



Australian Government

Tertiary Education Quality and Standards Agency

TEQSA submission: Quality of governance at Australian higher education providers

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TEQSA

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The Tertiary Education Quality and Standards Agency (TEQSA) welcomes the opportunity to contribute to the inquiry into the quality of governance at Australian higher education providers.

As Australia's national higher education regulator, TEQSA ensures that registered higher education providers (providers) comply with the [Higher Education Standards Framework \(Threshold Standards\) 2021](#) (Threshold Standards).

Domain 6 (Governance and Accountability) of the Threshold Standards establishes the core requirements for leadership, independent oversight, corporate monitoring and accountability, risk management and academic governance. Providers must meet these obligations to safeguard students, academic quality, institutional stability, and public confidence in the sector. Governance failures weaken institutional performance, negatively impact students and staff and increase regulatory risk. Governance failures also risk the social licence of universities and damage public confidence in Australia's higher education sector.

While this inquiry focuses on governance, the regulatory limitations TEQSA outlines in this submission apply across all domains of the Threshold Standards. TEQSA supports a broader review of the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act), legislative instruments and legislative powers available to TEQSA to better equip the agency with the tools needed to respond to emerging regulatory challenges. This is reflective of the Australian Universities Accord Final Report, which noted the need for such a review.¹

This submission has 3 parts:

Part 1 – Context: The higher education regulatory environment

This section outlines the regulatory context in which TEQSA operates. It explains how TEQSA was established and its role, the sector it regulates, and other bodies that influence provider governance and decision making.

Part 2 – TEQSA's current powers and limitations

This section provides an overview of TEQSA's existing powers under the TEQSA Act. It explains how these powers operate within the inquiry's terms of reference, and how TEQSA's regulatory approach is evolving within its existing legislative framework to address identified issues.

Part 3 – Strengthening TEQSA's regulatory powers

This section outlines proposed amendments to TEQSA's powers to improve its ability to address sector-wide governance risks. It explains how these changes would ensure regulatory oversight remains effective, proportionate, and aligned with issues in the sector, including those identified in the inquiry's terms of reference.

1. [Australian Universities Accord Final Report](#), p 197.

1. Context: The higher education regulatory environment

1.1 Australia's higher education sector operates within a complex regulatory framework that includes TEQSA, Commonwealth, state and territory governments, statutory bodies and independent integrity bodies. This section outlines:

- TEQSA's establishment and role
- Australia's higher education sector: composition and challenges
- other bodies that have a role in higher education control and oversight.

TEQSA's establishment and role

1.2 The 2008 [Review of Australian Higher Education](#) (the Bradley Review) highlighted the need for a national approach to higher education regulation and quality assurance. Key to this was the review's focus on developing a 'demand-driven' funding model, which necessitated a more rigorous system of registration, accreditation and quality assurance to ensure confidence that the new funding model was delivering the best outcomes for students, taxpayers and the nation. The Bradley Review noted that existing arrangements varied significantly between jurisdictions, and that compliance and intervention mechanisms were limited and not always embedded in regulatory and quality assurance models.

1.3 The Australian Government established TEQSA in 2011 to address the issues the Bradley Review identified. TEQSA commenced operations in 2012 as the independent, national regulatory and quality assurance agency for higher education.

1.4 As required by the TEQSA Act, TEQSA regulates using a standards-based quality framework guided by the principles of regulatory necessity, risk and proportionality. TEQSA is responsible for assuring providers meet their obligations under the Threshold Standards, a legislative instrument under the TEQSA Act, which sets minimum requirements for entering and operating within Australia's higher education sector. Recognising the diversity of providers across the sector, these standards emphasise high-level principles over detailed prescriptive measures. The Threshold Standards are developed independently of TEQSA by the Higher Education Standards Panel (HESP), an expert statutory advisory body that provides recommendations to the Minister for Education².

1.5 In accordance with the Act, a key focus of TEQSA's regulatory processes is the initial registration of prospective providers and courses, and cyclical provider re-registration and course re-accreditation to assure quality and determine whether a provider is meeting the Threshold Standards. In the event an initial application or cyclical review shows a provider is at risk of or failing to meet the Threshold Standards, to protect students and the integrity and reputation of the sector, TEQSA has the power to:

- reject an application
- impose conditions³ on the provider's registration, requiring action to address the risk of or not meeting their obligations under the Threshold Standards
- shorten the period of provider registration
- cancel an existing provider registration or course accreditation.

