



Australian Government

Tertiary Education Quality and Standards Agency

# TEQSA submission: Inquiry into Antisemitism at Australian Universities Bill 2024

August 2024

TEQSA

TEQSA thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to respond to the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024*.

Our submission draws attention to the *Higher Education Standards Framework (Threshold Standards) 2021* (Threshold Standards) in particular the standards registered higher education providers must meet regarding student and staff safety and wellbeing, academic freedom and corporate governance. We also provide a summary of our engagement with issues arising on Australian higher education (HE) providers' campuses in response to tensions in the Middle East.

## Background on TEQSA

The Tertiary Education Quality and Standards Agency (TEQSA) is the national regulator of HE in Australia. TEQSA was established under the [Tertiary Education Quality and Standards Agency Act 2011](#) (TEQSA Act). The objectives of the TEQSA Act, relevant to the inquiry, are to:

- regulate HE using a standards-based quality framework and principles relating to regulatory necessity, risk and proportionality
- protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality HE
- ensure students undertaking, or proposing to undertake, HE have access to information.

TEQSA regulates the HE sector's compliance with the [Threshold Standards](#). This applies to all domestic and international students studying for an Australian HE award.

TEQSA also has responsibilities under the legal framework for international students studying in Australia, including:

- The [Education Services for Overseas Students Act 2000](#) (ESOS Act) which applies to providers offering HE courses of study to students in Australia on student visas.
- The [National Code of Practice for Providers of Education and Training to Overseas Students 2018](#) (National Code) which provides a set of nationally consistent standards that protect international students.

## TEQSA's response to the inquiry

### Regulating in accordance with the Threshold Standards

TEQSA's regulatory approach is guided by the TEQSA Act and its principles for regulation: regulatory necessity, reflecting risk and proportionate regulation. The Threshold Standards are the legislative instrument made under the TEQSA Act, which set out the standards for provider entry into the HE sector and for continued operations within Australia.

The Threshold Standards outline the requirements that HE providers must meet to obtain and maintain registration with TEQSA. All registered HE providers in Australia must meet these standards, whether they are educating domestic or international students.

As a risk-based regulator, TEQSA's regulatory approach means HE providers are responsible for the management of their own risk. Furthermore, HE providers are expected to demonstrate to TEQSA self-assurance consistent with the Threshold Standards. TEQSA may periodically monitor the compliance of a HE provider based on its risk profile to ensure the provider is meeting the Threshold Standards.

Recognising the diversity of registered HE providers across Australia, the Threshold Standards focus on high-level principles. The Threshold Standards include standards which set out requirements relating to diversity, student and staff safety and wellbeing, corporate governance, freedom of speech and academic freedom.

The Threshold Standards also require HE providers to demonstrate and assure themselves of compliance with all relevant legislation under which they are established, recognised or incorporated (Standard 6.2.1a) and to comply with all other legislating requirements that apply to them. This includes various Commonwealth, state and territory laws concerning vilification, discrimination and safety. These laws, collectively referred to as anti-vilification laws, are governed by separate legislation in each state, territory, and the Commonwealth.

TEQSA does not have the authority to make a legal determination about whether HE providers are operating in accordance with anti-vilification laws. Similarly, TEQSA does not have the authority to make findings about individuals' compliance with discrimination or public safety laws. TEQSA's responsibility is to seek evidence-based assurances from HE providers that they have appropriate governance structures, policies and procedures in place to meet the Threshold Standards, including Standard 6.2.1a.

## Relevant Threshold Standards

While not specifically mentioning antisemitism, several sections of the Threshold Standards set out expectations for higher education providers in relation to discrimination and vilification. These include:

### **Section 2.2 Diversity and equity**

- Institutional policies, practices and approaches to teaching and learning are designed to accommodate student diversity, including the under-representation and/or disadvantage experienced by identified groups, and create equivalent opportunities for academic success regardless of students' backgrounds (Standard 2.2.1).

