

EXPLANATORY STATEMENT

Tertiary Education Quality and Standards Agency (Information) Guidelines 2013

Issued by the authority of the Chief Commissioner of the Tertiary Education Quality and Standards Agency (TEQSA)

Subject: *Tertiary Education Quality and Standards Agency
(Information) Guidelines 2013*

Authority

Section 204 of the *Tertiary Education Quality and Standards Agency Act 2011* (the Act) allows TEQSA to make, by legislative instrument, Information Guidelines.

Purpose and Description of the provisions

The purpose of the instrument is to set out the Commonwealth authorities and the State or Territory authorities that the Tertiary Education Quality and Standards Agency (TEQSA) may disclose higher education information to under sections 189 and 194 of the Act.

Under section 189 TEQSA can disclose higher education information to the authorities listed in the Information Guidelines if:

- a. The information relates to an offence, or possible offence against the Act, the Act's associated provisions or the *Education Services for Overseas Students Act 2000*;
- b. The information that relates to a contravention, or possible contravention, of:
 - i. the Act; or
 - ii. the *Education Services for Overseas Students Act 2000*; or
 - iii. the *Higher Education Support Act 2003*; or
 - iv. legislative instruments made under any of those Acts.

TEQSA can disclose higher education information to the authorities listed in the Information Guidelines under section 194 if TEQSA is satisfied that the disclosure is necessary to enable or assist the authority to perform or exercise any of the authority's functions or powers.

Section 5 of the Information Guidelines states that TEQSA can share higher education information under sections 194 and 189 to the authorities listed in Schedule A.

Items 1-62 of Schedule A contain profession-specific Commonwealth, State or Territory authorities.

Items 63- 90 of Schedule A contain authorities with a broader public interest remit.

Consultation

Draft Information Guidelines and an accompanying consultation paper were published on TEQSA's website (<http://www.teqsa.gov.au/news-publications/current-consultations>) on 1 March 2013. TEQSA asked for submissions on the Draft Information Guidelines with a closing date for responses of 28 March 2013. TEQSA received 11 responses and they fell into 4 broad categories:

1. Comments on the authorities included in Schedule A of the Draft Information Guidelines or suggestions for bodies to be added to Schedule A, including suggestions for the inclusion of bodies that cannot be included in the Information Guidelines on the basis that they are not Commonwealth Authorities or State or Territory authorities within the meaning set out in the TEQSA Act.
2. Questions asking whether TEQSA will advise higher education providers that information on them has been disclosed to bodies in Schedule A of the Draft Information Guidelines.
3. Questions on how information that is commercial in confidence will be used and what confidentiality arrangements will apply to authorities in Schedule A.
4. Questions on the type of information that may be disclosed.

In relation to the first category of responses TEQSA has included two additional authorities in Schedule A based on the submissions received; the Australian Charities and Not-for-profits Commission and the Professional Standards Board for Patents and Trade Mark Attorneys. Categories 2-4 of the submissions are beyond the scope of the instrument, but the responses will be taken into account when TEQSA is considering whether to disclose higher education information under the instrument.

TEQSA will comply with its legislative obligations when disclosing any higher education information. TEQSA has also published further information on how it treats requests to deal with information on a confidential basis in the documents collecting information, including TEQSA's application forms and guides and TEQSA's annual Provider Information Request.

Commencement

This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and will commence on the day after registration on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Tertiary Education Quality and Standards Agency (Information) Guidelines 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the instrument is to set out the Commonwealth authorities and the State or Territory authorities that the Tertiary Education Quality and Standards Agency (TEQSA) may disclose higher education information to under section 189 and 194 of the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act).

Human rights implications

The Instrument engages the right to education, contained in Article 13 of the International Covenant on Economic, Social, and Cultural Rights. In particular, this instrument has an effect on the provision of education services by higher education providers.

To the extent that the right to education is engaged, this right is promoted by the Legislative Instrument.

Conclusion

This Instrument is compatible with human rights because it advances the protection of human rights.

CAROL NICOLL

Chief Commissioner

Tertiary Education Quality and Standards Agency