2. TEQSA Act, Part 9.

3. See [Guide to conditions](#) for further information about conditions.

- 1.6 Providers are responsible for managing their own risk and are expected to demonstrate self-assurance consistent with the Threshold Standards. TEQSA supports this through guidance to direct and strengthen quality assurance within providers and to support providers in identifying emerging risks. In addition to cyclical re-registration assessments, where TEQSA identifies that a provider is at risk of not meeting its obligations under the Threshold Standards, the agency will seek information from the provider and assess the extent and focus of potential non-compliance. Where a more extensive assessment is required, outcomes can include entering undertakings, conditions on registration or cancelling a provider's registration.
- 1.7 The establishment of TEQSA was a significant milestone for higher education regulation and quality assurance in Australia, and TEQSA has been closely monitored by Government, Parliament and the sector during its history to ensure it is effective in delivering its role. The 2017 [review of the impact of the TEQSA Act](#) found that the TEQSA Act was operating effectively and as intended.⁴ The 2023 [Australian Universities Accord](#) further recognised TEQSA's role in strengthening quality and accountability in the sector by establishing minimum standards and regulatory oversight. As noted, the Accord⁵ proposed legislative reforms to enhance TEQSA's ability to address systemic risks proactively, recommending a review of TEQSA's regulatory powers to ensure they remain fit for purpose in a rapidly changing sector.
- 1.8 Similarly, the 2025 report from the [parliamentary inquiry into antisemitism at Australian universities](#) recommended that the Government consider expanding TEQSA's powers to enforce compliance with the Threshold Standards relating to student wellbeing and safety.
- 1.9 Central to this inquiry is Domain 6 (Governance and Accountability) of the Threshold Standards. The Threshold Standards anticipate governance that extends beyond corporate structures, with the standards giving to the requirements of higher education. While the Threshold Standards do not distinguish between public and private higher education providers, TEQSA notes that universities are publicly accountable entities whose governance frameworks must balance corporate compliance with social responsibilities and contribution to civic leadership⁶.

4. *Review of the impact of the TEQSA Act on the higher education sector 2017*, Deloitte Access Economics, at. ii.

5. [Australian Universities Accord Final Report](#), p. 229.

6. Providers registered within the Australian University category must demonstrate, in accordance with Higher Education Standards Framework, Standard B1.3.13 'strong civic leadership, engagement with its local and regional communities, and a commitment to social responsibility'.

Australia's higher education sector: Composition and challenges

- 1.10 The diversity of Australia's higher education sector informs TEQSA's regulatory and quality assurance approach to reflect the differences in provider maturity and operations.

Table 1: Summary of higher education in Australia, as of 19 February 2025

Registered higher education provider category	Number
Australian University	44
University College	8
Institutes of Higher Education	159
Total:	211
Total student enrolments (2023)⁷	1.6 million
Export income from higher education (2023-24)⁸	\$34.7 billion

- 1.11 Providers range in scale from small independent providers with fewer than 10 students, to mid-sized colleges and universities, through to large public universities enrolling more than 85,000 students. Some providers, including all public universities, are listed as Table A providers under the *Higher Education Support Act 2003* (HESA). These providers receive significant public funding. Other providers are financially independent.
- 1.12 This diversity influences the composition and responsibilities of governing bodies. While providers vary in size and funding models, all have the same obligations to meet Part A of the Threshold Standards, ensuring consistent governance, quality assurance and accountability across the sector.
- 1.13 While governance issues often differ between large and small providers, many core governance challenges persist across the sector regardless of size. Across all provider types, common governance challenges include:
- **Financial oversight and risk management:** Poor financial planning, a lack of transparency in financial reporting, and inadequate risk management.
 - **Governing body effectiveness:** Limited expertise, over corporatisation, poor decision-making processes, poor management of conflicts of interest, challenges in exercising sound judgment on complex social, cultural or community issues and insufficient oversight of the management of key risks.
 - **Regulatory compliance issues:** Weak self-assurance processes, and inadequate reporting that increases risks of non-compliance with the Threshold Standards.
 - **Workforce and employment problems:** Over-casualisation of staff, executive remuneration concerns, and workplace law non-compliance.

7. [Key findings from the 2023 Higher Education Student Statistics - Department of Education, Australian Government.](#)

8. Education export income - Financial Year.

- **Academic governance and integrity risks:** Weak oversight leading to research and academic misconduct risks, immature arrangements for course monitoring, review and reporting, and inadequate student support arrangements.
- **Transparency and accountability:** Limited public reporting, poor student and staff engagement in governance, and insufficient independent oversight.

Other bodies that have a role in higher education control and oversight

- 1.14 The higher education regulatory environment is complex, with multiple government agencies, statutory bodies and oversight entities playing distinct but interconnected roles. Some have specific authority over aspects of provider operations, such as employment law, financial compliance and administrative decision making. Others influence through legislative control, policy enforcement or oversight of institutional processes. The table below lists some, but not all, of the bodies with some responsibility in the sector.

