integrity?

Academic cheating services

The TEQSA Act prohibits the provision, offering, arranging and advertising of an academic cheating service to students undertaking an Australian course of study with a higher education provider. There are civil penalties for failing to comply with the relevant provisions. Criminal penalties may be applicable where the activity was undertaken for a commercial purpose. In addition to seeking penalties, TEQSA can apply to the Federal Court for an injunction requiring carriage service providers to disable access to websites that contravene the academic cheating provisions of the TEQSA Act.

In 2022, we received 432 concerns about commercial academic cheating services (commonly called contract cheating services). This is a significant increase on the number received in 2021 (137) and reflects increased engagement from the higher education sector on the threat posed by these services. Most reports were submitted anonymously. However, we also received many reports from staff of higher education providers and students.

TEQSA works in partnership with a range of stakeholders, including higher education providers, internet service providers (ISPs), social media companies, law enforcement and other government agencies, to disrupt the operations of commercial academic cheating services. Our enforcement actions are complemented by ongoing engagement with the sector to assist providers in promoting academic integrity and addressing commercial academic cheating within their institutions.

Our activities in 2022

Protocols to block access to commercial academic cheating sites

In partnership with the Communications Alliance we developed protocols to facilitate the blocking of commercial academic cheating sites. This collaboration streamlined our ability to disrupt access to websites that are in breach of the TEQSA Act. The protocols were finalised with participating ISPs in June 2022, and underpinned by the principles set out in our lawful disruption of access to online services policy.

In August 2022, we used these protocols for the first time to block access to 40 of the most visited academic cheating websites. Collectively, these 40 sites were accessed about 450,000 times per month from Australia prior to blocking.

In October 2022, we used the protocols to block access to a further 110 commercial academic cheating websites, including foreign language websites targeting students at Australian institutions. This action was timed to disrupt access during one of the peak months for traffic to cheating websites.

In 2023, TEQSA will undertake further investigation and use the protocols to block access to more commercial academic cheating websites. We use web traffic analysis to triage our enforcement actions, ensuring we more effectively target our resources to disrupt the operations of entities that contravene the academic cheating provisions.

Removal of social media advertisements for academic cheating services

The TEQSA Act prohibits the advertising of academic cheating services targeting students undertaking an Australian course of study at a higher education provider.

In 2022, we worked with social media companies to remove posts and accounts that advertise these services. To date, over 700 accounts or posts, including those linked to websites blocked

through the protocols, have been removed from various social media websites including Facebook, Instagram and Gumtree. Our work continues with social media companies to develop processes for the efficient reporting and removal of academic cheating advertisements.

Material changes

Under the TEQSA Act, providers are required to notify TEQSA if one of the following happens or is likely to happen:

1. an event that will significantly affect their ability to comply with the HES Framework or

2. an event that requires the National Register to be updated.

In 2022, we received 532 of these material change notifications (MCNs), a 16 per cent increase on the previous year (see Figure 3).

Figure 3: Month-to-month comparison of material change notifications received in 2021 and 2022
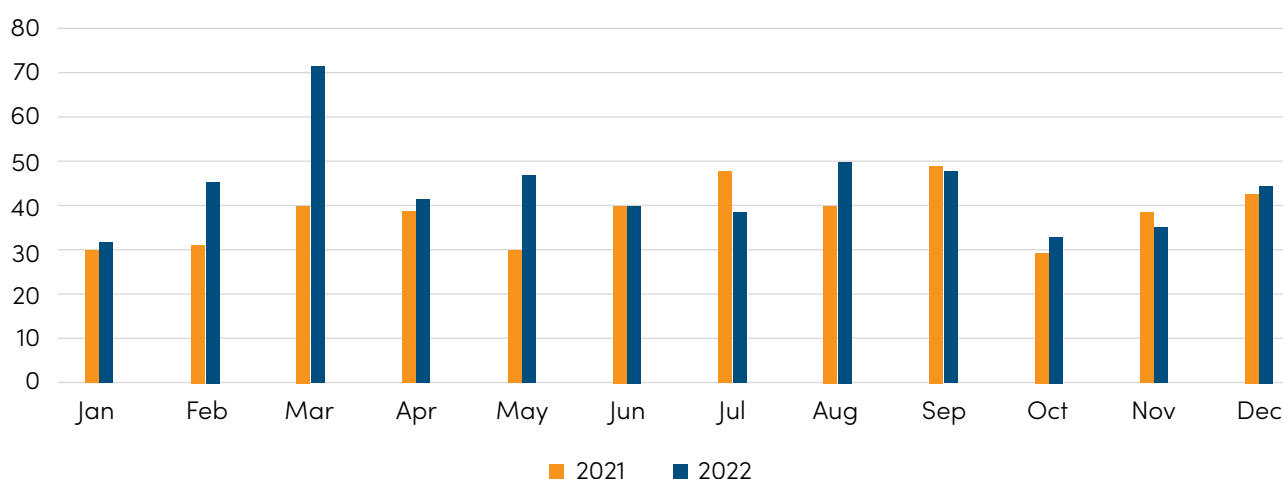

