IHEA SUBMISSION

TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY CONSULTATION PAPER ON INTERIM GUIDANCE: MANAGING EXTERNAL ACTORS

27 March 2025

IHEA Submission
Tertiary Education Quality and Standards Agency Consultation Paper on Interim Guidance: Managing External Actors

Independent Higher Education Australia (IHEA) welcomes the opportunity to provide feedback on the Tertiary Education Quality and Standards Agency (TEQSA) Consultation Paper on Interim Guidance: Managing External Actors, for which submissions are due by 27 March 2025.

Introduction

The interim guidance has been prepared in response to protests and encampments on campus that "multiple universities" experienced in 2024 and informed by learnings from a series of social cohesion roundtables, including with university vice chancellors on 21 October 2024 and university managers on 15 November 2024, which TEQSA organised and hosted.

At these roundtables, senior university representatives and other stakeholders shared their experiences of protests and encampments on campuses in Australia and the challenges associated with these events, including identifying and managing external actors. The guidance is also informed by relevant submissions to recent parliamentary inquiries.

While the experiences and focus of this guidance has been at/for universities, TEQSA is "encouraging all higher education providers to consider this emerging practice, giving appropriate consideration to all risks relevant to the institution's particular circumstances and ensuring steps are taken to protect student and staff wellbeing and safety."

From an IHEA perspective, our 86 members, include 5 independent universities, with the remainder being non-university higher education providers. Some providers will have campuses at which protests and encampments will be possible, however, for many it will not occur because of the layout or location of the campus.

While the material provided by TEQSA is guidance for managing external actors, as opposed to forming part of its regulatory processes, in considering how providers consider and implement the guidance, TEQSA needs to take account of providers' size and scale, resources and likelihood of protests and encampments from external actors. TEQSA should undertake its own risk assessment with respect to each provider and develop commensurate, risk-based guidance that respond to the challenges a provider is facing, rather than adopting a one size fits all response based on the most significant and concerning experiences of particular universities.

Furthermore, it may be appropriate to attempt to define "external actors" to provide clarity around who is included and who is not. As there have been concerns about people who are not connected with a university participating in protests and encampments on campus, the applicability of the guidance could be strengthened by defining external actors as people who are not affiliated with the university in any employment or studying capacity. The university will have greater authority to act in relation to the conduct of its staff and students so being clear about external actors being parties not associated with the core function of people who work and study on the campus may be beneficial.

TEQSA also encourages providers to consider other relevant recommendations from forthcoming reviews, including internal reviews by individual institutions, the Australian Human Rights Commission's study into the prevalence and impact of racism in Australian universities and work by the special envoys to combat antisemitism and Islamophobia.

It will be import in finalising the guidance that TEQSA takes account of other processes and ensures that they provide guidance that is streamlined but relevant to the provider and their operations and risk profile.

TEQSA will consider feedback with the aim of publishing the final guidance materials in April 2025.

Threshold Standards

With respect to the draft guidance document, TEQSA highlights the relevant provisions of the Higher Education Standards Framework (Threshold Standards) 2021 (Threshold Standards) that providers need to meet that relates to managing external actors, such as

- Section 2.3, which encompasses organisational responsibilities for safeguarding and supporting the wellbeing and safety of students and staff.

- Standard 6.1.3b, which sets expectations for having established clearly defined roles and delegated authority for effective governance and policy development and review, including relevant codes, by-laws, statutes and rules.

- Standard 6.1.4, which requires the governing body to maintain an institutional environment where the wellbeing of students and staff is fostered, and freedom of speech and academic freedom are upheld and protected.

- Section 6.2, which requires that providers be able to demonstrate, and the corporate governing body assure itself, that the provider is operating effectively and sustainably. This includes:
    - complying with all relevant legislative requirements
    - identifying, managing and mitigating material risks to higher education operations, and
    - monitoring and taking action in response to formal complaints, allegations of misconduct and critical incidents.

It should be noted that these are existing regulatory requirements which higher education providers are already required to meet in their day to day operations.

Sector challenges

The guidance identifies a number of challenges that universities identified in relation to managing external actors on campus.