Table 2: Other bodies responsibility for higher education providers

Commonwealth, state or territory governments (including departments of education and relevant Ministers)	State and territory parliaments and assemblies, through university Acts of establishment and other relevant state-based legislation
Higher Education Standards Panel (HESP)	Australian Skills Quality Authority (ASQA)
National Student Ombudsman (NSO) / Commonwealth Ombudsman	State and territory-based ombudsman offices
Australian Research Council (ARC)	National, state or territory-based anticorruption commissions
National Health and Medical Research Council (NHMRC)	Australian Research Integrity Committee (ARIC)
Tuition Protection Service	Fair Work Ombudsman (FWO)
National, state or territory-based audit offices	

- 1.15 Each of these bodies plays a distinct role, but their functions can intersect with TEQSA's oversight of provider governance.
- 1.16 For example, states and territories establish universities under Acts of Parliament, which define governing body structures, responsibilities and compliance requirements. These Acts form the legal foundation for a university's operation, and providers must demonstrate self-assurance against them to meet their obligations under Standard 6.2.1a of the Threshold Standards. TEQSA does not define governance requirements within these Acts but assesses providers' self-assurance that they comply with their legislative obligations, as well as meeting the governance expectations set out in the Threshold Standards. Responsibility for reviewing and updating these Acts to ensure these instruments remain contemporary and fit for purpose rests with state and territory-based parliaments and assemblies.

2. TEQSA's current powers and limitations

- 2.1 TEQSA has legislated powers for the regulation of all Australian higher education providers. However, its ability to address the governance risks relevant to this inquiry is constrained. This section examines TEQSA's powers, their application to governance oversight, and the statutory and operational limitations that impact enforcement. This section examines:
- the legal framework establishing TEQSA's jurisdiction
 - TEQSA's enforcement mechanisms
 - how the Threshold Standards relate to the governance issues identified by the inquiry.

The legal framework establishing TEQSA's jurisdiction and functions

- 2.2 TEQSA's operates under 3 Acts:
- *Tertiary Education Quality and Standards Agency Act 2011*
 - *Education Services for Overseas Students Act 2000*
 - *Higher Education Support Act 2003*.

Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act)

- 2.3 The [TEQSA Act](#) is the primary legislation for the regulation and quality assurance of the higher education sector in Australia. Under the TEQSA Act, TEQSA has functions dealing with applications, compliance and quality assessments, and enforcement.

TEQSA's key application-based functions

- 2.4 Under the TEQSA Act, TEQSA's key application-based activities are assessing applications for:
- initial registration from entities seeking to become higher education providers in Australia
 - renewal of registration of existing higher education providers
 - a change to a provider's registration category
 - initial course accreditation or re-accreditation from non-self-accrediting providers
 - self-accrediting authority.
- 2.5 TEQSA is required to be satisfied that an applicant meets, or continues to meet, the Threshold Standards in order to grant the applications set out above.

TEQSA's compliance functions

- 2.6 Once an entity is registered, or a course accredited under TEQSA Act, TEQSA continually monitors providers to meet the Threshold Standards through:
- annual risk assessments across each providers' scope of registration
 - environmental scanning of provider activities
 - risk intelligence
 - concerns and complaints received
 - emerging sector risks.

- 2.7 Where TEQSA identifies concerns about a provider meeting the Threshold Standards outside the context of an application, TEQSA can impose conditions on registration or course accreditation, or shorten or, in more serious cases, cancel registration or course accreditation.

TEQSA's enforcement functions

- 2.8 TEQSA also has regulatory powers dealing with the enforcement of the TEQSA Act. These are based on the powers in the *Regulatory Powers (Standard Provisions) Act 2014* (RPA). These include conditions imposed on registration or course accreditation⁹, as well as offence and civil penalty provisions¹⁰.
- 2.9 However, aside from the monitoring powers in section 115 of the TEQSA Act, the enforcement functions do not extend to the capacity to use enforcement powers to assess or enforce provider compliance with the Threshold Standards.
- 2.10 Appendix B provides greater detail of TEQSA's compliance and enforcement approach.

Education Services for Overseas Students Act 2000 (ESOS Act)

- 2.11 The [ESOS Act](#) sets out the legal framework governing delivery of education to international students studying in Australia on a student visa. (See Appendix A for an overview of the objects of the ESOS Act and TEQSA's responsibilities under it.)
- 2.12 The [National Code of Practice for Providers of Education and Training to Overseas Students 2018](#) (National Code) made under the ESOS Act, establishes nationally consistent standards to protect international students. TEQSA is the ESOS agency for providers registered under the TEQSA Act.

Higher Education Support Act 2003 (HESA)

- 2.13 The [HESA](#) is the main piece of legislation governing higher education funding in Australia. It establishes the framework for the Commonwealth Grant Scheme and other government subsidies, student loans and tuition support, while imposing financial accountability requirements on providers (both public and private) in receipt of public funding.
- 2.14 The Department of Education administers HESA, allocating funding through key programs including:
- Commonwealth Grant Scheme: subsidies for domestic undergraduate students
 - Higher Education Loan Program: student loan schemes
 - Research funding scheme: administered under HESA.
- 2.15 In addition to funding arrangement, specific regulatory obligations on approved providers have increasingly been incorporated into HESA.

9. This includes conditions specified in sections 25 to 31 of the TEQSA Act, which deal with matters such as providing financial information or other information and being a fit and proper person.

10. These provisions are largely focussed on entities which operate without the requisite registration or course accreditation – see Division 2 of Part 7 of the TEQSA Act. They also address breaches of conditions on registration or course accreditation and the provision of academic cheating services.