In September 2022, we revised our MCN policy to make clear our expectations around reporting all new TPAs and further clarify requirements in relation to changes to courses of study. The policy also streamlines reporting obligations for providers who are subject to the *Education Services for Overseas Students Act 2000* (ESOS Act) and the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code) into one reporting channel: materialchanges@teqsa.gov.au.

Key observations in 2022

- The most common MCNs were related to updates to the National Register and membership of governance bodies. Notifications in these categories together totalled 271 (51 per cent) as shown in Figure 4. This represents a 135 per cent increase in notifications compared to 2021 and is most likely due to the 20 April 2022 update to the *Tertiary Education Quality and Standards Agency (Register) Guidelines 2017* (the Guidelines) which increased requirements for information about principal contacts and Chief Executive Officers.

- 21 notifications (4 per cent) related to changes of ownership, shareholdings or control; a 110 per cent increase compared to notifications received in this category in 2021. Some newly registered providers reported departures of academic and corporate board members shortly after initial registration. This trend raises significant concerns about providers' ability to ensure high-quality education and academic stewardship.

- 108 notifications were about campus changes and major course changes such as changes to the course design, learning outcomes, structure and delivery mode. This represents a 14 per cent decrease from 2021.

- 48 notifications were about new TPAs, changes to existing TPAs and discontinuation of TPAs. This was a 60 per cent increase on 2021 and reflects updated reporting requirements as well as sector-wide shifts to decentralised delivery.

- Only one COVID-19 related MCN was received in 2022. This was not unexpected, given the relaxation of restrictions and return of on-site delivery.

Figure 4: Type of material change notifications received in 2021 and 2022
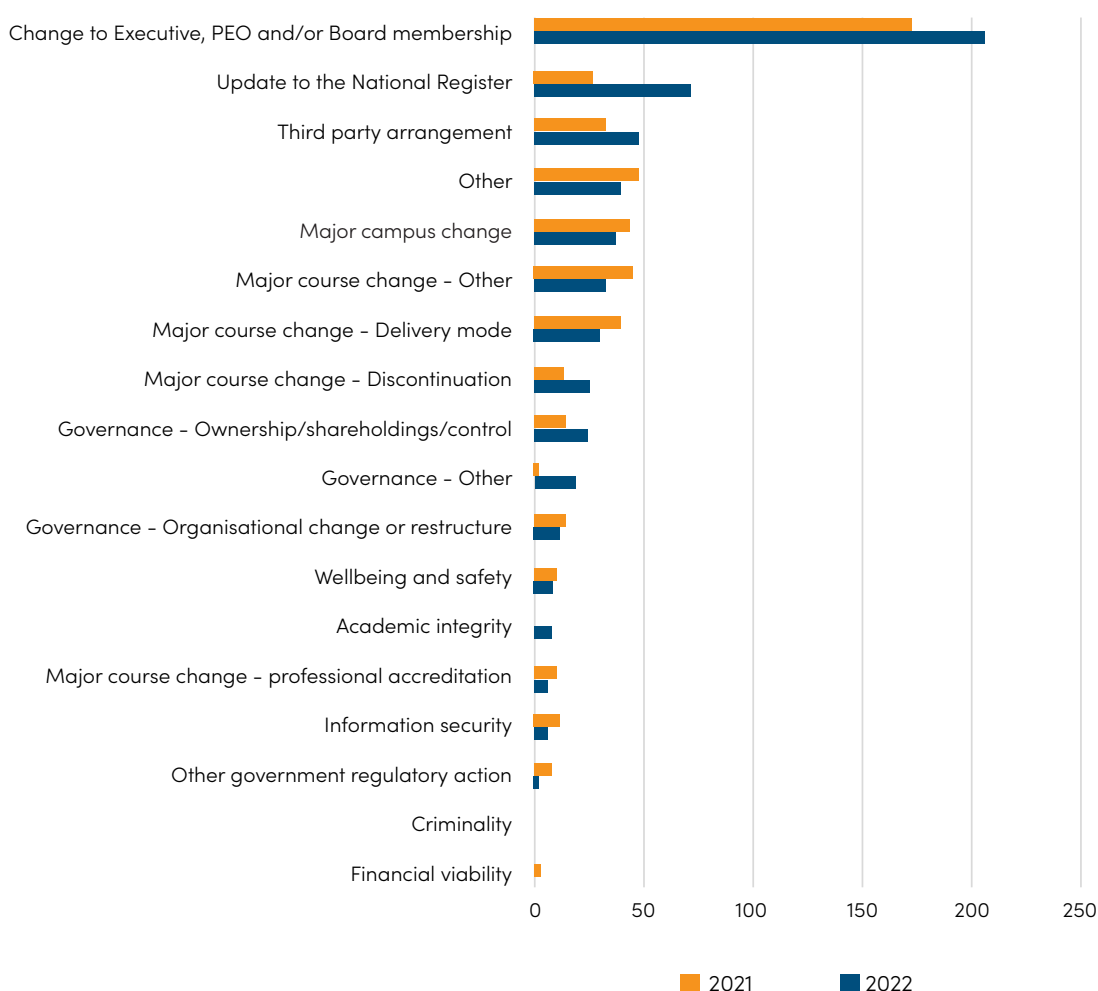
Although material changes do not require approval from TEQSA, we consider each notification carefully to identify impacts or potential areas of risk that may warrant further attention.

