

Proposed changes to the publication of TEQSA's decisions

TEQSA Consultation Paper
February 2017

ACPET submission

Introduction

Established in 1992, ACPET is the national industry association for private providers of tertiary education and training in Australia. ACPET has around 1,000 members who deliver a range of vocational education and training (VET), higher education, and English language programs across all states and territories, as well as internationally. Some 80 members deliver higher education services.

ACPET's mission is to enhance quality and choice in Australian tertiary education and training. Its members include commercial and not-for-profit entities, community and industry providers and enterprise-based training organisations. ACPET works with governments, industries and other stakeholders to ensure VET, higher education, English language and international education programs are well targeted, accessible and delivered to a high standard.

Given its commitment to developing a high quality sector, ACPET welcomes the opportunity to comment on the proposed changes to the publication of TEQSA's decisions.

A summary perspective on the proposed changes

ACPET supports greater transparency across the tertiary education and training sector so that students, particularly, are able to make well informed decisions about their course of study and provider. Relevant, accessible, and understandable information on the performance of the higher education sector and its institutions, universities and higher education providers (HEPs) alike, is fundamental to achieving this.

The publication, for the first time, of performance data for HEPs by the Department of Education and Training is one recent initiative to enhance transparency and student choice and follows the inclusion of HEP student satisfaction and outcomes through the Quality Indicators for Learning and Teaching (QILT). ACPET also notes the Australian Government's decision to implement a range of measures to improve the transparency of higher education institution admissions processes.

While these initiatives are supported for the clear benefits to students, stakeholders and the sector, the imperative for the proposed changes to publishing TEQSA's decisions appears less compelling, at least as outlined in the consultation paper. It is also less clear there will be widespread benefits for students.

In explaining the proposed changes, the consultation paper highlights, particularly, a similar approach that has been taken by the Australian Skills Quality Authority from 1 July 2016. There has, of course, been some major quality concerns following the unprecedented program design and implementation failures of the VET FEE-HELP program. A stronger regulatory response is necessary as part of the efforts to lift confidence in the VET sector and its nearly 5,000 registered training organisations.

By contrast, the higher education sector has not been riven with the same concerns. It is noted that of the approximately 200 decisions published in 2015-16, only one involved the cancellation of a provider's registration.

ACPET, nonetheless, understands there should not be prolonged delays in communicating significant regulatory decisions, particularly where they are likely to impact student choices about their course and provider. The external review processes, while necessary, can impact on the timely resolution of regulatory decisions and advice to students, stakeholders and the broader public.

While ensuring significant decisions are communicated in a timely way is important, so too is ensuring procedural fairness for providers, ensuring they are made aware of proposed decisions in a timely manner, have adequate opportunity to respond, and have an opportunity to have decisions reviewed. As the current policy document indicates, a factor guiding TEQSA's approach to public reporting is *"the need to avoid the publication of information that may unnecessarily prejudice a provider's ability to operate in the higher education sector, balanced against the interests of students"*.

Accordingly, ACPET is not able to support a number the proposals in the consultation paper but believes some reform of review processes and timeframes would provide a way forward that better meets the needs of students, providers and the broader public interest.

Response to consultation questions

Question 1: Do you agree with the proposed principles to guide TEQSA's approach to publishing information about its decisions?

The proposed principles to guide the publication of decisions are broadly supported. ACPET particularly supports the inclusion of consistency in the proposed principles. The existing *Policy on public reporting of TEQSA's decisions* expands on this principle and highlights the need for consistency across providers.

The transparency principle needs to include an explicit and greater focus on supporting students. The transparency principle needs to include a reference to providing relevant, accessible and understandable information for students, stakeholders and the public.

ACPET supports the publication of regulatory decisions where the provider has had a reasonable opportunity to respond to them and been afforded an internal review (where sought), but not before. Accordingly, the fairness principle should be adjusted to reflect the opportunity for a provider response and internal review before decisions are published. Therefore, a greater recognition of the need for procedural fairness is required.

Question 2: Do you agree with the proposed approach to the timing of the publication of information about TEQSA's decisions?

As noted above, the fairness principle should be adjusted to explicitly include the opportunity for a formal provider response to regulatory decisions and an internal review, if sought, before they are published.