TEQSA's enforcement mechanisms

- 2.16 This subsection outlines:
- TEQSA's enforcement mechanisms
 - TEQSA's administrative sanctions.
- 2.17 Governance failures in higher education can compromise financial sustainability, decision-making integrity and regulatory compliance, leading to adverse outcomes that impact students, staff, teaching and research and risk the integrity, quality and reputation of the overall sector. As noted, while TEQSA does not prescribe how providers structure their governance¹¹, it ensures that governing bodies meet the requirements set out in the Threshold Standards. TEQSA's role in enforcing compliance with the Threshold Standards focuses on compliance oversight, identifying governance risks and acting where providers fail to meet their obligations.

Enforcement powers

- 2.18 Part 7, Divisions 3–8 of the TEQSA Act applies regulatory frameworks from the Regulatory Powers Act (RPA), allowing TEQSA to:
- monitor compliance
 - investigate breaches
 - issue civil penalties and infringement notices
 - accept enforceable undertakings
 - seek injunctions.
- 2.19 These powers apply where there is a contravention of the TEQSA Act.
- 2.20 Failure to meet the Threshold Standards (including governance obligations) does not automatically constitute a breach of the TEQSA Act.
- 2.21 TEQSA's enforcement powers only become enlivened for the Threshold Standards if TEQSA places a condition on a provider, which requires specific provider action to meet a particular Threshold Standard. Sections 24 and 52 of the TEQSA Act require providers to comply with the conditions on their registration and course accreditation, respectively. Non-compliance with these conditions constitutes a civil penalty offence under sections 113 and 114 of the TEQSA Act. If the provider does not comply with its conditions, then TEQSA can take enforcement action.
- 2.22 The present design of TEQSA's enforcement powers limits TEQSA's ability to take direct enforcement action against systemic governance failures unless a separate statutory breach has occurred. TEQSA's enforcement model is complex and resource-intensive, requiring multiple procedural steps before TEQSA can take enforcement action against a non-compliant provider. Under the existing framework, TEQSA must:
- conduct a regulatory assessment to determine whether a provider has failed to meet the required standards
 - give the provider an opportunity to respond to any findings of non-compliance and any proposed adverse decisions to be made against the provider
 - consider imposing conditions on the provider's registrations if TEQSA is still not satisfied that the provider is compliant

11. Acts of Establishment or the provider's Constitution may specify this structure.

- monitor compliance with those conditions and establish a breach of the imposed conditions
 - consider pursuing enforcement action, which may require complex litigation to achieve penalties or corrective measures, only once TEQSA establishes a breach of the imposed condition.
- 2.23 While this framework affords procedural fairness, the consequence is that it often delays regulatory enforcement and limits TEQSA's ability to address systemic, emerging or urgent risks. This includes failures observed in provider responses to governance issues, which are often event-driven or episodic.
- 2.24 Unlike other regulators, TEQSA lacks a streamlined mechanism to pursue direct penalties or enforcement measures without court involvement. Under section 117 of the TEQSA Act, TEQSA must apply to a court for a civil penalty order, requiring time-consuming, resource-intensive and extensive legal action before a penalty can be applied.
- 2.25 Other regulatory frameworks, for example the [*National Vocational Education and Training Regulator Act 2011*](#) (NVETR Act), provide the regulator with capacity to enforce direct compliance with their equivalent legislative instruments. This is not possible under the TEQSA Act, but such capability would simplify TEQSA's enforcement approach.

Administrative sanctions

- 2.26 Part 7, Division 1 of the TEQSA Act allows TEQSA to impose administrative sanctions on non-compliant providers, including where governance failures lead to:
- a failure to meet the Threshold Standards
 - repeated or serious breaches of course accreditation conditions
 - repeated or serious breaches of registration conditions.
- 2.27 Available sanctions include:
- cancelling or shortening a provider's registration
 - revoking or reducing accreditation periods for courses of study.
- 2.28 These sanctions represent the most severe regulatory interventions and are designed for systemic non-compliance. However, they lack proportionality for addressing emerging governance concerns before they escalate.
- 2.29 Without early enforcement powers, TEQSA is limited in its ability to address governance failures before they lead to major issues.
- 2.30 When considering these sanctions, TEQSA must apply the principles of necessity, risk and proportionality. In most cases, these sanctions are neither feasible nor appropriate, unless all other options have been exhausted.
- 2.31 De-registration, for example, may affect tens of thousands of students, making it an impractical and disproportionate response, except in extreme cases. The severity of sanctions renders them ineffective as a regulatory tool, or for appropriate deterrence. This highlights the need for proportionate enforcement mechanisms.

How the Threshold Standards regulate governance issues identified by the inquiry

2.32 This subsection outlines:

- the governance obligations imposed by the Threshold Standards and alignment with the inquiry's focus
- regulatory gaps where the Threshold Standards do not directly address the inquiry's terms of reference
- TEQSA's evolving regulatory approach.