> In 2022, we observed that a large number of MCNs did not include adequate information about strategies adopted by providers to manage and mitigate the risks arising from the material changes. This information is valuable because it provides good insight into the effectiveness and maturity of providers' governance oversight and risk management frameworks, and it helps us determine if further action is required.

When reporting material changes, we recommend:

- notifications regarding changes to CEOs and Principal Executive Officers (PEOs) include fit and proper person declarations. Please refer to TEQSA's guide to determining the fitness and propriety of a person

- notifications about events or changes that warrant an MCN include a summary of the event including relevant timelines, a rationale for the change (if planned), the standards that are impacted, and the mitigation measures taken to address the risks and ensure ongoing compliance.

Please refer to TEQSA's material change notification policy for further information.

Compliance in focus – change of ownership

The circumstances

In 2022, TEQSA noted an increase in changes of ownership. This is not surprising, given the COVID-19 pandemic's significant financial impact on the higher education sector. In several instances, experienced senior leaders, including members of the governing body, left the organisation soon after this change of ownership.

As quality higher education relies on robust and competent corporate and academic governance, changes of ownership can present significant risks, particularly when the new owner has limited experience in the provision of higher education.

Our role

TEQSA monitors the ownership of higher education providers and pays close attention to any transitions, whether they be through mergers, acquisitions or changes in shareholding arrangements. This is to understand the extent and impact of these changes, such as changes to strategic direction, course offerings and key personnel, and be assured that students will not be unduly disadvantaged by these changes.

Domains 5 and 6 of the HES Framework require providers to exercise competent oversight of their operations so they adhere to all standards and the TEQSA Act. In instances of changes of ownership, sections 6.1 and 6.2 clearly outline our expectations regarding what is required from a provider both in terms of corporate governance and corporate monitoring and accountability.

What providers can do

As members of the governing body, new owners are expected to be well informed about the entity's operations and risks, and to be diligent in understanding and attending to the breadth of governance responsibilities as required by the HES Framework. Specifically, new owners should understand their obligations under:

- section 6.1: Corporate Governance
- section 6.2: Corporate Monitoring and Accountability
- section 6.3: Academic Governance.

As a starting point, new owners should consider:

- familiarising themselves with all relevant legislative requirements and obligations
- ensuring that delegations are documented and reflect accountabilities and timeframes for compliance
- engaging an independent expert to review the entity's mechanisms for compliance and identifying areas for improvement
- reviewing any pre-acquisition continuous improvement plans and modifying these to account for any changes in strategic direction
- reviewing the risk management framework and risk register, to ensure these are current and that risk mitigation measures remain appropriate.

Resources

- [Guidance note: Academic governance](#)
- [Guidance note: Corporate governance](#)
- [Guidance note: Academic leadership](#)
- [Guidance note: Academic quality assurance](#)

Compliance assessments

Our approach to compliance assessments is guided by TEQSA's compliance monitoring framework, and our compliance and enforcement policy. Figure 5 shows our staged approach to compliance assessments.

