



# **Tertiary Education Quality and Standards Agency Act 2011**

**Act No. 73 of 2011 as amended**

This compilation was prepared on 3 October 2012  
taking into account amendments up to Act No. 136 of 2012

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act to regulate higher education, and for other purposes

## Part 1—Introduction

### Division 1—Preliminary

#### 1 Short title [see Note 1]

This Act may be cited as the *Tertiary Education Quality and Standards Agency Act 2011*.

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2011
2. Sections 3 to 8	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
3. Section 9	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7 months beginning on the day this Act receives the Royal Assent.	29 January 2012 (paragraph (b) applies)

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**Part 1** Introduction  
**Division 1** Preliminary

Section 2

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Part 1, Division 5	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
5. Parts 2 to 4	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7 months beginning on the day this Act receives the Royal Assent.	29 January 2012 (paragraph (b) applies)
6. Part 5, Division 1	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
7. Part 5, Division 2, and Parts 6 and 7	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7 months beginning on the day this Act receives the Royal Assent.	29 January 2012 (paragraph (b) applies)
8. Parts 8 to 10	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)
9. Part 11	The later of: (a) 1 January 2012; and (b) the day after the end of the period of 7 months beginning on the day this Act receives the Royal Assent.	29 January 2012 (paragraph (b) applies)
10. Part 12	The later of: (a) 1 July 2011; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	29 July 2011 (paragraph (b) applies)

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## Division 2—Objects and simplified outline

### 3 Objects

The objects of this Act are:

- (a) to provide for national consistency in the regulation of higher education; and
- (b) to regulate higher education using:
  - (i) a standards-based quality framework; and
  - (ii) principles relating to regulatory necessity, risk and proportionality; and
- (c) to protect and enhance:
  - (i) Australia's reputation for quality higher education and training services; and
  - (ii) Australia's international competitiveness in the higher education sector; and
  - (iii) excellence, diversity and innovation in higher education in Australia; and
- (d) to encourage and promote a higher education system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population; and
- (e) to protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education; and
- (f) to ensure students undertaking, or proposing to undertake, higher education, have access to information relating to higher education in Australia.

### 4 Simplified outline

The following is a simplified outline of this Act:

- An entity must be registered before it can offer or confer any of the following awards (*regulated higher education awards*):
  - (a) Australian higher education awards;

(b) overseas higher education awards, if those awards relate to courses of study provided at Australian premises.

- Registered higher education providers must have their courses of study accredited before those courses can be provided in connection with regulated higher education awards. Some providers (including Australian universities registered in the Australian university provider category) are authorised to self-accredit their courses of study.
- The Tertiary Education Quality and Standards Agency (**TEQSA**) registers providers and accredits courses of study. TEQSA regulates higher education using principles relating to regulatory necessity, risk and proportionality, and using a standards-based quality framework.
- That quality framework is a series of standards made by the Minister on the advice of the Higher Education Standards Panel.

## Division 3—Definitions

### 5 Definitions

In this Act:

**accreditation assessment** means an assessment conducted under section 61.

**accredited course** means a course of study that:

- (a) if a registered higher education provider is authorised to self-accredit the course of study—is accredited by the provider; and
- (b) otherwise—is accredited by TEQSA.

**acquisition of property** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**annual operational plan** means a plan given under section 162.

**approved** means approved by TEQSA, in writing, for the purposes of the provision in which the expression occurs.

**associated provisions**: this Act's **associated provisions** are the provisions of the *Crimes Act 1914* or the *Criminal Code* that relate to this Act.

**Australia**, when used in a geographical sense, includes the external Territories.

**Australian corporation** means a trading or financial corporation formed within the limits of the Commonwealth (to which paragraph 51(xx) of the Constitution applies).

**Australian course of study** means:

- (a) a single course leading to an Australian higher education award; or
- (b) a course recognised by the higher education provider at which the course is undertaken as a combined or double course leading to one or more Australian higher education awards.



Example: An example of a combined or double course covered by paragraph (b) is a course that leads to the Australian higher education awards of Bachelor of Arts and Bachelor of Laws.

***Australian higher education award*** means a higher education award offered or conferred (whether solely or jointly) by:

- (a) an Australian corporation; or
- (b) a corporation established by or under a law of the Commonwealth or a Territory; or
- (c) a person (other than an individual) established in Australia who conducts activities in a Territory; or
- (d) an Australian resident who conducts activities in a Territory.

***Australian premises***, in relation to an overseas higher education award, means premises:

- (a) in Australia; and
- (b) occupied by the person (the ***offeror***) who offers or confers the award, or by another entity; and
- (c) from which the offeror, or the other entity under an arrangement with the offeror, provides all or part of a course of study.

***Australian Qualifications Framework*** has the same meaning as in the *Higher Education Support Act 2003*.

***Australian resident*** means an individual who resides in Australia and is:

- (a) an Australian citizen; or
- (b) the holder (within the meaning of the *Migration Act 1958*) of a permanent visa (within the meaning of that Act).

***authorised officer*** means a person appointed as an authorised officer under section 94.

***Chief Commissioner*** means the Chief Commissioner of TEQSA.

***Chief Executive Officer*** means the Chief Executive Officer of TEQSA.

***civil penalty order*** means an order under subsection 115(2).

***civil penalty provision*** means a subsection, or a section that is not divided into subsections, of this Act that has set out at its foot the words “civil penalty” and one or more amounts in penalty units.

Section 5

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**Commissioner** means the Chief Commissioner or another Commissioner of TEQSA.

**Commonwealth authority** means:

- (a) an Agency (within the meaning of the *Public Service Act 1999*); or
- (b) a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth.

**compliance assessment** means an assessment conducted under section 59.

**condition** includes:

- (a) for a condition imposed under section 32 (about conditions on registration)—that condition as varied under that section; or
- (b) for a condition imposed under section 53 (about conditions on accreditation)—that condition as varied under that section.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**course of study** means:

- (a) an Australian course of study; or
- (b) an overseas course of study.

**disclose** means divulge or communicate.

**enforcement powers** has the meaning given by section 72.

**enforcement warrant** means:

- (a) a warrant issued under section 91; or
- (b) a warrant signed by a magistrate under section 92.

**evidential material** means:

- (a) in relation to an offence against this Act or this Act's associated provisions:
  - (i) a thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or
  - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of the offence; or

- (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purposes of committing the offence; and
- (b) in relation to a contravention of a civil penalty provision:
  - (i) a thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or
  - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of the civil penalty provision; or
  - (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purposes of contravening the civil penalty provision.

**executive officer** of an entity means a person, by whatever name called and whether or not a director of the entity, who is concerned in, or takes part in, the entity's management.

**Federal Court** means the Federal Court of Australia.

**Federal Magistrate**, other than in section 96, means a Federal Magistrate in relation to whom a consent under subsection 96(1) and a nomination under subsection 96(2) are in force.

**foreign corporation** means a foreign corporation to which paragraph 51(xx) of the Constitution applies.

**full-time Commissioner** means:

- (a) the Chief Commissioner; or
- (b) a Commissioner of TEQSA appointed on a full-time basis.

**higher education award** means:

- (a) a diploma, advanced diploma, associate degree, bachelor degree, graduate certificate, graduate diploma, masters degree or doctoral degree; or
  - (b) a qualification covered by level 5, 6, 7, 8, 9 or 10 of the Australian Qualifications Framework; or
  - (c) an award of a similar kind, or represented as being of a similar kind, to any of the above awards;
- other than an award offered or conferred for the completion of a vocational education and training course.

**higher education information** means information, relating to a regulated entity:

- (a) that is obtained by TEQSA; and
- (b) that relates to TEQSA's functions; and
- (c) that is not personal information (within the meaning of the *Privacy Act 1988*).

**higher education provider** means:

- (a) a constitutional corporation that offers or confers a regulated higher education award; or
- (b) a corporation that:
  - (i) offers or confers a regulated higher education award; and
  - (ii) is established by or under a law of the Commonwealth or a Territory; or
- (c) a person who offers or confers a regulated higher education award for the completion of a course of study provided wholly or partly in a Territory.

**Higher Education Standards Framework** means the following standards:

- (a) the Provider Standards, which are:
  - (i) the Provider Registration Standards; and
  - (ii) the Provider Category Standards; and
  - (iii) the Provider Course Accreditation Standards;
- (b) the Qualification Standards;
- (c) the Teaching and Learning Standards;
- (d) the Research Standards;
- (e) the Information Standards;
- (f) any other standards made under paragraph 58(1)(h).

