

## **EXPLANATORY STATEMENT**

Issued by the authority of The Hon Alan Tudge MP, Minister for Education and Youth

### ***Higher Education Support Act 2003***

### ***Tertiary Education Quality and Standards Agency (Matters Relevant to the Approval of Domain Names) Determination 2021***

#### **AUTHORITY**

Subsection 204A(10) of the *Tertiary Education Quality and Standards Agency Act 2011* (the Act) provides that the Minister must determine by legislative instrument matters that the Minister must have regard to when deciding whether to grant approval for a person to use a particular domain name, under subsection 204A(4) of the Act.

#### **PURPOSE AND OPERATION**

The *Tertiary Education Quality and Standards Agency (Matters Relevant to the Approval of Domain Names) Determination 2021* ('Determination') lists matters that the Minister must have regard to when considering whether to grant approval for a person to use a particular domain name under subsection 204A(4) of the Act.

Ensuring that the word 'university' is used appropriately in Australian domain names is a longstanding element of Australia's higher education quality arrangements. This policy is intended to prevent the operation of entities that appear to be universities, or related to a specific university, or to universities in general, when in fact they are not.

The matters listed in the instrument will assist in ensuring that approval to use university or the same or similar words in domain names is only granted to domain names that are consistent with the Government's policy to protect the term university.

While the instrument lists criteria for revoking approval of domain names, a domain name that was issued before the legislation took effect will not be affected by the new provision unless it is relinquished and a new applicant subsequently seeks a licence to use it.

The intent of the instrument is not to revoke approval for use of a specified domain name under subsection 204A(4) of the Act where it is clear a business does not provide education-related services.

#### **REGULATORY IMPACT**

Regulatory impact was addressed during the development of the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020.

#### **COMMENCEMENT**

The Instrument will commence the day after the Instrument is registered on the Federal Register of Legislation.

## **AVAILABILITY OF MERITS REVIEW**

Section 183 of the Act specifies the types of decisions made under the Act that are reviewable decisions. This is an exhaustive list. Decisions to list matters which are relevant to the approval of domain names under subsection 204A(10) are not listed in section 183. The Instrument does not provide the Minister with the power to establish a new review mechanism in addition to the review process available under the Act.

## **CONSULTATION**

The Department of Education, Skills and Employment has consulted extensively with auDA and the Department of Communications (which endorses auDA as the .au domain name administrator) throughout the development of the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020 and this instrument. This instrument was developed in response to auDA's concerns and the department made other concessions in finalising the Bill and this instrument. IP Australia has also been consulted in the development of this policy and are supportive.

## 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 (Matters Relevant to the Approval of Domain Names) Determination 2021** The Tertiary Education Quality and Standards Agency (Matters Relevant to the Approval of Domain Names) Determination 2021 (the Determination) 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 Instrument

The Instrument lists matters that the Minister must have regard to when considering whether to grant approval for a person to use a particular domain name under subsection 204A(4) of the Act.

Restricting use of the word 'university' in line with section 204A of the TEQSA Act will ensure that any domain name that includes the word 'university' is not used in a way that might mislead prospective students, education providers, other education stakeholders or members of the public, about the relationship between the website or email address and either a specific university or Australian higher education providers in general.

These consumer protection measures will limit the opportunity to mislead individuals about the nature and standing of a business or service that claims to have a connection to universities.

### Human rights implications

#### Right to freedom of expression

The right to freedom of expression is set out in the International Covenant on Civil and Political Rights (Article 19).

This instrument will set out the matters that the Minister must have regard to when considering whether to grant approval to the use of the word university or like words in domain names.

This instrument will ensure that approval is only granted to domain names that uphold the integrity of the higher education sector. It will also ensure that any limitations around the use of those words is proportionate and reasonable in the circumstances.

The instrument is compatible with the right to freedom of expression as the limitation will be prescribed by law, pursue a legitimate objective that is rationally connected to the limitation and is a proportionate means of doing so.

### Conclusion

The Instrument is compatible with human rights because it promotes the protection of human rights.

**Minister for Education and Youth, the Hon Alan Tudge MP**

**TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY (MATTERS RELEVANT TO THE  
APPROVAL OF DOMAIN NAMES) DETERMINATION 2021**

**EXPLANATION OF PROVISIONS**

**Section 1: Name**

1. This section states the name of the instrument, the Tertiary Education Quality and Standards Agency (Matters Relevant to the Approval of Domain Names) Determination 2021 (the Determination).

**Section 2: Commencement**

2. This section provides that the instrument commences the day after the instrument is registered.

**Section 3: Authority**

3. This section states that the Instrument is made under subsection 204A(10) of the *Tertiary Education Quality and Standards Agency Act 2011* (Act).

**Section 4: Definition**

4. This section provides definitions for terms used in the Determination, including *Act*, *Education services* and *Government related entity*.

**Section 5: Words or expressions with the same or similar meaning to university**

5. Section 5 sets out the criteria for the Minister to have regard to when considering whether to grant approval to an applicant seeking to use a specified domain name:
  - (a) the applicant intends to provide education services or information about education services;
  - (b) the use of the domain name is likely to mislead people about the connection between the domain name and an Australian higher education provider with the right to use the word university in its name;
  - (c) the application is for a domain name that includes '.gov.au' or '.edu.au' domain names and includes the word 'university';
  - (d) the applicant is or proposes to become registered by TEQSA in a category that permits the use of the word university;
  - (e) the applicant has obtained the Minister's consent to use the word 'university' in relation to a company name that is substantially the same as the domain name under section 147 of the *Corporations Act 2001*, or a business name that is substantially the same as the domain name under section 28 of the *Business*

*Names Registration Act 2011* and in accordance with any legislative instrument made under those sections;

- (f) the applicant is an overseas university approved to operate in its home country by that country's registration or accreditation authority;
  - (g) the applicant is the owner or authorised user of a registered trademark that is an exact match of the domain name;
  - (h) the application is supported in writing by an Australian higher education provider with the right to use the word university in its name;
  - (i) the applicant receives funding under the Regional Universities Centres Program under Part 2-3 of the *Higher Education Support Act 2003*; and
  - (j) the applicant is a Government related entity.
6. Section 6 specifies that, for the avoidance of doubt, in deciding whether to revoke approval to use a specified domain name, the Minister must also have regard to the criteria listed in section 5.
7. A note to section 6 explains that subsection 33(3) of the *Acts Interpretation Act 1901* states that where an Act confers a power to make an instrument of a legislative or administrative character, the power shall be construed as including a power to revoke that instrument.