Figure 5: Stages preceding a compliance assessment

Triage > Preliminary assessment > Compliance assessment
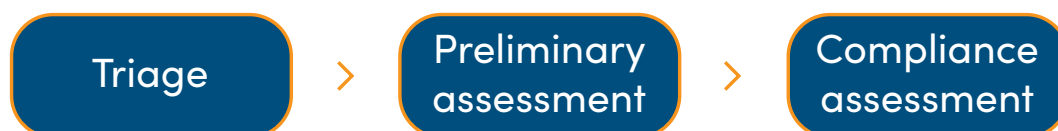
We apply a risk-based triage process to prioritise issues that pose the greatest risk of harm to students and the quality, integrity and reputation of the higher education sector.

For concerns triaged as a priority, we undertake a preliminary assessment to determine the level of risk and the potential harm, impact and consequence. As part of this process, we consider information and intelligence available to TEQSA such as the provider's regulatory history, related concerns, material changes, active conditions and risk profile. We usually engage with the provider to ensure that we have sufficient information to assess any potential non-compliance or risk of non-compliance and determine the appropriate course of action.

> Where there is a reasonable basis to a concern and our engagement with the provider has not mitigated the concern, we may commence a compliance assessment.

We notify the provider and describe the nature of the concerns and the scope of the assessment. We thoroughly review and analyse the evidence submitted by the provider to determine the best course of action to address any identified non-compliance.

Key activities in 2022

In 2022, TEQSA initiated 28 preliminary assessments and 4 compliance assessments. We also finalised 20 preliminary assessments and 7 compliance assessments.

The average assessment duration was 5 months and 16 days, similar to 2021.

Of the 32 preliminary and compliance assessments commenced in 2022:

- 19 were initiated in response to concerns
- 8 were initiated in response to an internal referral
- 4 were initiated in response to material change notifications
- one was initiated in response to media reports.

This is a reduction in the number of compliance assessments initiated in 2021 (43) and is evidence of our maturing risk-based approach, with our regulatory effort increasingly directed to areas of greatest risk, impact and consequence.

The main areas of focus for the assessments initiated and finalised in 2022 were:

- failure to obtain or maintain professional accreditation and misrepresentation of course information

- systemic underpayment of casual academic staff

- corporate and academic governance in relation to the delivery of courses by unqualified staff

- cancellation of courses without following due process

- unsafe working and learning environments for staff and students

- providers' responses to allegations of sexual harassment and sexual assault on campus or at the college residence, including support for impacted individuals

- the admission of non-genuine students or students who do not meet the entry criteria

- providing misleading information to prospective students.

Figure 6 shows the themes of compliance assessments initiated in 2022.

Figure 6: Focus of compliance assessments initiated in 2022
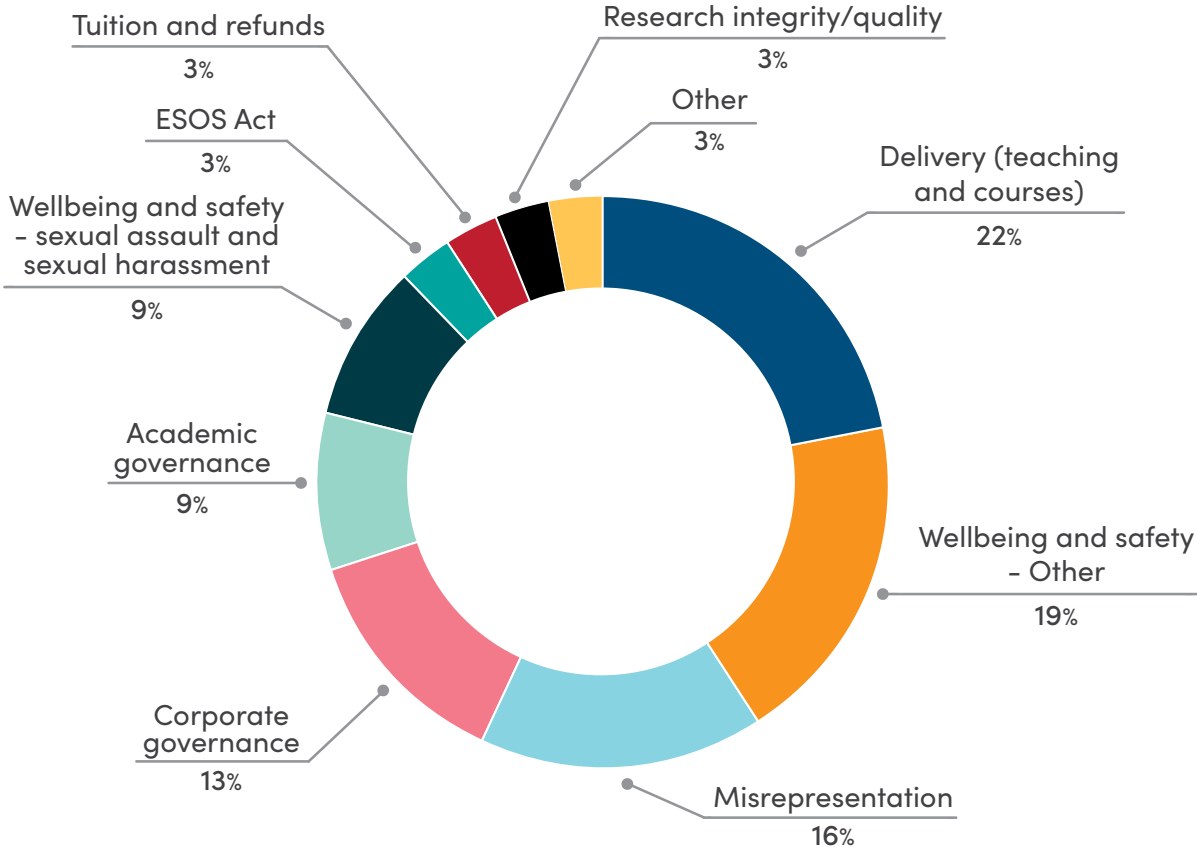
In 2022, we continued to work closely with the Fair Work Ombudsman on underpayments of casual staff. Since first raising our concern about wage underpayments with the sector in August 2020, we have engaged with 22 universities. Most universities have now undertaken, or are undertaking, comprehensive reviews of their payroll practices, improving processes and implementing contemporaneous record-keeping systems.