2.33 Appendix C provides extracts of the provisions of the Threshold Standards relevant to the reference for this inquiry. The scope of these provisions is discussed in the next section.

Threshold Standards relevant to the reference

2.34 Governance-related matters are primarily set out under:

- Section 6.1, Corporate Governance: deals with the establishment, composition¹² and role of a provider's governing body, including accountability for the provider's higher education operations, the need for diligent and effective governance processes, and taking steps to develop and maintain an institutional environment which addresses specific matters¹³.
- Section 6.2, Corporate Monitoring and Accountability: requires providers to demonstrate, and the governing body to assure itself of, matters including:
 - compliance with legislation
 - financial viability and performance targets
 - financial monitoring and management, including financial safeguards and controls
 - risk identification and mitigation.
- Section 6.3, Academic Governance: establishes requirements for a provider's academic governance framework to ensure effective oversight of academic quality across teaching, learning and research. It requires assurance of academic quality through development and review of policies, oversight of academic research and integrity, monitoring performance against benchmarks and review of innovations. It also requires opportunities for student participation in academic governance.

2.35 Additionally, Standard B1.3.13 requires providers in the Australian University provider category to demonstrate strong civic leadership and a commitment to social responsibility.

Matters not specifically addressed in the Threshold Standards

2.36 While TEQSA assesses providers against the Threshold Standards, several areas identified in the inquiry's terms of reference, as governance risks, are not specifically addressed in the Threshold Standards. These include:

- **Governing body composition:** The Threshold Standards require that governing body members are fit and proper persons, include independent members, and meet certain residency requirements, but do not contain particular provisions about the skills, qualifications, experience or other characteristics of members of a governing body.

12. See the next section for limits on the scope of provisions about governing body composition.

13. As noted in the appendix, these include freedom of speech and academic freedom, equitable treatment of students and staff, fostering wellbeing of students and staff and supporting informed decision making by students.

- **Executive remuneration and employment practices:** The Threshold Standards do not address provider employment arrangements, remuneration structures, or the use of external consultants.
- **Governance transparency:** The Threshold Standards do not mandate specific transparency or disclosure requirements in relation to provider governance.

TEQSA's evolving regulatory approach

- 2.37 While TEQSA's enforcement powers and early intervention mechanisms are constrained, and certain governance issues are not explicitly covered by the Threshold Standards, TEQSA is evolving its regulatory approach to enhance sector-wide compliance.
- 2.38 TEQSA has developed statements of regulatory expectations (SREs), to set clearer expectations of providers. SREs articulate targeted expectations to the sector around how providers demonstrate they are meeting particular elements of the Threshold Standards. TEQSA can monitor and evaluate a provider's performance against the expectations included in the statement, supporting regulatory intervention where providers fail to meet obligations.
- 2.39 In 2025, TEQSA will release 2 SREs:
- compliance with workplace obligations
 - student grievance and complaints mechanisms.
- 2.40 Given TEQSA's role to assure providers are meeting all relevant legislative requirements¹⁴ (Threshold Standard 6.2.1a), the workplace obligations SRE will include specific expectations that providers:
- obtain independent advice on workplace and employment policies
 - develop internal self-assurance mechanisms to meet workplace obligations
 - engage with the Fair Work Ombudsman and relevant agencies.
- 2.41 For universities, where wage underpayment risks have been systemic, the SRE will include an expectation of annual reporting to TEQSA over 2 years. This will include an expectation that Vice-Chancellors will attest to their institution's compliance and provide an index of evidence for TEQSA's review.

14. Including those that relate to the [Fair Work Act 2009](#).

3. Strengthening TEQSA's regulatory powers

- 3.1 Government-led initiatives are responding to concerns about the governance of Australian higher education providers identified in the Australian Universities Accord. The establishment of an Expert Governance Council and the development of 'University Governance Principles and Recommendations' aim to mature expectations for institutional accountability and transparency.
- 3.2 Additionally, state and territory governments should continue to review institutional governance arrangements for higher education providers established under specific state or territory legislation. Recent reviews, such as the inquiry into the [University of Tasmania Act 1992](#), have resulted in legislative amendments clarifying governing body roles, powers and obligations, which will strengthen governance obligations and standards over time.
- 3.3 While these initiatives enhance institutional governance, they do not address TEQSA's role in regulating governance across the sector. TEQSA delivers effective guidance, and compliance monitoring under its graduated regulatory approach (see Appendix B)¹⁵ however, it faces significant barriers in escalating to enforcement action that result in deterrence and imposing corrective measures. These barriers limit TEQSA's ability to act on governance and other regulatory risks before they escalate into major compliance breaches. Addressing these limitations would enable TEQSA to take a more responsive and proportionate approach to governance issues, reducing reliance on under-used, resource-intensive enforcement processes.
- 3.4 To strengthen TEQSA's capacity to regulate effectively, TEQSA has identified key opportunities for legislative amendments, organised as follows:
1. responding to acute provider risks
 2. responding to systemic risks
 3. monitoring systemic risks.