**Information Guidelines** means guidelines referred to in item 1 of the table in section 204.

**just terms** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**lawyer** means:

- (a) a barrister; or
- (b) a solicitor; or

(c) a barrister and solicitor; or  
(d) a legal practitioner;  
of the High Court or of the Supreme Court of a State or Territory.

**magistrate** includes a Federal Magistrate of the Federal Magistrates Court.

**member of the staff of TEQSA** means:

- (a) a person referred to in subsection 156(1); or
- (b) a person whose services are made available to TEQSA under section 157.

**monitoring powers** has the meaning given by section 71.

**monitoring warrant** means a warrant issued under section 90.

**overseas course of study** means:

- (a) a single course leading to an overseas higher education award; or
- (b) a course recognised by the higher education provider at which the course is undertaken as a combined or double course leading to one or more overseas higher education awards.

Example: An example of a combined or double course covered by paragraph (b) is a course that leads to the overseas higher education awards of Bachelor of Arts and Bachelor of Laws.

**overseas higher education award** means a higher education award offered or conferred (whether solely or jointly) by:

- (a) a foreign corporation; or
- (b) a person (other than an individual) established outside of Australia who conducts activities in a Territory; or
- (c) an individual, who is not an Australian resident, who conducts activities in a Territory.

**Panel** means the Higher Education Standards Panel established by section 166.

**Panel Chair** means the Panel Chair mentioned in paragraph 167(1)(a).

**Panel member** means the Panel Chair or another member of the Panel.

***part-time Commissioner*** means a Commissioner of TEQSA appointed on a part-time basis.

***penalty unit*** has the meaning given by section 4AA of the *Crimes Act 1914*.

***person assisting*** an authorised officer has the meaning given by section 73.

***preliminary assessment application fee*** means:

- (a) for an application under section 18 (about applications for registration)—the fee payable under paragraph 18(3)(c); or
- (b) for an application under section 46 (about applications for accreditation)—the fee payable under paragraph 46(2)(c).

***premises*** includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

***protected person*** has the meaning given by subsection 202(2).

***provide a course of study***: an entity may ***provide a course of study*** by one or more of the following means:

- (a) a lecture, class or examination on campus or other premises;
- (b) a postal or other like service;
- (c) a computer adapted for communicating by way of the internet or another communications network;
- (d) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network;
- (e) a telephone;
- (f) any other electronic device.

***provider category*** means a provider category listed in the Provider Category Standards.

***Provider Category Standards*** means the Provider Category Standards made under paragraph 58(1)(b).

***Provider Course Accreditation Standards*** means the Provider Course Accreditation Standards made under paragraph 58(1)(c).

***Provider Registration Standards*** means the Provider Registration Standards made under paragraph 58(1)(a).

***qualified auditor*** means:

- (a) the Auditor-General of a State, of the Australian Capital Territory or of the Northern Territory; or
- (b) a person registered as a company auditor or a public accountant under a law in force in a State, the Australian Capital Territory or the Northern Territory; or
- (c) a member of the Institute of Chartered Accountants in Australia, or of the Australian Society of Certified Practising Accountants; or
- (d) a person approved by TEQSA under subsection 27(4).

***quality assessment*** means an assessment conducted under section 60.

***Register*** means the National Register of Higher Education Providers established and maintained under section 198.

***registered higher education provider*** means a higher education provider registered under Part 3 and listed on the Register under paragraph 198(1)(a).

***Register Guidelines*** means guidelines referred to in item 2 of the table in section 204.

***regulated entity*** means:

- (a) a constitutional corporation; or
- (b) a corporation established by or under a law of the Commonwealth or a Territory; or
- (c) a person who conducts activities in a Territory.

***regulated higher education award*** has the meaning given by section 6.

***Research Minister*** means the Minister administering the *Australian Research Council Act 2001*.

***Research Standards*** means the Research Standards made under subsection 58(2).

***reviewable decision*** means a decision covered by section 183.

**Secretary** means the Secretary of the Department.

**State or Territory authority** means:

- (a) a Department, or agency, of a State or Territory; or
- (b) a body, whether incorporated or not, established for a public purpose by or under a law of a State or Territory.

**strategic plan** means a plan prepared under section 159.

**substantive assessment application fee** means:

- (a) for an application under section 18 (about applications for registration)—the fee payable under paragraph 20(1)(b); or
- (b) for an application under section 46 (about applications for accreditation)—the fee payable under paragraph 48(1)(b).

**TEQSA**: see *Tertiary Education Quality and Standards Agency*.

**Tertiary Admission Centre** means a person, body or organisation that provides services in relation to student admissions and enrolments on behalf of registered higher education providers.

**Tertiary Education Quality and Standards Agency** or **TEQSA** means the body established by section 132.

**Threshold Standards** means the following:

- (a) the Provider Standards, which are:
  - (i) the Provider Registration Standards; and
  - (ii) the Provider Category Standards; and
  - (iii) the Provider Course Accreditation Standards;
- (b) the Qualification Standards.

**vacancy** has a meaning affected by section 7.

**vocational education and training course** means a VET course (within the meaning of the *National Vocational Education and Training Regulator Act 2011*) or a course of a similar kind.

**warrant** means a monitoring warrant or an enforcement warrant.



## **6 Meaning of *regulated higher education award***

- (1) A *regulated higher education award* is:
  - (a) an Australian higher education award offered or conferred for the completion of an Australian course of study; or
  - (b) an overseas higher education award offered or conferred for the completion of an overseas course of study provided wholly or mainly from Australian premises related to the award.
- (2) The course of study does not need to be provided by the person that offers or confers the award.
- (3) Paragraph (1)(a) does not apply to an Australian higher education award to the extent that it is offered or conferred by:
  - (a) a foreign corporation; or
  - (b) a person (other than an individual) established outside of Australia who conducts activities in a Territory; or
  - (c) an individual, who is not an Australian resident, who conducts activities in a Territory.

## **7 Meaning of *vacancy***

- (1) For the purposes of a reference in:
  - (a) this Act to a vacancy in the office of a Commissioner; or
  - (b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;there are taken to be 4 offices of Commissioners in addition to the Chief Commissioner.
- (2) For the purposes of a reference in:
  - (a) this Act to a vacancy in the office of a Panel member; or
  - (b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;there are taken to be 10 offices of Panel members in addition to the Panel Chair.

## **Division 4—Constitutional matters**

### **8 Constitutional basis**

This Act relies on:

- (a) the Commonwealth's legislative powers under paragraphs 51(xx) and (xxxix), and section 122, of the Constitution; and
- (b) any other Commonwealth legislative power to the extent that the Commonwealth has relied, or relies, on the power to establish a corporation.

### **9 Act excludes State and Territory higher education laws**

- (1) The following entities are not required to comply with a State or Territory law purporting to regulate the provision of higher education:
  - (a) a higher education provider;
  - (b) a regulated entity who intends to become a higher education provider if:
    - (i) the regulated entity has applied to TEQSA for registration under section 18; and
    - (ii) TEQSA has not made a decision on the application.
- (2) Subsection (1) does not apply in relation to a State or Territory law to the extent that:
  - (a) the law establishes the higher education provider or regulated entity; or
  - (b) the law regulates who may carry on an occupation; or
  - (c) the law is of a kind specified in regulations made for the purposes of this paragraph.
- (3) Subsection (1) does not apply in relation to a State or Territory law if that law purports to regulate a matter, of which the provision of higher education is only a part, unless that law is of a kind specified in regulations made for the purposes of this subsection.

## **Division 5—General application of this Act**

### **10 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) However, nothing in this Act makes the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

### **11 Application to external Territories and outside Australia**

- (1) This Act extends to every external Territory.
- (2) Except so far as the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

### **12 Geographical jurisdiction of offences**

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to each offence against this Act or this Act's associated provisions.

## **Part 2—Basic principles for regulation**

### **13 Basic principles for regulation**

TEQSA must comply with the following principles when exercising a power under this Act in relation to a regulated entity:

- (a) the principle of regulatory necessity;
- (b) the principle of reflecting risk;
- (c) the principle of proportionate regulation.

### **14 Principle of regulatory necessity**

TEQSA complies with the principle of regulatory necessity if its exercise of the power does not burden the entity any more than is reasonably necessary.

### **15 Principle of reflecting risk**

TEQSA complies with the principle of reflecting risk if its exercise of the power has regard to:

- (a) the entity's history, including the history of:
  - (i) its scholarship, teaching and research; and
  - (ii) its students' experiences; and
  - (iii) its financial status and capacity; and
  - (iv) its compliance with the Threshold Standards, this Act, this Act's associated provisions and other laws regulating higher education; and
- (b) matters relating to the risk of the entity not complying with the Threshold Standards, this Act or this Act's associated provisions in the future, including:
  - (i) its internal quality assurance mechanisms; and
  - (ii) its financial status and capacity.