While appreciating the significant delays that can accompany external review processes are outside its control, TEQSA should be able to manage its own timeframes to enable a provider adequate time to respond to a decision, to seek an internal review, and for that review to be finalised without significantly disadvantaging students and the broader public interest. Advice from TEQSA is there were only two internal reviews in 2015-16. With the overwhelming majority of 'adverse' decisions recorded on the National Register involving the imposition of conditions that require future remedial action, the provision of a reasonable period of time for a provider response and internal review before publication is appropriate.

Accordingly, regulatory decisions should not be published before providers have been afforded 30 days to formally respond to proposed decisions. Should a provider seek an internal review during this period, publication of the regulatory decision, if it is upheld, should only follow the completion of that review. To support more timely publication of decisions, TEQSA should reduce the timeframe for the completion of its internal reviews to 30 days.

Noting the potential for significant delays where an external review is sought, under exceptional circumstances only, TEQSA should be able to publish decisions on the National Register and take other action to inform students or others. The Register should note that an external review is in train and be updated as the outcomes are determined. This would be consistent with the exceptional circumstances provision in the current policy on reporting TEQSA's decisions.

Question 3: Do you agree with the proposal to publish information about the rejection of applications for initial registration and course accreditation?

In considering its response to TEQSA's proposals to publish decisions, the key consideration is the benefit to students from the earlier release of significant regulatory decisions. While there are circumstances where the publication of decisions regarding existing providers and their courses is warranted, it is unclear how the publication of individual decisions to reject initial applications for registration and course accreditation assists in this regard.

The publication of individual decisions to reject these applications will have no impact on existing or prospective students. Their study choices will not be affected given prospective providers or courses will not be available to them.

For applicants seeking initial registration or new course accreditation that respond to emerging market opportunities, the publication of decisions to reject applications (depending on the level of detail) could materially damage their reputation or market advantage. It surely would not assist the preparation of revised applications nor the broader need to encourage (or at least not discourage) applications that respond to the dynamic needs of students, industry and the labour market.

ACPET supports the current approach of publishing the summary data on the number of applications received, approved and rejected. If appropriately communicated, this information should address the “substantial public interest” highlighted in the consultation paper. Noting some recent interest in and commentary about increased initial registration applications, TEQSA should strongly and publicly articulate the very significant requirements for provider registration and course accreditation, including through workshops or information sessions for aspiring providers.

Question 4: Do you agree with the proposed amendments to the National Register Guidelines?

Noting its advice in relation to the matters informing the proposed amendments to the Register Guidelines, ACPET:

1. Does not agree with the amendment to paragraph 9(a) to include decisions to reject applications by an existing higher education provider for initial accreditation of a course of study.
2. Agrees, in part only, with the proposed amendment to paragraph 9(b) to specify that TEQSA must include information about the review rights available in relation to a decision and (where relevant) that a higher education provider has applied for a review of a decision. Noting ACPET’s proposal to publish decisions only after an internal review has been completed, this information would only need to reference any external review afoot, and only where exceptional circumstances warrant publication.
3. Does not agree with the proposed amendment to paragraph 9(c) to specify that information in paragraph 9(b) will be included after the higher education provider has been notified. This information should only be published after the provider has had 30 days to respond to the notification.

In cases where a provider seeks an internal review of a decision, ACPET proposes that publication of the decision on the National Register should not occur until the review has been completed.

Where an external review is sought, information about the decision should be included on the National Register in exceptional circumstances only. This information should, as a matter of course, be updated to reflect the progress and outcomes of any external review.

4. Agrees with the proposed amendment to paragraph 9(d) where the decision is varied or substituted on review that the published information must include both TEQSA's decision and the decision made on review.

Question 5: Do you agree with the proposal to publish news announcements and media releases about significant decisions by TEQSA?

As noted previously, while the National Register is the authoritative source of information about higher education providers and courses accredited by TEQSA, it is not widely used by students to support their decisions.

It is also the case that regulatory decisions can be difficult to understand and, of necessity, only summarise what can often be quite complex matters considered by TEQSA.

There is a need for other means of communicating relevant, accessible and understandable information about providers and their courses to students and the broader public. ACPET supports the greater use of public announcements and media releases about significant regulatory decisions, once these decisions have been confirmed.

Noting that traditional media is less relevant to students, in particular, a greater use of social media should be considered.

The Australian Government has approved the recommendations of the Higher Education Standards Panel's report on improving the transparency of admissions processes. These recommendations include provision for standardised admissions information located on a dedicated website. A link to this site and QILT, with relevant information about the regulatory decisions held on the National Register, may also assist in this regard.