



INDEPENDENT
HIGHER EDUCATION
AUSTRALIA

IHEA SUBMISSION

CONSULTATION ON TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY'S (TEQSA) FIT AND PROPER PERSON DETERMINATION

18 May 2024

IHEA Submission

Consultation on Tertiary Education Quality and Standards Agency's (TEQSA) Fit and Proper Determination

Independent Higher Education Australia (IHEA) appreciates the opportunity to provide feedback on TEQSA's fit and proper person determination consultation paper, for which submissions are due by 5pm (AEST) 20 May 2024.

IHEA notes the proposed changes to the Fit and Proper Determination and supports in-principle these changes. However, with respect to all of the changes it will be important to understand the process and mechanism through which TEQSA will give effect to them in their day to day operations. That detail has not been made available by TEQSA and should be the subject of further consultation during their development

With respect to whether a person has committed an offence or offences against foreign law/s and whether a relevant person has been found not to be a fit and proper person for the purposes of any law of the Commonwealth or of a State or Territory (other than those specifically listed in the Determination), IHEA notes and supports these proposals based on the available information and has no further comment at this time. However, it will be important to understand how TEQSA will verify overseas charges, convictions, and sanctions.

The third part of the proposed changes relates to whether the public is unlikely to have confidence in a relevant person's suitability to be a person who makes or participates in making decisions that affect the whole, or a substantial part, of a registered higher education provider's affairs. With this change, TEQSA's assessment of public confidence in persons' suitability would be stated as a matter TEQSA "may have regard to".

IHEA agrees and supports measures to ensure that robust determinations of a fit and proper person are in place with respect to higher education providers, of which public confidence is a component. However, there is currently no understanding on how TEQSA will acquire the information about the public's confidence or make a determination. We urge TEQSA to ensure procedural fairness in doing so.

There is a risk that a lack of public confidence, which may be based only on a perception, could be triggered or motivated by disingenuous commentary or vexatious complaints, potentially by other education providers seeking to obtain a competitive advantage. For this reason, TEQSA needs to develop a robust, defensible and fair process to ensure veracity of any determination relating to a lack of public confidence, even if it is only an element that TEQSA will 'have regard to'. Part of such a process should determine what information will be used, how an assessment will be made and what review rights will be available. Transparency through publishing this procedure on the TEQSA website will be paramount. We look forward to further consultation on the development of the specific detail of such a proposal.

Who We Are

Independent Higher Education Australia Ltd. (IHEA) is a peak body established in 2001 to represent Australian independent (private sector) higher education institutions. Our membership spans independent universities, university colleges and other institutes of higher education, all of which are registered higher education providers accredited by the national higher education regulator, TEQSA or associate members seeking registration.

Our Vision is that: students, domestic and international, have open and equitable access to world class independent higher education in Australia, built on the foundations of equity, choice, and diversity.

Our Mission is to represent independent higher education and promote recognition and respect of independent providers as they contribute to Australian education, the Australian economy, and to society in general. We achieve this by promoting continuous improvement of academic and quality standards within member institutions, by advocating equity for their staff and students, and by delivering services that further strengthen independent providers' reputations as innovative, sustainable, and responsive to the needs of industry and other relevant stakeholders in both higher education and vocational education and training. IHEA's commitment is to excellence, productivity and growth in independent higher education being delivered through a trusted Australian education system underpinned by equity, choice, and diversity.

IHEA members have different missions, scales, and course offerings across the full AQF range (Diplomas to Doctorates). Members comprise:

- Four private universities (Bond University, Torrens University, University of Divinity, Avondale University).
- Five University Colleges (Alphacrucis University College, Moore Theological College, Australian College of Theology, Sydney College of Divinity and SAE Institute).
- Seventy four not-for-profit and for-profit institutions of Higher Education; and related corporate entities.

IHEA members teach approximately 74 percent of the students in the independent sector (i.e., more than 130,000 students) and educate students in a range of disciplines, including law, agricultural science, architecture, business, accounting, tourism and hospitality, education, health sciences, theology, creative arts, information technology, and social sciences.

IHEA holds a unique position in higher education as a representative peak body of higher education providers. Membership in IHEA is only open to providers registered with the Australian regulator –TEQSA. However, some IHEA members are dual and multi-sector providers who also deliver VET and/or English Language Intensive Courses for Overseas Students (ELICOS) courses.

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APPENDIX TO IHEA SUBMISSION



Australian Government

Tertiary Education Quality and Standards Agency

Proposed changes to TEQSA's Fit and Proper Person Determination

TEQSA consultation paper, April 2024

TEQSA

Fit and Proper Person Determination

The Tertiary Education Quality and Standards Agency Fit and Proper Person Determination 2018 (Determination) is a legislative instrument that sets out the information to specify matters that TEQSA may have regard to when determining whether a person is fit and proper under paragraph 21(1)(b), subsection 25A and paragraph 36(1)(b) of the *Tertiary Education Quality and Standards Agency Act 2011* (the Act).

You can view the Determination and the TEQSA Act by accessing the respective links: [Tertiary Education Quality and Standards Agency Fit and Proper Person Determination 2018](#) (legislation.gov.au) and [Federal Register of Legislation - Tertiary Education Quality and Standards Agency Act 2011](#).

Proposed amendments to the Determination

TEQSA proposed amendments

The proposal is that TEQSA amend the Determination so it states, in addition to what it covers already, that TEQSA may have regard to:

- whether a relevant person has been found guilty of a foreign offence (within the meaning of section 85ZL of the Crimes Act 1914). With this change, TEQSA may have regard to whether a person has committed an offence or offences against a foreign law/s
- whether a relevant person has been found not to be a fit and proper person for the purposes of any law of the Commonwealth or of a State or Territory (other than those specifically listed in the Determination). With this change, TEQSA may have regard to fitness and propriety findings made by Commonwealth or State or Territory regulators (amongst other bodies)
- whether the public is unlikely to have confidence in a relevant person's suitability to be a person who makes or participates in making decisions that affect the whole, or a substantial part, of a registered higher education provider's affairs. With this change, TEQSA's assessment of public confidence in persons' suitability would be stated as a matter TEQSA may have regard to.

Reason for proposed amendments

Amending the Determination will mean that it appropriately aligns with:

- a. the relevant content of Schedule 3 of the *Standards for Registered Training Organisations (RTOs) 2015* concerning the fit and proper person requirements in the vocational education sector, and

- b. the Higher Education Support (Fit and Proper Person) Instrument 2019 which sets out the fit and proper person requirements the Minister applies under the *Higher Education Support Act 2003*.

Consultation process

This paper is being made available on TEQSA's website (www.teqsa.gov.au) and has been sent directly to peak bodies for providers regulated by TEQSA under the TEQSA Act.

TEQSA requests that feedback on the proposed amendments to the Determination, along with any other relevant feedback, be submitted via email to review@teqsa.gov.au.

Submissions close at 5:00pm (AEST) on Monday 20 May 2024.

Interested parties can also email review@teqsa.gov.au with queries about this consultation, or to seek clarification regarding the proposed amendments.

Please note that TEQSA intends to publish a summary of submissions received. If you do not wish for your submission (or part of your submission) to be published, please indicate this in your response. TEQSA may alter the format or content of submissions before they are published, or decline to publish particular submissions, having regard to the requirements for Australian Government websites.