These included:

- Balancing their obligation to uphold freedom of speech and academic freedom with their obligation to protect the health and safety of students and staff, including minimising risks of psychological or physical harm that may come from external actors.

- Understanding and navigating legal provisions for dealing with the occupation of, and encampments on, an institution's grounds by external actors and disbanding protests that escalate and become unsafe.

- Understanding and fostering productive relationships with state-based police.
    - There may be variation across jurisdictions in relation to legislation that must be considered and the drafting of relevant provisions.

- The diversity of the higher education sector made it difficult for providers to draw on one another's experience and expertise.
    - Factors such as the geographical location and structure of a provider's campus (or campuses) may require different policies and procedures or by-laws to manage external actors.
    - For example, different strategies may need to be employed to manage external actors at:
        - institutions with one versus multiple campuses
        - campuses located in major metropolitan hubs and easily accessible by public transport compared to those that are more isolated

- campuses with lots of open space versus primarily enclosed buildings
- self-contained campuses with external barriers compared with those which are porous to local foot traffic in a busy local area.

IHEA feedback on sector challenges

These challenges will be faced by independent higher education providers to varying degrees based upon their operations. However, for smaller providers, in particular, there are a number of challenges they will face, including:

- Not having access to legal expertise to navigate complex legal provisions and matters of interpretation such as freedom of speech versus removing external actors to protect staff and students from psychological harm.

- Limited access to appropriately trained security personnel needed to effectively address sensitives situations.

- Difficulty in establishing relationships with local police due to a lack of established networks or recognition.

- The diversity within the higher education sector may mean that smaller providers might not be able to leverage the experience and expertise of larger institutions easily.

- Smaller providers in busy local areas might find it challenging to secure their campuses and manage foot traffic, which can increase the risk of external actors causing disruptions.

Emerging practice to manage external actors

The draft guidance states that Australian universities that experienced protests and encampments on campus in 2024 demonstrated different ways of managing external actors, and various learnings have subsequently been identified, as outlined below.

Institutional policies and misconduct procedures

- Regularly review and update policies and processes to ensure their ongoing effectiveness. Address any identified gaps in existing policies promptly.
  - Review the process for updating policies to ensure that, when necessary, policies can be updated quickly and efficiently.

- Establish clear reporting procedures for incidents or the presence of external actors on campus.
  - Reporting processes are user-friendly, easy to access, include provision for confidentiality or anonymity and be clearly communicated to staff and students
  - Ensure there is clarity about how the provider will respond to these reports, and within what timeframe.

- Develop a risk assessment framework for external actors.
  - Clarify how relevant legal and policy frameworks affects the capacity for external actors to plan and/or participate in protests or encampments on campus, and the terms on which they may do so.

- Establish or clearly communicate policies or by-laws that articulate campus access for external actors and procedures for responding to situations where external actors breach these policies.
  - Set out what actions will be taken and consequences that apply to external actors who engage in behaviour that is disruptive, damaging, a threat to the safety or wellbeing of others, or otherwise breaches institutional policies.

- Regularly review whether these procedures are being upheld and the misconduct process implemented in a timely manner.

- Ensure policies and by-laws are well advertised, and easy to access and understand, including for people outside the institution.

Critical incident management

- Review and update existing critical incident management structures and institutional security arrangements with a consideration of this guidance and learnings from recent events.
  - Ensure clarity exists on what situations warrant calling the critical incident management team and/or the local police, and who is responsible for making that decision.
- Develop productive relationships with outside agencies, such as state police or Australian Federal Police.
  - Understand what obligations and expectations police have about when they should be called and how they can assist.

- Establish a standardised process and communication strategy for use by campus security regarding external actors coming on to campus.

- Establish clear organisational responsibility for developing, implementing and monitoring safety plans, for individual staff or students who may be targeted by outside actors.

Education and training for staff and students

- Provide clear and practical education and training on relevant institutional policies and misconduct procedures for all students, staff and contractors.
  - Training includes processes for how to report incidents or the presence of external actors on campus.

- Equip staff with a clear understanding of critical management procedures so they are confident following appropriate processes when responding to incidents involving external actors on campus.