### **Section 2.3 Wellbeing and safety**

- All students are advised of the actions they can take, the staff they may contact and the support services that are accessible if their personal circumstances are having an adverse effect on their education (Standard 2.3.1).
- Timely, accurate advice on access to personal support services is available, including for access to emergency services, health services, counselling, legal advice, advocacy, and accommodation and welfare services (Standard 2.3.2).
- A safe environment is promoted and fostered, including by advising students and staff on actions they can take to enhance safety and security on campus and online (Standard 2.3.4).
- There is a critical-incident policy, with readily accessible procedures that cover immediate actions to be taken in the event of a critical incident and any follow ups required (2.3.5).

## **Section 2.4 Student grievances and complaints**

- Current and prospective students have access to mechanisms that are capable of resolving grievances about any aspect of their experience with the higher education provider, its agents or related parties (Standard 2.4.1).
- There are policies and processes that deliver timely resolution of formal complaints and appeals against academic and administrative decisions without charge, or at reasonable cost to students and these are applied consistently, fairly and without reprisal (2.4.2).
- Institutional complaints-handling and appeals processes for formal complaints include provision for confidentiality, independent professional advice, advocacy and other support for the complaint or appellant, with provision for review by an appropriate third party (2.4.3).
- Decisions about formal complaints and appeals are recorded and the student concerned is informed in writing of the outcome and the reasons, and of further avenues of appeal where they exist and where the student could benefit (2.4.4).

## **Section 6.1 Corporate governance**

- The governing body attends to governance functions and processes diligently and effectively, including defining roles and delegating authority as is necessary for effective governance, policy development and management; and monitoring the implementation of those delegations (Standard 6.1.3b).
- The governing body takes steps to develop and maintain an institutional environment in which freedom of speech and academic freedom are upheld and protected, students and staff are treated equitably, the wellbeing of students and staff is fostered, informed decision making by students is supported and students have opportunities to participate in the deliberative and decision-making processes of the higher education provider (Standard 6.1.4).

## **Section 6.2 Corporate monitoring and accountability**

- The provider is able to demonstrate, and the corporate governing body assures itself, that the provider is operating effectively and sustainably, including:
  - the governing body and the entity comply with the requirements of the legislation under which the provider is established, recognised or incorporated, any other legislative requirements and the entity's constitution or equivalent (Standard 6.2.1a)
  - risks to higher education operations have been identified and material risks are being managed and mitigated effectively (Standard 6.2.1e)
  - the occurrence and nature of formal complaints, allegations of misconduct, breaches of academic or research integrity and critical incidents are monitored and action is taken to address underlying causes (Standard 6.2.1j)
  - lapses in compliance with the Threshold Standards are identified and monitored, and prompt corrective action is taken (Standard 6.2.1k).

## **TEQSA's regulatory options**

When TEQSA is concerned a provider may not be meeting the Threshold Standards, TEQSA may request further relevant information from the provider as part of a compliance process. Depending on the circumstances and nature of the concern, TEQSA may then seek assurance from the provider that they are responding adequately to an issue, taking corrective action or

undertaking review and improvement activities to improve management of the risks. In cases where a provider's response is insufficient, or if there is a lack of corrective action from the HE provider, TEQSA may impose administrative sanctions.

The administrative actions available to TEQSA include imposing conditions on the HE provider's registration, shortening the period of registration or, in extreme circumstances, cancelling the registration of a HE provider altogether. Financial penalties can only be imposed for failures to comply with the TEQSA Act, including where a provider fails to comply with a condition of registration.

When taking any compliance action, TEQSA must follow the basic principles of regulation set out in the TEQSA Act. These principles require TEQSA to consider if the action is focused on risks, necessary and proportionate in the circumstances.

## TEQSA's approach since 7 October 2024

TEQSA has undertaken focused monitoring risks to student and staff wellbeing associated with protests about conflict in the Middle East since 7 October 2024.

On 11 October 2024, the Minister for Education wrote to all universities about these risks, requesting information. The relevant information from the responses of 42 universities was shared with TEQSA.

In April 2024, TEQSA observed a rapid escalation in protest activities and associated risks at Australian university campuses.

As a result, TEQSA established a Regulatory Response Group (RRG) to coordinate our response.