In 2023 we will be looking for assurance that in assessing quality, learning and student outcomes, providers are considering the impacts of staff employment arrangements. In particular, governing bodies need to assure themselves that academic rigour and educational support to students are not being compromised by such arrangements.

Of the 27 compliance assessments finalised in 2022:

- in 20 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 no significant non-compliance and the matters were closed

- in 4 cases, we made a decision to close the compliance assessment and maintain watching briefs to monitor possible future non-compliance

- in 2 cases, we issued warning letters to providers who had addressed identified non-compliance, placing the provider on notice about the possibility of future action should the concerns persist or re-emerge

- in one case, we issued regulatory advice and guidance to the provider.

On 31 December 2022, TEQSA had 46 preliminary assessments and 6 compliance assessments on hand.

Cost recovery

Under TEQSA's updated cost recovery model, we will recover the costs of compliance assessments and investigations commenced after 1 January 2023. The amount a provider will pay as part of their registered higher education provider charge for a compliance assessment or investigation commenced in 2023 has been based on historical data related to past regulatory effort. Throughout 2023, we will be monitoring the work effort for this activity to ensure the amounts are appropriate and reflect regulatory effort.

For more information, see our fees and charges page.

Investigations

In 2022, in addition to the blocking of 150 commercial academic cheating websites, we commenced two investigations using our enforcement powers to obtain the evidence necessary to commence civil proceedings against two entities suspected of contravening the TEQSA Act by providing academic cheating services. These investigations are supported by detailed evidence collected by providers as part of their own investigations into academic integrity matters. This work will continue into 2023.

Annual compliance program

2021–22

The 2021–22 annual compliance program focused on offshore TPAs. We sampled 6 providers' oversight of specific TPAs between January 2020 and January 2022 to determine if there were adequate oversight arrangements in place, and how these were impacted by border closures due to the COVID-19 pandemic.

We also reviewed all concerns received about the offshore TPAs of providers as well as material notifications reported by all providers about their TPAs.

Key observations

- All sampled providers had adequate overarching policies and procedures to ensure that academic partners had maintained standards for quality and integrity of course learning outcomes. Generally, there was evidence that providers ensured the implementation of the policies and procedures.

- Sampled providers' monitoring abilities were impacted by the pandemic. Joint committee meetings and scheduled quality assessments stipulated in contracts between parties were delayed or affected to an extent. While providers had alternative means of engagement, their monitoring occurred informally. Due to the informal nature of the meetings, it was difficult to track actions arising from these discussions and their completion.

- In general, there was evidence of cyclical reporting to the governing body in relation to student monitoring, particularly with regard to issues that are most often at risk in transnational settings. These included admissions, credit, subject offerings, assessment, moderation, pedagogy and graduation.

- In some cases, there was insufficient evidence that academic boards were ensuring teaching staff at offshore delivery partners were adequately equipped to detect and address academic integrity risks, especially regarding commercial academic cheating and the emerging threat of the use of artificial intelligence.