Responding to acute provider risks

- 3.5 Acute provider risks are immediate, high-impact failures that threaten students, institutional stability or sector integrity. These risks require urgent regulatory intervention but are difficult to address under TEQSA's current powers.

Acute provider risks typically concern

- 3.6
- Financial collapse – a provider becomes insolvent, jeopardising student enrolment and course completion.
 - Severe governance failure – a provider's leadership is incapacitated, unfit, or engaged in serious misconduct.
 - Fraudulent or misleading conduct – deceptive or misleading enrolment practices, falsified records or misrepresented qualification.
 - Immediate student welfare concerns – failure to meet minimum academic, wellbeing or safety standards.
 - Uncontrolled mass enrolment – a provider expands enrolments unsuitably without adequate supports and infrastructure.

15. Notably, the 2020 Auditor-General Report of TEQSA notes the agency's appropriate support for the sector to 'address the majority of key sector-wide risks'.

Current limitations

- 3.7 TEQSA does not have the powers to immediately suspend a provider's registration in response to acute risks¹⁶.
- 3.8 In appropriate cases, and within the limits of the available powers in the TEQSA Act, TEQSA seeks to address risks where they arise. However, while conditions and other powers can support some responses to acute risks, the TEQSA Act does not provide a clear statutory basis for doing so.
- 3.9 Further, the TEQSA Act does not specifically link the use of regulatory powers to public interest matters such as those in the Act's objects¹⁷. Instead, the basic principles in Part 2 of the TEQSA Act are framed in a way that:
- involves a lengthy list of matters required to be considered in each exercise of power, primarily framed by reference to aspects of an individual institution's history or risk to compliance
 - does not specifically address the need to consider possible harm arising from risks or failures by individual institutions.
- 3.10 This means that public interest matters, such as the protection of students or of Australia's reputation for quality higher education, are not specifically required to be considered when regulatory action is contemplated.

Opportunities to resolve the limitations

- 3.11 To resolve the limitations, parliament could consider amending the TEQSA Act to:
- **Establish suspension powers:** Introduce provisions for suspending provider registration or course accreditation, with a specific legislative intention that these powers may be used to address acute risks of the kind described above, would improve TEQSA's capacity to act in cases where acute risks arise.
 - **Establish explicit legislative triggers:** Define clear statutory grounds for suspending, cancelling, shortening or imposing conditions on provider registration, by reference to a broader range of matters that better reflect the objects of the TEQSA Act¹⁸.
 - **Strengthen the basic principles of regulation:** Amend the basic principles of regulation to prioritise student protection, provider accountability and Australia's reputation for high-quality education. An explicit requirement to consider matters relevant to the interests of students or the preservation of Australia's reputation for quality higher education would reflect an improved balance between the sector's protection from harsh or unjust regulatory intervention and the paramount importance of the protective purposes in the objects of the TEQSA Act.

16. An example of a suspension power is contained in sections 83 and 93-95 of the *Education Services for Overseas Students Act 2000*.

17. For an example of where this has occurred in other legislation, see the scheme for imposition of interim prohibition orders under the Health Practitioner Regulation National Law, which provides for such orders where a regulatory body believes a practitioner has contravened a relevant provision, is subject to an assessment or investigation and poses a serious risk to other persons, and where it is necessary to make such an order to protect public health or safety.

18. Such triggers could be framed by reference to similar considerations to those in subsections 83(1A)-(2A) of the ESOS Act.

Responding to systemic risks

- 3.12 Systemic risks and issues that emerge across multiple providers pose a broad risk to students and the integrity, quality and reputation of Australian higher education. These risks often stem from structural weaknesses in governance, compliance gaps or external pressures/events that affect multiple providers simultaneously.
- 3.13 Recent examples of systemic risks include:
- **Risks to student and staff, wellbeing and safety:** Arising from campus protests and encampments related to the recent events in the Middle East, and ineffective responses to gender-based violence.
 - **Failures in workplace compliance:** The underpayment of university staff and failure to comply with fundamental workplace obligations.
 - **Lack financial accountability for the expenditure of public money:** University governance structures are failing to meet the public's expectations for use of public funds.

Current limitations

- 3.14 TEQSA cannot directly enforce provider adherence to the Threshold Standards through the TEQSA Act by seeking penalties for non-compliance or using enforcement powers such as warrants to investigate acute non-compliance risks.

- 3.15 TEQSA relied upon its powers to impose conditions on the registration of Australian School of Management Pty Ltd (ASM). It did so to address a dramatic increase in projected enrolments and concerns that ASM's owner, Careers Australia Group, had admitted to unconscionable conduct and making false representations in the recruitment of vocational education students.

- 3.16 TEQSA imposed conditions which prohibited the recruitment, enrolment and commencement of new students for a period of 3 months, during which TEQSA undertook a compliance assessment under section 59 of the TEQSA Act. However, TEQSA could not use enforcement powers to enter and search premises, or to require persons other than ASM to provide information, for the purposes of assessing compliance with the Threshold Standards.