Through the RRG, TEQSA has:

- engaged directly with Australian universities where protest activities or encampments were active
- written to providers about their obligations regarding student wellbeing and freedom of speech (in May, June and August 2024)
- consolidated advice previously provided to institutions in earlier letters into a sector update published on our website (August 2024)
- met with student groups including the Australian Union of Jewish Students, the National Union of Students and the Council of Australian Postgraduate Associations to understand their experiences and concerns
- requested information from specific universities about significant issues identified through concerns or the media to seek assurance that they have appropriate policies and procedures in place for responding to the current situation and that they are utilising those policies and procedures to meet the relevant Threshold Standards.

TEQSA continues to keep the Minister for Education updated on TEQSA's work in this area.

## University responses to protest activities and complaints observed by TEQSA

Members of TEQSA's RRG engaged directly with Australian universities affected by protests or encampments. In these discussions universities reported similar strategies for responding to protests. The strategies involved:

- leading and taking responsibility through special critical incident or strategic crisis groups led by the Vice Chancellor, a Deputy Vice Chancellor or other relevant executive
- proactively working with police
- proactively addressing student safety concerns
- putting in place additional measures to support students, such as offering special consideration and establishing safe spaces or escorts
- identifying further potential risks to wellbeing and safety.

TEQSA is largely satisfied that most institutions had in place appropriate response mechanisms, however, institutions need to ensure that their policies and procedures are reviewed and learnings applied.

In addition to our engagement with institutions where protest activity and encampments were reported, TEQSA also requested that all 42 Australian universities provide relevant complaints data.

The complaints data reported is not itself an indication of problems at the university. It is a useful indication of the scale of complaints being received and managed by each university.

Given the variations in the scope of complaints reported between universities, the insights that can be gained from this data are limited. Noting the limitations of the quality of data, TEQSA's analysis of complaints data provided by universities observed:

- complaints received were concentrated in the major urban centres, particularly Sydney and Melbourne, which reflects demographic data and feedback from relevant student bodies
- encampments were not always correlated with number of complaints at a university
- the volume of complaints received by universities slowed from June 2024. This is consistent with protest camps closing and many universities commencing the mid-year break.

TEQSA continues to monitor and respond to this evolving issue through the work of its RRG

### Complaints data, as of 17 July 2024

Table 1. Number of complaints reported by providers to TEQSA

Total number of complaints received by providers*	Total number of complaints being reviewed, assessed or investigated by providers	Total number of student or staff misconduct processes in progress or finalised by providers
598	221	122

\* Note: The complaints recorded are not all from current staff or students who had concerns about their experience on campus, some are from the public about broader concerns. Not all universities captured complaints using the same scope and at least one provider relied on estimates in providing their total numbers.

Table 2. Concerns received by TEQSA

Source of concern	Number of concerns received
Former student	2
Internal referral	1
Media	2
Member of public	2
Peak body / advocacy group	3
<b>Total</b>	<b>10</b>

Most concerns arose from or related to matters reported in the media and focussed on the wellbeing and safety of students. TEQSA engaged with all providers that were the subject of concerns to assure ourselves that, at an institutional level, the providers are taking appropriate steps to proactively identify and respond to issues.

## TEQSA engagement with Department of Education initiatives that support efforts to address antisemitism

The Department of Education is leading numerous initiatives that support efforts to address antisemitism. TEQSA is engaging with these initiatives as outlined below.

### Respect at Uni study by the Race Discrimination Commissioner

In addition to engaging with this study, TEQSA expects to draw on any interim or final findings to inform our regulatory advice and compliance monitoring activities.

### National Student Ombudsman

TEQSA welcomes and supports the establishment of the National Student Ombudsman, as it will help to simplify and clarify the complex environment students face in seeking support to resolve disputes with their provider. TEQSA is continuing to engage with the Department of Education and the Commonwealth Ombudsman to ensure there is an effective interface between TEQSA and the new ombudsman.

### New University Governance Principles and Recommendations

TEQSA welcomes the development of the new 'University Governance Principles and Recommendations', agreed to at the Education Ministers Meeting on 26 April 2024. TEQSA will ensure that these principles and recommendations are reflected in our regulatory guidance materials and in our quality assurance and regulatory approach.

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