### **16 Principle of proportionate regulation**

TEQSA complies with the principle of proportionate regulation if its exercise of the power is in proportion to:

- (a) any non-compliance; or

(b) risk of future non-compliance;  
by the entity with the Threshold Standards, this Act or this Act's  
associated provisions.

### **17 Application to authorised officers**

This Part applies to an authorised officer in a corresponding way to  
the way it applies to TEQSA.

## **Part 3—Registration**

### **Division 1—Applying for registration**

#### **18 Applying for registration**

- (1) A regulated entity who is, or intends to become, a higher education provider may apply to TEQSA for registration within a particular provider category.
- (2) If an application is made, the entity may also apply to TEQSA for a course of study to be accredited.

Note: For an application for a course of study to be accredited, see section 46.

- (3) An application for registration must be:
  - (a) in the approved form; and
  - (b) accompanied by any information, documents and assistance that TEQSA requests; and
  - (c) accompanied by the fee determined under section 158 for a preliminary assessment under this Part.

#### **19 Preliminary assessment of application**

- (1) TEQSA must, within 30 days after an application is made, advise the applicant:
  - (a) whether its application for registration in a particular provider category is appropriate, and if it is not, what provider category would be appropriate (if any); and
  - (b) whether an application is required for a course of study to be accredited.
- (2) Before making a decision under paragraph (1)(a) about a provider category, TEQSA must:
  - (a) have regard to the Threshold Standards; and
  - (b) if the provider category applied for, or the provider category that TEQSA considers would be appropriate, permits the use of the word “university”:

- (i) consult the Minister for each relevant State and Territory responsible for higher education; and
  - (ii) have regard to any advice or recommendations given by each of those Ministers.
- (3) If the applicant withdraws its application, the preliminary assessment application fee is not refundable.

## **20 Substantive assessment of application**

- (1) The applicant may continue with its application by:
- (a) providing any further information, documents and assistance that TEQSA requests; and
  - (b) paying the fee determined under section 158 for a substantive assessment under this Part.
- (2) When conducting the substantive assessment, TEQSA must:
- (a) proceed on the basis that the application is for registration in the provider category advised as appropriate under paragraph 19(1)(a); and
  - (b) if that provider category permits the use of the word “university”:
    - (i) consult the Minister for each relevant State and Territory responsible for higher education; and
    - (ii) have regard to any advice or recommendations given by each of those Ministers.
- (3) If an applicant withdraws its application, the substantive assessment application fee is not refundable.

## **21 Registration**

### *Grant of application for registration*

- (1) TEQSA may grant the application for registration if TEQSA is satisfied that the applicant meets the Threshold Standards.

### *Decision on application*

- (2) TEQSA must make a decision on the application:
- (a) within 9 months of receiving it; or

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- (b) if a longer period is determined by TEQSA under subsection (3)—within that period.

For the purposes of paragraph (a), TEQSA is taken to receive the application when it receives payment of the substantive assessment application fee.

*Longer period for decision on application*

- (3) If TEQSA is satisfied that, for reasons beyond its control, a decision on the application cannot be made within the period mentioned in paragraph (2)(a), TEQSA may determine a longer period, not exceeding a further 9 months, within which it must make a decision on the application.
- (4) If TEQSA determines a longer period, it must do so not later than 6 weeks before the end of the period mentioned in paragraph (2)(a).
- (5) If TEQSA determines a longer period, TEQSA must, within 7 days of making the determination:
- (a) notify the applicant, in writing, of the determination; and
  - (b) give, in writing, the reasons for the determination.

*Period of registration*

- (6) If TEQSA grants the applicant's application, TEQSA must also determine the period for which the applicant is registered. The period must not exceed 7 years.

Note 1: For renewals of registration, see section 36.

Note 2: TEQSA may also impose conditions on the registration (see subsection 32(1)).

*Decision not made*

- (7) TEQSA is taken to have rejected the application if a decision is not made within the period applicable under subsection (2).

**22 TEQSA to notify applicant of decision about registration**

TEQSA must, within 30 days of its decision to grant or reject an application for registration as a registered higher education provider, notify the applicant, in writing, of:

- (a) the decision; and



- (b) if TEQSA grants the application—the following:
  - (i) the provider category in which the applicant is registered, and the reasons for deciding on that category;
  - (ii) the period for which the applicant is registered;
  - (iii) whether the applicant may self-accredit one or more courses of study; and
- (c) if TEQSA rejects the application—the reasons for the decision.

Note: TEQSA must also notify of any conditions imposed under subsection 32(1) on the applicant's registration (see section 34).

### **23 Commencement and duration of registration**

- (1) An applicant's registration:
  - (a) commences on the day specified in the notice given under section 22; and
  - (b) ends at the end of the period specified in the most recent notice given under section 22 or 37 in relation to the registration.
- (2) Paragraph (1)(b) has effect subject to subsection 36(3) (about renewing registration), section 43 (about withdrawing registration) and Division 1 of Part 7 (about cancelling registration and other administrative sanctions).

## **Division 2—Conditions of registration**

### **24 Complying with conditions**

A registered higher education provider must:

- (a) comply with the conditions imposed by sections 25 to 31 on the provider's registration; and
- (b) comply with any conditions imposed under subsection 32(1) on the provider's registration.

Note: The provider's registration will be automatically cancelled if a winding-up order is made in respect of the provider (see section 102).

### **25 Condition—accredited course**

A registered higher education provider must offer at least one accredited course.

### **26 Condition—courses to be provided consistently with the Threshold Standards**

- (1) This section applies to a registered higher education provider if the provider offers or confers a regulated higher education award for the completion of a course of study provided wholly or partly by another entity.
- (2) The provider must ensure that the other entity provides the course of study consistently with the Threshold Standards.

### **27 Condition—financial information must be provided**

*Providers must give TEQSA annual financial statements*

- (1) A registered higher education provider must give TEQSA a financial statement for each annual financial reporting period for which the provider is registered.
- (2) The provider's annual financial reporting period is the period of 12 months:
  - (a) to which the provider's accounts relate; and
  - (b) that is notified, in writing, to TEQSA as the provider's annual financial reporting period.

- (3) A statement given under subsection (1) must be:
- (a) in the approved form; and
  - (b) provided together with a report on the statement by an independent qualified auditor; and
  - (c) provided within 6 months after the end of the annual financial reporting period to which the statement relates.

*TEQSA may approve additional persons as qualified auditors*

- (4) TEQSA may, in writing, approve a person as a qualified auditor for the purposes of this Act.

### **28 Condition—other information must be provided**

- (1) This section applies to a registered higher education provider if:
- (a) TEQSA believes on reasonable grounds that the provider has information relevant to TEQSA's functions; and
  - (b) TEQSA, by written notice given to the provider, requests the provider to give TEQSA the information:
    - (i) within the period (not shorter than 14 days after the notice is given) specified in the notice; and
    - (ii) in the manner specified in the notice.
- (2) The provider must comply with the request.

### **29 Condition—notifying TEQSA of material changes**

- (1) A registered higher education provider must notify TEQSA if any of the following events happens or is likely to happen:
- (a) an event that will significantly affect the provider's ability to meet the Threshold Standards;
  - (b) an event that will require the Register to be updated in respect of the provider.
- (2) The notification must be given no later than 14 days after the day the provider would reasonably be expected to have become aware of the event.

### **30 Condition—record keeping**

A registered higher education provider must keep adequate records for the purposes of this Act.

### **31 Condition—cooperation**

A registered higher education provider must cooperate with TEQSA to facilitate TEQSA's performance of its functions.

### **32 Other conditions**

*TEQSA may impose conditions on registrations etc.*

- (1) TEQSA may impose other conditions on a registered higher education provider's registration. Examples of the kinds of conditions that may be imposed (which need not be imposed at the time of registration) include the following:
  - (a) if section 26 applies to the provider:
    - (i) that the provider do certain things in relation to the other entity referred to in that section;
    - (ii) that the other entity referred to in that section do certain things;
  - (b) that the provider do any or all of the following for one or more accredited courses:
    - (i) maintain a particular staffing profile;
    - (ii) provide access to particular facilities;
    - (iii) provide particular support services;
  - (c) restricting or removing the provider's authority to self-accredit one or more courses of study;
  - (d) restricting or removing the provider's ability to provide an accredited course;
  - (e) restricting the number of students that may enrol in a particular accredited course provided by the provider;
  - (f) restricting or removing the provider's ability to offer or confer a regulated higher education award.

Note 1: TEQSA may need to consult before imposing a condition of a kind covered by paragraph (c) (see section 33).