- 3.17 Further, the TEQSA Act does not currently allow for the creation of binding legislative instruments, such as enforceable codes, to address systemic risks. While the Threshold Standards are high-level expectations, they lack specific, enforceable obligations that would enable direct enforcement.

- 3.18 For example, the recently introduced Bill to establish and enforce a National Higher Education Code to Prevent and Respond to Gender-based Violence illustrates how a legislative instrument can be used to set clear regulatory expectations. Under that Bill, providers would be subject to direct compliance obligations, allowing the responsible agency to issue compliance or infringement notices, and peruse civil penalties for breaches of the code.

3.19 Several governance requirements under the Threshold Standards are too broad to serve as effective compliance and enforcement tools.

3.20 For example:

- Standard 6.1.4 requires that a governing body ‘takes steps to develop and maintain an institutional environment in which ... students and staff are treated equitably’
- Standard 2.3.4 requires ‘a safe environment is promoted and fostered’

3.21 While these provisions set important expectations, they lack the specificity necessary to prescribe best practices, drive accountability or serve as the basis for enforcement.

Opportunities to resolve the limitations

3.22 To resolve the limitations, parliament could consider amending the TEQSA Act to:

- **Introduce a legislative instrument such as an enforceable code:** This could provide a structured mechanism for TEQSA to set clear compliance obligations, which fall from the Threshold Standards, while allowing flexibility to regulate a diverse and evolving sector.
- **Establish explicit enforcement provisions for systemic risks:** This may enable TEQSA to issue infringement notices, require production of information, obtain warrants and pursue civil penalties for governance failures. Consideration could also be given to introducing provisions allowing TEQSA to issue compliance notices to support these enforcement arrangements¹⁹.

Monitoring systemic risks (early detection and oversight)

3.23 Systemic risks require ongoing oversight to assure compliance with the Threshold Standards before they escalate into major regulatory issues. Recent examples of systemic risks are set out in the ‘Responding to systemic risks’ section above and also includes the impact of generative artificial intelligence on course delivery and assessment integrity.

Current limitations

3.24 TEQSA’s ability to identify and track these risks is limited by its current legislative framework, which primarily focuses on assuring individual provider compliance rather than sector-wide oversight. Section 60 of the TEQSA Act provides for thematic assessments, but its scope is limited to the quality of education provided by higher education providers, or systemic issues relating to courses of study that lead to one or more higher education awards. This limitation restricts TEQSA’s ability to systematically review governance-related risks that emerge across multiple providers and which are not related to particular courses of study.

3.25 Further, TEQSA’s functions are expressed in a form which means that TEQSA’s information collection power in section 28 of the TEQSA Act is limited in its application. Those functions are focused on the assessment of applications, compliance with the Act and the quality of education. While the functions were amended in 2020 to provide broader powers to collect information about academic cheating, they do not support responses to other systemic risks, such as those identified in the reference for this inquiry. This limits early identification

¹⁹ While the TEQSA Act does not currently provide for compliance notices, such provisions are included in section 716 of the *Fair Work Act 2009* and in section 32 of the *Universities Accord (National Higher Education Code to Prevent and Respond to Gender-based Violence) Bill 2025*.

of systemic risks, or the performance of detailed and systematic reviews about those risks, reducing TEQSA's ability to support responses to those risks.

- 3.26 Another limitation for TEQSA, unrelated to powers within the Act, is the limited ability to access accurate, up-to-date data. Delays in data submission, data being held across different systems and issues with data quality contributes to delays in identifying and responding to emerging sector-wide risks and working efficiently with other bodies to effectively respond and determine whether regulatory responses are effective in mitigating these risks.

Opportunities to resolve the limitations

- 3.27 To resolve the limitations, consideration could be given to amending the TEQSA Act to:
- **Broaden TEQSA's functions:** TEQSA's functions in section 134 of the TEQSA Act could be broadened to reflect a role in gathering and sharing information, and providing guidance, in relation to systemic risks in addition to academic integrity. This would support sector-wide risk monitoring and early intervention.
 - **Establish a national data-sharing framework:** This would implement a coordinated approach to higher education data collection and sharing across relevant agencies, allowing TEQSA to access information it needs without imposing additional administrative burdens on providers.

4. Appendix A: The ESOS Act

4.1 The objects of the ESOS Act are:

- to provide tuition assurance, and refunds, for overseas students for courses for which they have paid
- to protect and enhance Australia's reputation for quality education and training services
- to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.

4.2 The ESOS Act achieves the objects through the establishment of a registration and assessment framework for providers (including higher education providers) delivering education to international students. A key mechanism of this framework is the National Code of Practice for Providers of Education and Training to Overseas Students (National Code), the purpose of which is to provide nationally consistent standards and procedures for registered providers. The National Code does not cover standards in relation to corporate governance.

4.3 The responsibility of monitoring a registered provider's compliance with the National Code falls with several regulators including TEQSA, ASQA and the National VET Regulator. TEQSA is responsible for monitoring compliance by registered providers that provides higher education. When deciding to register or re-register a provider under the ESOS Act, TEQSA must be satisfied that provider or registered provider is complying with the National Code.