> We also observed that, for all providers, there was very limited reporting about material concerns with third-party operations. This was inconsistent with the number of concerns we received about offshore delivery.

In cases where providers did report concerns about their offshore arrangements, these were identified by external sources such as media and not through the providers' own monitoring.

Outcome

At the conclusion of the 2021–22 program, we provided feedback to the selected providers in relation to good practice, areas of risk and opportunities for improvement.

We also updated our MCN guidance to clearly state the expectation that providers advise TEQSA of new TPAs. The commencement of a new TPA could significantly affect a provider's ability to comply with the HES Framework. It therefore requires an MCN with information about how the provider will manage the change to ensure ongoing compliance.

Finally, our findings fed into TEQSA's [Transnational education toolkit](#), which provides guidance on best practice in third-party offshore delivery.

2022–23

The 2022–23 annual compliance program is focusing on the quality of online delivery and support services available to students.

We aim to review how providers are responding to student feedback regarding online delivery, including the quality of education and support services. The review also aims to evaluate how this feedback is used to inform initiatives to improve teaching and learning, and to mitigate future risks to the quality of course delivery.

Findings from the 2022–23 program will also guide our efforts to support the sector in strengthening their own online delivery and the support they provide to their students.

Compliance in focus – cyber security

The circumstances

In 2022, TEQSA received an unprecedented number of notifications relating to cyber security incidents. These included serious data breaches leading to unauthorised disclosures of personal information and cyber security incidents involving ransomware attacks.

The Australian higher education sector has extensive networks of IT systems and a wide network of users. Its significant holdings of personal information about staff and students and highly valuable repositories of world-class research, including intellectual property and research data, present an attractive target for malicious cyber activity.

Our role

Maintaining information security was one of TEQSA's 5 compliance priorities in 2022. Under the HES Framework, providers must:

- ensure that information systems and records are maintained, securely and confidentially to prevent unauthorised or fraudulent access to private or sensitive information (paragraph 7.3.3(b))

- promote and foster a safe environment, including by advising students and staff on actions they can take to enhance safety and security online (standard 2.3.4)

- have a critical incident policy and readily accessible procedures (standard 2.3.5)

- take preventative action to mitigate foreseeable risks to academic and research integrity (standard 5.2.2)

- exercise due diligence to identify, prevent, and manage risks within a provider's remit of operations (domain 6).

Additionally, a cyber security incident or significant data breach would trigger an MCN, as there is a heightened risk to students and staff, academic and research integrity, and possible reputational damage.

Our focus

Our key focus was on the providers' response to cyber security incidents, including:

- whether the provider met its legal and regulatory obligations, for example, reporting under the *Notifiable Data Breaches Scheme* and the *Security of Critical Infrastructure Act 2018*

- how the incident was detected and whether the detection was through routine monitoring

- what the provider did to identify the extent of the problem, minimise the impact and mitigate further or future risks

- whether actions taken in response to the incident were guided by policies and procedures, and whether the framework is routinely reviewed to ensure it remains fit for purpose.

> We noted that most cyber security incidents occurred due to the lack of vigilance in following security protocols. Staff agility and preparedness in addressing cyber security incidents were crucial to minimising disruption and further malicious activity.

Our assessment of providers' responses depended on the information included in the initial notification. In most cases where the provider voluntarily disclosed the information outlined above, we had confidence that the provider was taking appropriate action and we closed the matter. However, in some cases where the notification contained scant information, we sought more information and provided guidance to assist their response. Undoubtedly, comprehensive MCNs build our confidence in the maturity of providers' governance and the effectiveness of their risk management frameworks.

What providers can do

- Awareness is the first step to preventing cyber security incidents. Providers should ensure that students and staff (including sessional staff) are appropriately trained on how to safeguard sensitive information and access to it.

- Providers must have appropriate policies to identify and address cyber security incidents, and ensure that such policies translate effectively into practice and are embedded in daily operations.

- Providers should be mindful of cyber security threats associated with learning management systems (LMS), particularly if their courses are delivered by a third-party provider.

- Should a cyber security incident occur, providers should take prompt action in accordance with their security and incident response plans, paying close attention to the wellbeing and safety of all affected parties.

Resources

- Strategies to mitigate cyber security incidents

Unregistered entities

The TEQSA Act sets out the offences for entities which represent that they offer or award a higher education award such as diplomas and/or bachelor, master or doctoral degrees without registering with TEQSA, or that falsely represent themselves as registered higher education providers.