Note 2: A condition covered by paragraph (d) could, for example, prohibit a registered higher education provider:

- (a) doing anything for the purposes of recruiting or enrolling students or intending students for an accredited course; or
- (b) soliciting or accepting any money from a student or an intending student for an accredited course.

- (2) TEQSA may, on its own initiative, vary or revoke a condition imposed under subsection (1).

*Applications to vary or revoke a condition*

- (3) TEQSA may also vary or revoke a condition imposed under subsection (1) if the registered higher education provider applies for the variation or revocation.
- (4) The provider's application must be:
- (a) in the approved form; and
  - (b) accompanied by any information, documents and assistance that TEQSA requests; and
  - (c) accompanied by the fee determined under section 158 for an application under this section.

### **33 Conditions about authority to self-accredit**

*TEQSA to consult about such conditions*

- (1) Subsection (2) applies if:
- (a) a registered higher education provider is registered in a provider category that permits the use of the word "university"; and
  - (b) TEQSA proposes to make a decision to:
    - (i) impose under subsection 32(1) a condition restricting or removing the provider's authority to self-accredit one or more courses of study; or
    - (ii) vary or revoke a condition of that kind.
- (2) Before doing so, TEQSA must give the provider and the Minister for each relevant State and Territory responsible for higher education:
- (a) a written notice stating that TEQSA intends to make the decision for specified reasons; and
  - (b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.
- (3) TEQSA must have regard to any representations received under subsection (2).

*Consequences for accreditation if authority removed*

- (4) If:
- (a) a course of study is accredited by a registered higher education provider; and
  - (b) a condition imposed under subsection 32(1) removes the provider's authority to self-accredit the course of study;
- the accreditation is cancelled when that removal takes effect.

Note: The provider may apply to TEQSA for TEQSA to accredit the course of study under Part 4.

**34 TEQSA to notify provider of decision to impose, vary or revoke a condition**

TEQSA must, within 30 days of making a decision under subsection 32(1), (2) or (3), notify the registered higher education provider, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) if the decision is to impose a condition—the period for which the condition is imposed.

## **Division 3—Renewing registration**

### **35 Applying to renew registration**

- (1) A registered higher education provider may apply to TEQSA, in the approved form, to have its registration renewed:
  - (a) at least 180 days before its registration is to end; or
  - (b) within such shorter period as TEQSA allows.
- (2) An application must be accompanied by the fee determined under section 158 for an application under this section.

### **36 Renewing registration**

#### *Deciding whether to grant the application*

- (1) Upon receiving a registered higher education provider's application for renewal of registration, TEQSA may renew the provider's registration if it is satisfied that the provider continues to meet the Threshold Standards.
- (2) The things TEQSA may do to assist it to make a decision under subsection (1) include:
  - (a) requesting information, documents or assistance from the provider; and
  - (b) conducting a compliance assessment.
- (3) The provider's registration is taken to continue until TEQSA decides whether to renew the provider's registration.
- (4) If TEQSA renews the provider's registration, TEQSA must determine the period for which the provider's registration is renewed. The period must not exceed 7 years.

Note: Any conditions imposed on the registration, and in force immediately before its renewal, will apply to the renewed registration.

#### *Proposal to reject the application*

- (5) If TEQSA proposes to make a decision to reject the provider's application for renewal of registration, TEQSA must give each entity mentioned in subsection (6):

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- (a) a written notice stating that TEQSA intends to make the decision for specified reasons; and
  - (b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.
- (6) The entities are:
- (a) the provider; and
  - (b) if the provider's registration is in a provider category that permits the use of the word "university"—the Minister for each relevant State and Territory responsible for higher education.
- (7) TEQSA must consider any representations received under subsection (5).

**37 TEQSA to notify provider of decision about renewal**

TEQSA must, within 30 days of its decision to grant or reject an application for renewal of registration, notify the registered higher education provider, in writing, of:

- (a) the decision; and
- (b) if TEQSA grants the application—the period for which the registration is renewed; and
- (c) if TEQSA rejects the application—the reasons for the decision.



## **Division 4—Changing provider registration category**

### **38 Changing provider registration category**

- (1) TEQSA may change the provider category in which a registered higher education provider is registered:
  - (a) on its own initiative; or
  - (b) on application by the provider.
- (2) However, before doing so TEQSA must have regard to the Threshold Standards.
- (3) A registered higher education provider’s application must be:
  - (a) in the approved form; and
  - (b) accompanied by any information, documents and assistance that TEQSA requests; and
  - (c) accompanied by the fee determined under section 158 for an application under this section.

### **39 Consultation—change relates to use of “university”**

- (1) This section applies if:
  - (a) TEQSA proposes to make a decision under subsection 38(1) to change the provider category in which a registered higher education provider is registered; and
  - (b) the provider’s current provider category, or the proposed provider category, permits the use of the word “university”.
- (2) Before doing so, TEQSA must give the provider and the Minister for each relevant State and Territory responsible for higher education:
  - (a) a written notice stating that TEQSA intends to make the decision for specified reasons; and
  - (b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.
- (3) TEQSA must have regard to any representations received under subsection (2).

**Part 3** Registration

**Division 4** Changing provider registration category

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**40 TEQSA to notify provider of decision**

TEQSA must, within 30 days of making a decision under subsection 38(1), notify the registered higher education provider, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision.

## **Division 5—Applying to self-accredit**

### **41 Applying to self-accredit courses of study**

- (1) TEQSA may, on application, authorise a registered higher education provider to self-accredit one or more courses of study.
- (2) However, before doing so TEQSA must have regard to the Threshold Standards.
- (3) A registered higher education provider's application must be:
  - (a) in the approved form; and
  - (b) accompanied by any information, documents and assistance that TEQSA requests; and
  - (c) accompanied by the fee determined under section 158 for an application under this section.

### **42 TEQSA to notify provider of decision**

TEQSA must, within 30 days of making a decision under subsection 41(1), notify the registered higher education provider, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision.

## **Division 6—Withdrawing registration**

### **43 Withdrawing registration**

- (1) A registered higher education provider may apply to TEQSA, in the approved form, to withdraw its registration.
- (2) Upon receiving the provider's application to withdraw its registration, TEQSA may grant the application if TEQSA is satisfied that it is appropriate to allow the registration to be withdrawn.

### **44 TEQSA to notify provider of decision about withdrawal**

TEQSA must, within 30 days of its decision to grant or reject an application to withdraw a registration, notify the registered higher education provider, in writing, of:

- (a) the decision; and
- (b) if TEQSA grants the application—the day on which the withdrawal takes effect; and
- (c) if TEQSA rejects the application—the reasons for the decision.

## **Part 4—Accreditation of courses of study**

### **Division 1—Accrediting courses of study**

#### **45 Who can accredit courses of study**

*Australian universities can self-accredit courses of study*

- (1) Each registered higher education provider that:
  - (a) is registered in the Australian university provider category;  
and
  - (b) is:
    - (i) established by or under, or recognised by, a law of the Commonwealth, a State or a Territory; or
    - (ii) registered as a company under Part 2A.2 of the *Corporations Act 2001*;is authorised to self-accredit each course of study that leads to a higher education award that it offers or confers.

- (2) However, this authority is subject to section 32 (about imposing conditions on a provider's registration).

Note: TEQSA may impose a condition restricting or removing the provider's authority to self-accredit. TEQSA will need to consult (see section 33) and comply with the principles in Part 2 before doing so.

- (3) Subsection (1) does not limit the registered higher education providers that may be authorised to self-accredit one or more courses of study.

*TEQSA can accredit courses of study*

- (4) Divisions 2 to 4 of this Part apply to a registered higher education provider in relation to a course of study if the provider is not authorised to self-accredit the course of study.

## **Division 2—Applying for accreditation**

### **46 Applying for accreditation**

- (1) A regulated entity who is, or has applied to become, a registered higher education provider may apply to TEQSA for a course of study to be accredited.
- (2) An application must be:
  - (a) in the approved form; and
  - (b) accompanied by any information, documents and assistance that TEQSA requests; and
  - (c) accompanied by the fee determined under section 158 for a preliminary assessment under this Part.

### **47 Preliminary assessment of application**

- (1) TEQSA must, within 30 days after an application is made:
  - (a) advise the applicant whether its application is accompanied by sufficient information, documents and assistance; and
  - (b) if it is not, request that the applicant provide further information, documents or assistance.
- (2) If the applicant withdraws its application, the preliminary assessment application fee is not refundable.