- Establish protocols for supporting staff to deal with external actors who may enter learning and teaching spaces, or offices.

Legal obligations

- Confirm the governing body has documented and possesses a clear understanding of the legal status of the institution with regards to the classification of land/property in relation to protests and outside actors.
  - This includes obligations under relevant state or territory legislation, any applicable local by-laws, and legislation under which the institution is established.

- Ensure relevant staff understand what powers the institution has and the legal avenues available for managing external actors.
  - This includes taking action against or removing people that are not part of the provider's community who are engaging in behaviour that poses a risk to the wellbeing and safety of students and staff.

Campus management

- A statement should be displayed at entrances to campus for external actors and campus visitors that outlines conditions associated with access to campus.

- Manage building access, through access cards or other mechanisms where appropriate.

- Examine how student and staff identification cards could be used to enable identification of external actors.
  - This includes establishing an expectation that staff and students carry their identification with them and show it to security when requested.
- Reflect on the necessity and effectiveness of monitoring through CCTV and security guards wearing body cams.
  - Ensure relevant privacy laws and obligations are considered, and that there are appropriate policies in place around the use, storage and access of data captured.

IHEA Feedback on emerging practice

Independent higher education providers, including private universities, already comply with the requirements of the Threshold Standards and develop, implement and review procedures and policies to protect the welfare of staff and students. However, in applying this to the specific issue of managing external actors there will be complexity.

While the emerging practice provides a raft of potential actions to manage external actors provides helpful guidance to providers, it will be variable in its applicability across the higher education sector.

Some providers, because of factors such as having an open and easily accessible campus and the demography of their student cohorts, may be more susceptible to protests and encampments. Conversely, many providers may not be susceptible at all.

TEQSA does acknowledge this and "encourages all higher education providers to consider this emerging practice, giving appropriate consideration to all risks relevant to the institution's particular circumstances and ensuring steps are taken to protect student and staff wellbeing and safety". In doing so TEQSA does reflect that "risks relevant to the institution's particular circumstances" means that they will vary as will the provider's response.

TEQSA also states that the diversity of the higher education sector, including the laws, by-laws and statutes with which different providers must maintain compliance, made it difficult to establish a sectorwide approach. This reflects that providers will have different circumstances and should be able to utilise only those elements of the emerging practice guidance as needed and required.

For example, some smaller, non-university higher education providers that operate closed campuses may be less likely to be affected by external actors. They may also not have the means to implement the full suite of emerging practices, for example, utilising CCTV and utilising security guards wearing body cams.

As such, consideration also needs to be given to the ownership of the land on which a higher education provider sits. Most independent (private) higher education providers' campuses are on private land, which is either through freehold or commercial lease, which provides rights under law regarding the ability to control and limit access. In contrast, most public universities are on public land and have responsibilities around allowing public/community access, which most independent providers will not have. In effect, independent providers have greater control over access to their campuses than public universities and the guidance should reflect this (and other) points of differentiation.

Furthermore, each campus of a higher education provider will be unique to that institution as will the issues they face. We believe that TEQSA needs to recognise this in the guidance document to ensure that it is scalable. TEQSA should work with providers to understand the risk to a provider/provider type based on their circumstances and their vulnerability to campus protests and encampments. In finalising the guidance, TEQSA should reflect this in specific and fit for purpose guidance and case studies based on type and size of campus and provider.

This will assist providers and TEQSA in actively addressing the actual risks and issues a provider faces. We also believe that providing a definition of external actors may be useful in being clear about the audience that is in scope. As a starting position, this should be all people who are not connected to the provider through any

employment or studying arrangement. This may help to provide additional clarity to situations that are already complex.

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). IHEA has 86 members, which comprise:

- Five private universities (Australian University of Theology, Avondale University, Bond University, Torrens University and University of Divinity).

- Six University Colleges (ACAP University College, Alphacrucis University College, Excelsia University College, Moore Theological College, SAE University College and Sydney College of Divinity).

- Seven self−accrediting institutes of higher education (ACAP University College, Excelsia University College, Griffith College, Kaplan Business School, Marcus Oldham College, Photography Studies College and The College of Law).

- Seventy 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, human services 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, or seeking registration, 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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