Unregistered entities' representation of their courses can present a serious risk to students. Students may not recognise that the courses offered by these entities are not regulated higher education courses, and may not constitute recognised, quality-assured higher education courses.

Concerns raised

In 2022, we investigated 16 concerns related to alleged unregistered entities. These concerns were raised through several channels, including from students, members of the public, registered providers, government agencies and internal investigations.

Action taken

We apply a range of regulatory responses to protect student interests and the reputation of the higher education sector. In general, we first seek to educate entities about how to voluntarily comply with their obligations under the TEQSA Act.

In 2022, of the 16 entities we investigated, 12 were identified as unregistered entities. Warning letters were issued to these unregistered entities, leading to positive engagement and voluntary compliance in all 12 cases.

Publication on the TEQSA website

In 2021, we published the details of several unregistered entities on the TEQSA website. This action was taken to provide clarity on the registration status of the entities and their courses. Subsequently, one entity was removed and 3 continue to be listed on the website. We will continue to list the details of these entities to help inform decisions of prospective students.

Conditions

TEQSA employs a range of tools to help achieve compliance, build providers' capability for self-assurance and address non-compliance. These compliance and enforcement measures include imposing conditions on a provider's registration or accreditation to mitigate identified material risks.

We may impose conditions in instances where:

- TEQSA is not confident that a provider is managing risks effectively
- targeted action is needed to address the non-compliance or risks of non-compliance
- TEQSA does not have confidence that alternate assurance measures, such as a voluntary undertaking, or a statutory request for information, would sufficiently mitigate the risks.

Although conditions are most often imposed as a result of an application-based assessment (initial registration, re-registration, accreditation or re-accreditation), they may also be imposed as a result of a compliance or other out-of-cycle assessment.

In 2022, we undertook a major project to ensure that new conditions were not only better aligned to the areas of noted risk, but also more precise in critical assurance aspects. Proposed conditions are now guided by SMART principles: specific, measurable, achievable, relevant and time-bound. In addition, reporting in response to a condition is focused, where possible, on documentation expected within a provider's normal operations rather than tailored specifically for TEQSA.
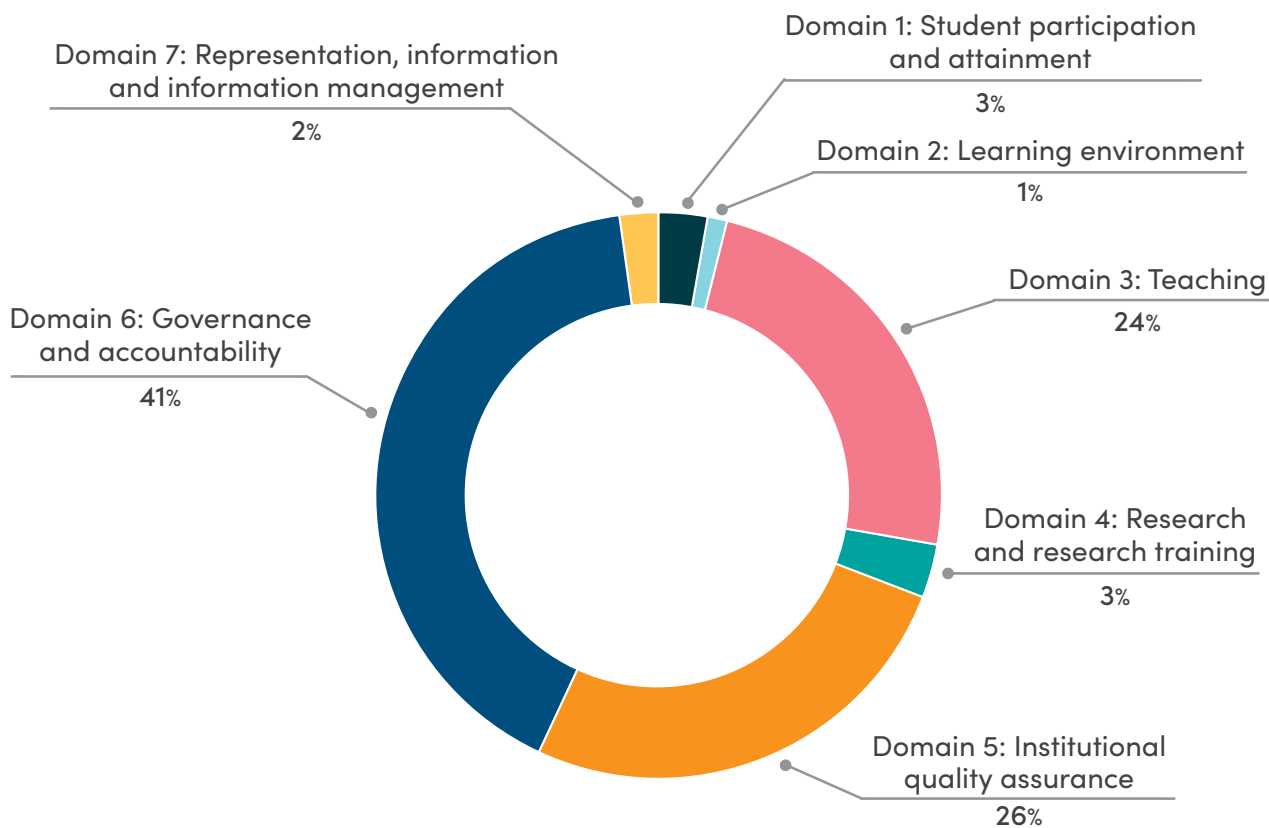
Conditions snapshot for 2022