### **48 Substantive assessment of application**

- (1) The applicant may continue with its application by:
  - (a) providing any further information, documents and assistance that TEQSA requests; and
  - (b) paying the fee determined under section 158 for a substantive assessment under this Part.
- (2) If an applicant withdraws its application, the substantive assessment application fee is not refundable.

## **49 Accreditation of course of study**

### *Grant of application for accreditation*

- (1) Following an application for a course of study to be accredited, TEQSA may accredit the course of study in relation to the applicant if TEQSA is satisfied that:
  - (a) the applicant is a registered higher education provider; and
  - (b) the course of study meets the Provider Course Accreditation Standards.

### *Decision on application*

- (2) TEQSA must make a decision on the application:
  - (a) within 9 months of receiving it; or
  - (b) if a longer period is determined by TEQSA under subsection (3)—within that period.

For the purposes of paragraph (a), TEQSA is taken to receive the application when it receives payment of the substantive assessment application fee.

### *Longer period for decision on application*

- (3) If TEQSA is satisfied that, for reasons beyond its control, a decision on the application cannot be made within the period mentioned in paragraph (2)(a), TEQSA may determine a longer period, not exceeding a further 9 months, within which it must make a decision on the application.
- (4) If TEQSA determines a longer period, it must do so not later than 6 weeks before the end of the period mentioned in paragraph (2)(a).
- (5) If TEQSA determines a longer period, TEQSA must, within 7 days of making the determination:
  - (a) notify the applicant, in writing, of the determination; and
  - (b) give, in writing, the reasons for the determination.

### *Period of accreditation*

- (6) If TEQSA accredits a course of study in relation to a registered higher education provider, TEQSA must also determine the period for which the course of study is accredited. The period must not

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exceed 7 years, but need not be for the same period for which the provider is registered.

Note 1: The period will end automatically if the provider ceases to be registered as a registered higher education provider (see paragraph 51(2)(a)).

Note 2: Accreditation can be renewed (see section 56).

Note 3: TEQSA may also impose conditions on the accreditation (see subsection 53(1)).

*Decision not made*

- (7) TEQSA is taken to have rejected the application if a decision is not made within the period applicable under subsection (2).

**50 TEQSA to notify provider of decision about accreditation**

TEQSA must, within 30 days of its decision to grant or reject an application for a course of study to be accredited, notify the applicant, in writing, of:

- (a) the decision; and
- (b) if TEQSA grants the application—the period for which the course of study is accredited; and
- (c) if TEQSA rejects the application—the reasons for the decision.

Note: TEQSA must also notify of any conditions imposed under subsection 53(1) on the accreditation (see section 54).

**51 Commencement and duration of accreditation**

- (1) Accreditation of a course of study:
  - (a) commences on the first day of the period specified in the notice given under section 50; and
  - (b) ends at the end of the period specified in the most recent notice given under section 50 or 57 in relation to the accreditation.
- (2) Paragraph (1)(b) has effect subject to the following:
  - (a) the accreditation ends immediately if the provider ceases to be registered as a registered higher education provider;
  - (b) subsection 56(3) (about renewing accreditation);



- (c) Division 1 of Part 7 (about cancelling accreditation and other administrative sanctions).

## **Division 3—Conditions of accreditation**

### **52 Complying with conditions**

A registered higher education provider must comply with any conditions imposed under subsection 53(1) on the accreditation of a course of study.

### **53 Conditions**

- (1) TEQSA may impose conditions on the accreditation of a course of study.
- (2) TEQSA may, on its own initiative, vary or revoke a condition imposed under subsection (1).
- (3) TEQSA may also vary or revoke a condition imposed under subsection (1) if the registered higher education provider applies for the variation or revocation.
- (4) The provider's application must be:
  - (a) in the approved form; and
  - (b) accompanied by any information, documents and assistance that TEQSA requests; and
  - (c) accompanied by the fee determined under section 158 for an application under this section.

### **54 TEQSA to notify provider of decision to impose, vary or revoke a condition**

TEQSA must, within 30 days of making a decision under subsection 53(1), (2) or (3), notify the registered higher education provider, in writing, of:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) if the decision is to impose a condition—the period for which the condition is imposed.

## **Division 4—Renewing accreditation**

### **55 Applying to renew accreditation**

- (1) A registered higher education provider may apply to TEQSA, in the approved form, for the renewal of the accreditation of a course of study in relation to the provider:
  - (a) at least 180 days before the accreditation of the course of study is to end; or
  - (b) within such shorter period as TEQSA allows.
- (2) An application must be accompanied by the fee determined under section 158 for an application under this section.

### **56 Renewing accreditation**

#### *Deciding whether to grant the application*

- (1) Upon receiving an application for renewal of the accreditation of a course of study, TEQSA may renew the accreditation of the course of study in relation to the registered higher education provider if it is satisfied that the accredited course continues to meet the Provider Course Accreditation Standards.
- (2) The things TEQSA may do to assist it to make a decision under subsection (1) include:
  - (a) requesting information, documents or assistance from the provider; and
  - (b) conducting an accreditation assessment.
- (3) The accreditation of the course of study is taken to continue until TEQSA decides whether to renew the accreditation.
- (4) If TEQSA renews the accreditation, TEQSA must determine the period for which the accreditation is renewed. The period must not exceed 7 years.

Note 1: The period will end automatically if the provider ceases to be registered as a registered higher education provider (see paragraph 51(2)(a)).

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Note 2: Any conditions imposed on the accreditation, and in force immediately before its renewal, will apply to the renewed accreditation.

*Proposal to reject the application*

- (5) If TEQSA proposes to make a decision to reject the provider's application for renewal of the accreditation, TEQSA must give the provider:
- (a) a written notice stating that TEQSA intends to make the decision for specified reasons; and
  - (b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.
- (6) TEQSA must consider any representations received under subsection (5).

**57 TEQSA to notify provider of decision about renewal**

TEQSA must, within 30 days of its decision to grant or reject an application for renewal of accreditation, notify the registered higher education provider, in writing, of:

- (a) the decision; and
- (b) if TEQSA grants the application—the period for which the accreditation is renewed; and
- (c) if TEQSA rejects the application—the reasons for the decision.

## **Part 5—Higher Education Standards Framework**

### **Division 1—Higher Education Standards Framework**

#### **58 Making the Higher Education Standards Framework**

##### *Making the standards (other than the Research Standards)*

- (1) The Minister may, by legislative instrument, make the following standards that, together with the Research Standards, make up the Higher Education Standards Framework:
  - (a) the Provider Registration Standards;
  - (b) the Provider Category Standards;
  - (c) the Provider Course Accreditation Standards;
  - (d) the Qualification Standards;
  - (f) the Teaching and Learning Standards;
  - (g) the Information Standards;
  - (h) other standards against which the quality of higher education can be assessed.

Note 1: The Threshold Standards are the standards referred to in paragraphs (a) to (d).

Note 2: For varying or revoking a standard, see subsection 33(3) of the *Acts Interpretation Act 1901*.

##### *Making the Research Standards*

- (2) The Research Minister may, by legislative instrument, make the Research Standards.

Note: For varying or revoking the Research Standards, see subsection 33(3) of the *Acts Interpretation Act 1901*.

##### *Requirements before making any of the standards*

- (3) A Minister must not make a standard under this section unless:
  - (a) a draft of the standard has been developed by the Panel; and
  - (b) that Minister has consulted each of the following about the draft:

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- (i) the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education;
  - (ii) the Research Minister or the Minister (as appropriate);
  - (iii) TEQSA.
- (4) Before a Minister makes a standard under this section, that Minister must have regard to:
- (a) the draft of the standard developed by the Panel; and
  - (b) any advice or recommendations given to that Minister by any of the following:
    - (i) the Panel, that Ministerial Council or TEQSA;
    - (ii) the Research Minister or the Minister (as appropriate).

*Content of the standards*

- (5) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, a standard may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

## **Division 2—Compliance with the Framework**

### **59 Compliance assessments**

TEQSA may review or examine any aspect of an entity's operations to assess whether a registered higher education provider continues to meet the Threshold Standards.

Note: This enables TEQSA to review the operations of an entity that provides part of a course of study that leads to a regulated higher education award offered or conferred by the registered higher education provider.

### **60 Quality (including thematic) assessments**

TEQSA may review or examine any aspect of an entity's operations to:

- (a) assess the level of quality of higher education provided by one or more registered higher education providers; or
- (b) assess whether there are any systemic issues relating to a particular course of study leading to a particular regulated higher education award; or
- (c) assess the level of quality of, or whether there are any systemic issues relating to, the courses of study that lead to one or more kinds of regulated higher education awards.

### **61 Accreditation assessments**

TEQSA may review or examine an accredited course to assess whether the course continues to meet the Provider Course Accreditation Standards.