4.4 The ESOS Act imposes the following obligations on registered higher education providers:

- To notify TEQSA if an associate or high managerial agency of the provider has been convicted or been the subject of relevant regulatory sanctions (s 17)
- To notify TEQSA of certain events that would significantly affect the provider's compliance with the ESOS Act (s 17A)
- To maintain and publish a list of all of the provider's agents who deal with international students (s 21A).

4.5 TEQSA can impose sanctions against providers for a breach of these obligations.

5. Appendix B: Summary of TEQSA's compliance and enforcement approach

- 5.1 TEQSA operates within a graduated enforcement/compliance model, where intervention escalates based on risk and non-compliance. This approach aligns with the principles for regulation in the TEQSA Act²⁰. A graduated approach allows TEQSA to escalate actions in a way that reflects both the severity of risks, and the proportionality and necessity of regulatory intervention.

Monitoring, education, guidance and engagement

- 5.2 At this level TEQSA prioritises voluntary compliance by ensuring providers understand and meet their obligations. Actions TEQSA takes at this level include:
- publishing guidance notes, application guides and delivering training to clarify regulatory expectations
 - engagement with providers to answer regulatory queries
 - risk-based compliance monitoring, thematic reviews and targeted roundtables to identify and address emerging risks
 - site visits and targeted meetings with providers to proactively address concerns.

Regulatory assessments and conditions

- 5.3 At this level TEQSA conducts regulatory assessments to determine whether providers meet their regulatory obligations. Actions TEQSA takes at this stage include:
- preliminary or compliance assessments to review provider compliance with standards, and reviews of provider self-assurance
 - targeted risk reviews and early interventions through voluntary undertakings or direct engagement
 - imposing conditions on a provider's registration or accreditation where compliance concerns persist
 - monitoring compliance with imposed conditions before further enforcement is considered
 - investigations to assess a provider's compliance with the TEQSA Act. Under existing legislation, compliance assessments can be conducted but 'investigations' cannot be conducted into breaches of the Threshold Standards.

20. Part 2 s 13 TEQSA Act.

Enforcement and administrative sanctions

- 5.4 At this level TEQSA has determined voluntary compliance and conditions are insufficient, and more severe sanctions are needed. Actions TEQSA takes at this stage include:
- applying to a court for enforceable undertakings requiring providers to implement corrective measures
 - applying to a court for civil penalty provisions and infringement notices
 - administrative sanctions, including cancelling, shortening or downgrading a provider's registration or accreditation where systemic non-compliance persists.
- 5.5 All of the enforcement actions in the model flow from empowering provisions in the TEQSA and RPA Acts. While TEQSA effectively operates at the lower levels of this model, escalating to formal enforcement is complex. These powers and limitations of these powers are explored below.

6. Appendix C: Threshold Standards relevant to the inquiry

- 6.1 There are a number of Threshold Standards that are relevant to the focus areas specified in the terms of reference for this inquiry. The relevant standards come from sections 6.1 (Corporate Governance) and 6.2 (Corporate Monitoring and Accountability). Threshold Standard B1.3.13 has a broad connection to each of the terms of reference, requiring Australian universities to demonstrate strong civic leadership and a commitment to social responsibility.

Threshold Standards relevant to 1a include:

- 6.2
- 6.1.1 specifies that there must be a formally constituted governing body that includes independent members and exercises competent governance oversight of and is accountable for the provider's operations in or from Australia
 - 6.1.2 requires that members of the governing body be fit and proper persons and meet any Australian residency requirements included within the establishing instrument, or otherwise the governing body must include 2 members who ordinarily reside in Australia
 - 6.1.3d expects the governing body to attend to governance functions and processes diligently and effectively, including undertaking periodic (at least every 7 years) independent reviews of the effectiveness of the governing body.

Threshold Standards relevant to 1b include:

- 6.3
- 6.2.1c requires that the provider be financially viable
 - 6.2.1d specifies that the financial position, financial performance and cash flows of the entity must be monitored regularly and understood, financial reporting must be materially accurate, financial management must meet Australian accounting standards, there must be effective financial safeguards and controls operating and financial statements audited independently by a qualified auditor
 - 6.2.1i requires that there be adequately resourced financial safeguards to mitigate disadvantage to students unable to progress in their course of study due to unexpected changes to the provider's operations.

Threshold Standards relevant to 1c include:

- 6.4
- 6.2.1a expects the governing body and the entity to comply with the requirements of the legislation under which the provider is established, recognised or incorporated, as well as any other legislative requirements and the entity's constitution or equivalent.

Standards relevant to 1d include:

- 6.5
- 6.2.1c requires that the provider have sufficient financial and other resources to sustain the quality of higher education that is offered
 - 6.2.1e expects that risks to higher education operations are identified, managed and mitigated effectively
 - 6.2.1f notes that academic governance and leadership should be effective in maintaining the quality of higher education offered.

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