In 2022, we imposed 13 conditions on TEQSA registrations across 7 providers and 14 conditions on course accreditation across 6 providers. TEQSA also revoked or removed 70 conditions and varied one condition.

In anticipation of the introduction of TEQSA's increased cost recovery on 1 January 2023, we reviewed all conditions for which the required reporting by providers had been completed, by 31 December 2022, to avoid providers incurring unnecessary charges. As a result, in December 2022, we revoked 19 registration and 16 course conditions.

As at 31 December 2022, there were 78 active conditions on registration and 20 active conditions on courses imposed under the TEQSA Act across 40 providers. There were also 34 active conditions across 23 providers imposed under the ESOS Act.

The most notable areas of risk leading to the imposition of conditions have remained constant within domains 3, 5, and 6 of the HES Framework, as shown in Figure 7.

Figure 7: Relevant domains under the HES Framework for active conditions as at 31 December 2022

Domain 7: Representation, information and information management
2%

Domain 1: Student participation and attainment
3%

Domain 2: Learning environment
1%

Domain 6: Governance and accountability
41%

Domain 3: Teaching
24%

Domain 4: Research and research training
3%

Domain 5: Institutional quality assurance
26%

For registration and course accreditation conditions, the standards and sections most often at risk are outlined below.

Domain 3: Teaching, in particular section 3.2 staffing

Conditions are commonly imposed to address risks related to courses not having appropriate and qualified staff, especially those with teaching and supervisory responsibilities. In cases where staff may not have a relevant qualification one level above the course being taught, TEQSA pays particular attention to how a provider determines *equivalency* in compliance with standard 3.2.3 paragraph (c). The other most common risk areas related to ensuring effective policies are in place to address qualifications in cognate disciplines, and the scholarly engagement of academic staff.

Domain 5: Institutional quality assurance, in particular section 5.3 monitoring, review and improvement

Most conditions imposed in relation to section 5.3 were related to external referencing activities, usually in the form of reviews by independent experts. Additionally, the conditions also sought to ensure that the relevant board had oversight of the drafting, and continued to monitor the effectiveness, of any action plan prepared to address the recommendations resulting from the external review.

Domain 6: Governance and accountability, in particular section 6.2 corporate monitoring and accountability

Competent and sustainable governance is essential for the provider's operations and to ensure the provision of high-quality education. During 2022, conditions imposed in relation to section 6.2 sought to ensure that the governing body had appropriate oversight of strategic plans and was accountable for the resourcing and achievement of objectives detailed in the strategic plans. Conditions were also imposed to ensure the financial viability of providers and that projected student numbers were met.

Suggestions for preparing submissions and reporting

- All submissions with respect to conditions must be submitted via the provider portal. There should be a request item clearly identifying the condition and due date if applicable.

- Forward planning is essential, ensuring that work on conditions requiring academic or governing board action is appropriately coordinated with meeting schedules.

- Reporting against conditions is evaluated on both the provider meeting the letter of the condition as well as addressing the risks which resulted in the condition's imposition. This will be outlined in a Summary of Reasons or a Course/Registration Assessment Report.

- For conditions with regular reporting, keep a summary of actions taken against each condition and reflect on whether the condition has improved the provider's capability to meet its compliance obligations.

- Depending on the condition, evidence of effective implementation of measures is given greater weight than a statement or recording in meeting minutes. For example, a revised policy has less evidential weight than supporting documentation which demonstrates operational changes.

- Do not hesitate to present adverse findings. We expect providers to proactively review their processes and identify areas for improvement.

For more information on conditions, please see TEQSA's Guide to conditions.

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TEQSA