### **62 Matters relevant to assessments**

#### *Consent*

- (1) Sections 59, 60 and 61 have effect subject to subsection (2).
- (2) TEQSA must obtain an entity's consent before:
  - (a) entering the entity's premises; or
  - (b) doing anything on those premises;

for the purposes of a review or examination under this Division.

- (3) However, subsection (2) has effect subject to section 24 (about a registered provider having to comply with conditions).

Note 1: When deciding whether to give the consent mentioned in subsection (2), a registered higher education provider needs to have regard to the condition that it cooperate with TEQSA (see section 31).

Note 2: A condition could be imposed under subsection 32(1) for the provider to arrange for another entity's consent to be given.

*Operations that can be reviewed or examined*

- (4) The operations covered by sections 59 and 60 are not limited to the entity's higher education operations.



## **Part 6—Investigative powers**

### **Division 1—Requiring people to give information etc.**

#### **63 Requiring person connected with a regulated entity to give information etc.**

- (1) This section applies to a person if TEQSA believes on reasonable grounds that:
  - (a) the person is, or was, connected with:
    - (i) a regulated entity; or
    - (ii) a former regulated entity; and
  - (b) the person is capable of giving or producing information, a document or a thing relevant to TEQSA's function in paragraph 134(1)(c) (about investigating compliance with this Act).
- (2) TEQSA may, by written notice given to the person, require the person:
  - (a) to give TEQSA the information; or
  - (b) to produce to TEQSA the document or thing; or
  - (c) to make copies of the document and to produce to TEQSA those copies;within the period and in the manner specified in the notice.
- (3) The notice must:
  - (a) not specify a period shorter than 14 days after the notice is given, unless TEQSA reasonably considers that a shorter period is necessary that is at least 24 hours after the notice is given; and
  - (b) set out the effect of section 64.
- (4) Subsection (1) does not apply to:
  - (a) a lawyer who is acting, or has acted, for the regulated entity or former regulated entity; or
  - (b) national security information (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or

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- (c) documents or things relating to national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

**64 Contravening requirement to give information etc.**

A person commits an offence if:

- (a) the person has been given a notice under subsection 63(2);  
and
- (b) the person fails to comply with a requirement in the notice.

Penalty: 30 penalty units.

**65 Copying documents—compensation**

A person is entitled to be paid by TEQSA, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 63(2)(c).

**66 TEQSA may retain documents and things**

*TEQSA may retain documents and things etc.*

- (1) If a document (including a copy of a document), or a thing, is produced to TEQSA under section 63, TEQSA:
  - (a) may take possession of, and may make copies of, the document or thing; and
  - (b) may retain possession of the document or thing for such period as is necessary:
    - (i) for the purposes of this Act; or
    - (ii) for the purposes of an investigation to which the document or thing relates; or
    - (iii) to enable evidence to be secured for the purposes of a prosecution or civil penalty proceeding.

*Access and certified copy to be provided*

- (2) Subsections (3) to (5) apply to a document produced under paragraph 63(2)(b).

- (3) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by TEQSA to be a true copy.
- (4) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (5) Until a certified copy is supplied, TEQSA must, at such times and places as TEQSA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

### **67 Returning documents or things produced**

- (1) If:
  - (a) a document (other than a copy of a document), or thing, is produced to TEQSA under section 63; and
  - (b) TEQSA can no longer retain it under paragraph 66(1)(b);TEQSA must take reasonable steps to return it, unless the document or thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) The document or thing must be returned to the person who produced it (or to the owner if that person is not entitled to possess it).

### **68 Disposal if cannot be returned**

- (1) TEQSA may dispose of a document or thing in such manner as it considers appropriate if:
  - (a) the document or thing is produced to TEQSA under section 63; and
  - (b) under section 67, TEQSA is required to take reasonable steps to return the document or thing to a person; and
  - (c) either:
    - (i) TEQSA cannot, despite making reasonable efforts, locate the person; or
    - (ii) the person has refused to take possession of the document or thing.

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- (2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

**69 Self-incrimination**

- (1) A person is not excused from:
  - (a) giving information; or
  - (b) producing a document (including a copy of a document) or thing;under section 63 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following:
  - (a) the information given;
  - (b) the document, copy or thing produced;
  - (c) the giving of the information or the producing of the document, copy or thing;
  - (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document, copy or thing;is admissible in evidence against the individual:
  - (e) in civil proceedings for the recovery of a penalty; or
  - (f) in criminal proceedings, other than proceedings for an offence against:
    - (i) section 64; or
    - (ii) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
    - (iii) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

## Division 2—Searches of premises

### 70 Authorised officer may enter premises by consent or under a warrant

- (1) For the purposes of finding out whether this Act or this Act's associated provisions have been or are being complied with, an authorised officer may:
  - (a) enter any premises; and
  - (b) exercise the monitoring powers set out in section 71.
- (2) If an authorised officer has reasonable grounds for suspecting that there may be evidential material on any premises, the authorised officer may:
  - (a) enter the premises; and
  - (b) exercise the enforcement powers set out in section 72.
- (3) However, an authorised officer is not authorised to enter premises under this section unless:
  - (a) the occupier of the premises has consented to the entry and the authorised officer has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a warrant.

Note: If entry to the premises is with the occupier's consent, the authorised officer must leave the premises if the consent ceases to have effect: see section 77.

### 71 Monitoring powers of authorised officers

- (1) The following are the *monitoring powers* that an authorised officer may exercise under section 70 in relation to premises:
  - (a) the power to search the premises and any thing on the premises;
  - (b) the power to examine any activity conducted on the premises;
  - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;

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- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take onto the premises such equipment and materials as the authorised officer requires for the purposes of exercising powers in relation to the premises;
- (h) the powers set out in subsections (2), (3) and (5).

*Operating electronic equipment*

- (2) The **monitoring powers** include the power to operate electronic equipment on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;contains information that is relevant to determining whether there has been compliance with this Act or this Act's associated provisions.
- (3) The **monitoring powers** include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
  - (a) the power to operate electronic equipment on the premises to put the information in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the information to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An authorised officer may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

*Securing things if entry to premises is under a monitoring warrant*

- (5) If entry to the premises is under a monitoring warrant, the **monitoring powers** include the power to secure a thing for a period not exceeding 24 hours if:
  - (a) the thing is found during the exercise of monitoring powers on the premises; and
  - (b) an authorised officer believes on reasonable grounds that the thing affords evidence of either or both of the following:
    - (i) the commission of an offence against this Act or this Act's associated provisions;
    - (ii) the contravention of a civil penalty provision; and
  - (c) the authorised officer believes on reasonable grounds that:
    - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (ii) the circumstances are serious and urgent.
- (6) If an authorised officer believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (7) The authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (8) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) The 24-hour period may be extended more than once.

## **72 Enforcement powers of authorised officers**

- (1) The following are the **enforcement powers** that an authorised officer may exercise under section 70 in relation to premises:
  - (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the authorised officer has reasonable grounds for suspecting may be on the premises;

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- (b) if entry to the premises is under an enforcement warrant:
  - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
  - (ii) the power to seize evidential material of that kind if the authorised officer finds it on the premises;
- (c) the power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b);
- (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
- (e) the power to take onto the premises such equipment and materials as the authorised officer requires for the purposes of exercising powers in relation to the premises;
- (f) the powers set out in subsections (2), (3) and (6).

*Powers relating to electronic equipment*

- (2) The **enforcement powers** include the power to operate electronic equipment on the premises to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it; contains evidential material referred to in paragraph (1)(a) or (b).
- (3) The **enforcement powers** include the following powers in relation to evidential material described in subsection (2) found in the exercise of the power under that subsection:
  - (a) if entry to the premises is under an enforcement warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:



- (i) is brought to the premises for the exercise of the power;  
or
  - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;
- and remove the disk, tape or other storage device from the premises.
- (4) An authorised officer may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
  - (5) An authorised officer may seize equipment or a disk, tape or other storage device as mentioned in paragraph (3)(a) only if:
    - (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (3)(b) or to transfer the evidential material as mentioned in paragraph (3)(c); or
    - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

*Seizing other evidential material*

- (6) If:
  - (a) entry to the premises is under an enforcement warrant; and
  - (b) the authorised officer, in the course of searching for the kind of evidential material specified in the warrant, finds a thing that the authorised officer believes on reasonable grounds to be other evidential material; and
  - (c) the authorised officer believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;then the *enforcement powers* include seizing the thing.

### **73 Persons assisting authorised officers**

*Authorised officers may be assisted by other persons*

- (1) An authorised officer may, in entering premises under section 70 and in exercising monitoring powers or enforcement powers in

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relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a *person assisting* the authorised officer.

*Powers of a person assisting the authorised officer*

- (2) A person assisting the authorised officer may:
  - (a) enter the premises; and
  - (b) exercise monitoring powers or enforcement powers in relation to the premises, but only in accordance with a direction given to the person by the authorised officer.
- (3) A power exercised by a person assisting the authorised officer as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised officer.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

**74 Use of force in executing a warrant**

In executing a warrant, an authorised officer executing the warrant, and a person assisting the authorised officer, may use such force against things as is necessary and reasonable in the circumstances.

Note: This section does not authorise the use of force against people.

**75 Authorised officer may ask questions and seek production of documents**

*Entry with consent*

- (1) If an authorised officer is authorised to enter premises because the occupier of the premises consented to the entry, the authorised officer may ask the occupier to:
  - (a) answer any questions relating to:
    - (i) the operation of this Act; or
    - (ii) information provided under this Act; or
    - (iii) the reasons for the authorised officer entering the premises;that are put by the authorised officer; and
  - (b) produce any document relating to:

- (i) the operation of this Act; or
  - (ii) information provided under this Act; or
  - (iii) the reasons for the authorised officer entering the premises;
- that is requested by the authorised officer.

*Entry under a warrant*

- (2) If an authorised officer is authorised to enter premises by a warrant, the authorised officer may require any person on the premises to:
- (a) answer any questions relating to:
    - (i) the operation of this Act; or
    - (ii) information provided under this Act; or
    - (iii) the reasons for the authorised officer entering the premises;that are put by the authorised officer; and
  - (b) produce any document relating to:
    - (i) the operation of this Act; or
    - (ii) information provided under this Act; or
    - (iii) the reasons for the authorised officer entering the premises;that is requested by the authorised officer.

*Offence*

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

**76 Self-incrimination**

- (1) A person is not excused from:
- (a) answering a question; or
  - (b) producing a document;
- under subsection 75(2) on the ground that doing so might tend to incriminate the person or expose the person to a penalty.

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- (2) However, in the case of an individual, none of the following:
- (a) the answer given or document produced;
  - (b) answering the question or producing the document;
  - (c) any information or document obtained as a direct or indirect consequence of answering the question or producing the document;
- is admissible in evidence against the individual:
- (d) in civil proceedings for the recovery of a penalty; or
  - (e) in criminal proceedings, other than proceedings for an offence against:
    - (i) subsection 75(3); or
    - (ii) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
    - (iii) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

### **Division 3—Obligations and incidental powers of authorised officers**

#### **77 Consent**

- (1) An authorised officer must, before obtaining the consent of an occupier of premises for the purposes of paragraph 70(3)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised officer entered premises because of the consent of the occupier of the premises, the authorised officer, and any person assisting the authorised officer, must leave the premises if the consent ceases to have effect.

#### **78 Announcement before entry under warrant**

- (1) An authorised officer must, before entering premises under a warrant:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
  - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.

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- (3) If:
- (a) an authorised officer does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- the authorised officer must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

**79 Authorised officer to be in possession of warrant**

*Monitoring warrant*

- (1) If a monitoring warrant is being executed in relation to premises, an authorised officer executing the warrant must be in possession of the warrant or a copy of the warrant.

*Enforcement warrant*

- (2) If an enforcement warrant is being executed in relation to premises, an authorised officer executing the warrant must be in possession of:
- (a) the warrant issued by the magistrate under section 91, or a copy of the warrant as so issued; or
  - (b) the form of warrant completed under subsection 92(6), or a copy of the form as so completed.

**80 Details of warrant etc. to be given to occupier**

If:

- (a) a warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- an authorised officer executing the warrant must, as soon as practicable:
- (c) do one of the following:
    - (i) if the warrant was issued under section 90 or 91—make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it);

- (ii) if the warrant was signed under section 92—make a copy of the form of warrant completed under subsection 92(6) available to the occupier or other person; and
- (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 4.

## **81 Expert assistance to operate electronic equipment**

- (1) This section applies to premises to which a warrant relates.

### *Monitoring powers*

- (2) If entry to the premises is under a monitoring warrant and an authorised officer believes on reasonable grounds that:
- (a) there is on the premises information:
    - (i) that is relevant to determining whether there has been compliance with this Act or this Act's associated provisions; and
    - (ii) that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the information may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or other means.

### *Enforcement powers*

- (3) If entry to the premises is under an enforcement warrant and an authorised officer believes on reasonable grounds that:
- (a) there is on the premises evidential material of the kind specified in the warrant that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the evidential material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.

*Notice to occupier*

- (4) The authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment under subsection (2) or (3) and of the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (5) The equipment may be secured:
- (a) until the 24-hour period ends; or
  - (b) until the equipment has been operated by the expert;
- whichever happens first.

*Extensions*

- (6) If an authorised officer believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (7) The authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (8) The provisions of this Part relating to the issue of monitoring warrants or enforcement warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) The 24-hour period may be extended more than once.

## **82 Compensation for damage to electronic equipment**

- (1) This section applies if:
- (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:



- (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
  - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) For the purposes of this section:  
*damage*, in relation to data, includes damage by erasure of data or addition of other data.

## **Division 4—Occupier's rights and responsibilities**

### **83 Occupier entitled to observe execution of warrant**

- (1) If:
  - (a) a warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;the occupier or other person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **84 Occupier to provide authorised officer with facilities and assistance**

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an authorised officer executing the warrant; and
  - (b) any person assisting the authorised officer;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## **Division 5—General provisions relating to seizure**

### **85 Copies of seized things to be provided**

- (1) If an enforcement warrant is being executed and an authorised officer seizes:
  - (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device, the information in which can be readily copied;the authorised officer must, if requested to do so by the occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.
- (2) However, subsection (1) does not apply if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

### **86 Receipts for things seized**

- (1) If a thing is seized under this Part, an authorised officer must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

### **87 Return of seized things**

- (1) Subject to any contrary order of a court, if an authorised officer seizes a thing under this Part, an authorised officer must take reasonable steps to return it if:
  - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) the period of 60 days after its seizure ends;whichever happens first, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

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- (2) If, apart from this subsection, an authorised officer would be required to take reasonable steps to return a thing under subsection (1) because of paragraph (1)(b), the authorised officer is not required to do so if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the thing may continue to be retained because of an order under section 88; or
  - (c) the Commonwealth, a Commissioner or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.
- (3) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

**88 Magistrate may permit a thing to be retained**

- (1) An authorised officer may apply to a magistrate for an order permitting the retention of the thing for a further period if:
- (a) before the end of 60 days after the seizure; or
  - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:
- (a) for the purpose of either or both of the following:
    - (i) an investigation as to whether an offence against this Act or this Act's associated provisions has been committed;
    - (ii) an investigation as to whether there has been a contravention of a civil penalty provision; or
  - (b) to enable either or both of the following:
    - (i) evidence of an offence mentioned in subparagraph (a)(i) to be secured for the purposes of a prosecution;

- (ii) evidence of a contravention of a civil penalty provision to be secured for the purposes of civil penalty proceedings;  
the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).
- (3) Before making the application, the authorised officer must:
  - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the authorised officer believes to have such an interest of the proposed application.

### **89 Disposal if cannot be returned**

- (1) TEQSA may dispose of a thing in such manner as it considers appropriate if:
  - (a) the thing is seized under this Part; and
  - (b) apart from this section, an authorised officer would be required to take reasonable steps to return the thing to a person; and
  - (c) either:
    - (i) the authorised officer cannot, despite making reasonable efforts, locate the person; or
    - (ii) the person has refused to take possession of the thing.
- (2) If the operation of this section would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

## Division 6—Warrants

### 90 Issuing monitoring warrants

#### *Application for warrant*

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

#### *Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purpose of determining whether this Act or this Act's associated provisions have been, or are being, complied with.
- (3) However, the magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state that the warrant is issued for the purpose of determining whether this Act or this Act's associated provisions have been, or are being, complied with; and
  - (d) authorise one or more authorised officers (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in Divisions 2 and 3 in relation to the premises; and
  - (e) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and

- (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

## **91 Issuing enforcement warrants**

### *Application for warrant*

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.

### *Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

### *Content of warrant*

- (4) The warrant must:
- (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) specify the kind of evidential material that is to be searched for under the warrant; and
  - (d) name one or more authorised officers; and
  - (e) authorise the authorised officer or authorised officers so named:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in Divisions 2, 3 and 5 in relation to the premises; and
  - (f) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (g) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to be in force.

## 92 Enforcement warrants by telephone, fax etc.

### *Application for warrant*

- (1) An authorised officer may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 91 in relation to premises:
  - (a) in an urgent case; or
  - (b) if the authorised officer believes, on reasonable grounds, that the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

### *Voice communication*

- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

### *Information*

- (3) Before applying for the warrant, the authorised officer must prepare an information of the kind mentioned in subsection 91(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the authorised officer may apply for the warrant before the information is sworn or affirmed.

### *Signing of warrant*

- (4) If the magistrate is satisfied:
  - (a) after considering the terms of the information; and
  - (b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 91 if the application had been made under that section.

### *Notification*

- (5) If the magistrate completes and signs the warrant, the magistrate must inform the authorised officer, by telephone, fax or other electronic means, of:
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- (a) the terms of the warrant; and
- (b) the day, and the time, the warrant was signed.

*Form of warrant*

- (6) The authorised officer must then complete a form of warrant in the same terms as the warrant completed and signed by the magistrate, stating on the form:
  - (a) the name of the magistrate; and
  - (b) the day, and the time, the warrant was signed.

*Completed form of warrant to be given to magistrate*

- (7) The authorised officer must also, not later than the day after the warrant ceased to be in force or the day of execution of the warrant, whichever is the earlier, send to the magistrate:
  - (a) the form of warrant completed by the authorised officer; and
  - (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

*Attachment*

- (8) The magistrate must attach to the documents provided under subsection (7) the warrant signed by the magistrate.

*Authority of warrant*

- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:
  - (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
  - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

**93 Offence relating to warrants by telephone, fax etc.**

An authorised officer commits an offence if:

- (a) the authorised officer states, in a document that purports to be a form of warrant under section 92, the name of a magistrate, unless that magistrate signed the warrant; or
- (b) the authorised officer states on a form of warrant under that section a matter that, to the authorised officer's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or
- (c) the authorised officer purports to execute, or present to another person, a document that purports to be a form of warrant under that section that the authorised officer knows:
  - (i) has not been approved by a magistrate under that section; or
  - (ii) departs in a material particular from the terms of a warrant signed by a magistrate under that section; or
- (d) the authorised officer gives to a magistrate a form of warrant under that section that is not the form of warrant that the authorised officer purported to execute.

Penalty: Imprisonment for 2 years.

## **Division 7—Authorised officers and identity cards**

### **94 Authorised officers**

- (1) TEQSA may, in writing, appoint a member of the staff of TEQSA as an *authorised officer* for the purposes of this Act.
- (2) TEQSA must not appoint a person as an authorised officer unless:
  - (a) the person holds the classification of APS Executive Level 1 or higher, or an equivalent classification; and
  - (b) TEQSA is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an authorised officer.
- (3) An authorised officer must, in exercising powers as an authorised officer, comply with any directions of TEQSA.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### **95 Identity cards**

- (1) TEQSA must issue an identity card to an authorised officer.

#### *Form of identity card*

- (2) The identity card must:
  - (a) be in the approved form; and
  - (b) contain a recent photograph of the authorised officer.

#### *Offence*

- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not, as soon as practicable after so ceasing, return the identity card to TEQSA.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

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**Division 7** Authorised officers and identity cards

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Defence: card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

*Authorised officer must carry card*

- (6) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer.

## **Division 8—Powers of magistrates**

### **96 Federal Magistrates—consent to nomination**

- (1) A Federal Magistrate may, by writing, consent to be nominated by the Minister under subsection (2).
- (2) The Minister may, by writing, nominate a Federal Magistrate in relation to whom a consent is in force under subsection (1) to be a magistrate for the purposes of this Act.

### **97 Magistrates—personal capacity**

#### *Powers conferred personally*

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

#### *Powers need not be accepted*

- (2) The magistrate (other than a Federal Magistrate) need not accept the power conferred.

#### *Protection and immunity*

- (3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if he or she were exercising the power:
  - (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

## **Part 7—Enforcement**

### **Division 1—Administrative sanctions**

#### **Subdivision A—Sanctions**

##### **98 Provider is non-compliant**

This Subdivision applies if a registered higher education provider has:

- (a) failed to meet the Threshold Standards; or
- (b) breached a condition imposed on its registration; or
- (c) breached a condition imposed on the accreditation of a course of study accredited in relation to the provider; or
- (d) failed to ensure that an accredited course in relation to the provider meets the Provider Course Accreditation Standards;

or if circumstances exist in relation to the provider that are of a kind specified in regulations made for the purposes of this section.

Note: TEQSA may impose conditions under section 32 or 53 instead of, or in addition to, applying a sanction under this Subdivision.

##### **99 Sanctions about accredited course**

For a failure or breach relating to a course of study, TEQSA may:

- (a) shorten the period of accreditation of the course of study; or
- (b) cancel the accreditation of the course of study.

##### **100 Shortening period of registration**

TEQSA may shorten the period of the provider's registration.

##### **101 Cancelling registration**

- (1) TEQSA may cancel the provider's registration.
- (2) However, before doing so, TEQSA must give the provider and the Minister for each relevant State and Territory responsible for higher education:

- (a) a written notice stating that TEQSA intends to make a decision to cancel the provider's registration for specified reasons; and
  - (b) a reasonable opportunity to make representations to TEQSA in relation to the proposed decision.
- (3) TEQSA must have regard to any representations received under subsection (2).
- (4) Subsection (2) does not apply if TEQSA is satisfied that the circumstances require immediate action.

### **Subdivision B—Other matters**

#### **102 Automatic cancellation if provider wound up**

A registered higher education provider's registration is cancelled, by force of this section, if a winding-up order is made in respect of the provider.

#### **103 Seeking registration after cancellation**

An entity whose registration under Part 3 is cancelled cannot reapply for registration for:

- (a) 2 years after the cancellation takes effect; or
- (b) such shorter period as TEQSA considers appropriate.

## Division 2—Offences and civil penalty provisions

### Subdivision A—Offences and civil penalty provisions

#### 104 Guide to offences and civil penalty provisions

The following is a guide to this Subdivision:

- The offences in this Subdivision need to be read with other Acts, including the *Criminal Code* and the *Crimes Act 1914*. For example, the *Criminal Code*:
  - (a) sets out fault elements of intention or recklessness for the offences; and
  - (b) sets out defences such as mistake of fact; and
  - (c) extends the reach of the offences to, for example, a person who aids or abets the commission of an offence by a provider.
- The civil penalty provisions in this Subdivision need to be read with Subdivisions B and C. For example:
  - (a) section 120 provides for a defence of mistake of fact; and
  - (b) section 116 extends the reach of each civil penalty provision to, for example, a person knowingly concerned in a provider's contravention of the civil penalty provision.

#### 105 Offering a regulated higher education award if unregistered

##### *Offence*

- (1) A higher education provider commits an offence if the higher education provider is not a registered higher education provider.

Penalty: 300 penalty units.



*Civil penalty*

- (2) A higher education provider contravenes this subsection if the higher education provider is not a registered higher education provider.

Civil penalty: 600 penalty units.

**106 Representing offer of a regulated higher education award if unregistered**

*Offence*

- (1) A regulated entity commits an offence if:
- (a) the entity represents that the entity:
    - (i) is offering, or will offer, a regulated higher education award; or
    - (ii) is conferring, or will confer, a regulated higher education award; and
  - (b) the entity is not a registered higher education provider.

Penalty: 300 penalty units.

*Civil penalty*

- (2) A regulated entity contravenes this subsection if:
- (a) the entity represents that the entity:
    - (i) is offering, or will offer, a regulated higher education award; or
    - (ii) is conferring, or will confer, a regulated higher education award; and
  - (b) the entity is not a registered higher education provider.

Civil penalty: 600 penalty units.

**107 Offering an award without a course of study**

*Offence*

- (1) A regulated entity commits an offence if:
- (a) the entity offers or confers:
    - (i) an Australian higher education award; or

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- (ii) an overseas higher education award for the completion of a course of study provided wholly or mainly from Australian premises related to the award; and
- (b) for one or more students, the entity offers or confers the award:
  - (i) without requiring the completion of a course of study; and
  - (ii) not as an honorary award.

Penalty: 300 penalty units.

*Civil penalty*

- (2) A regulated entity contravenes this subsection if:
  - (a) the entity offers or confers:
    - (i) an Australian higher education award; or
    - (ii) an overseas higher education award for the completion of a course of study provided wholly or mainly from Australian premises related to the award; and
  - (b) for one or more students, the entity offers or confers the award:
    - (i) without requiring the completion of a course of study; and
    - (ii) not as an honorary award.

Civil penalty: 600 penalty units.

**108 Regulated entity represents itself as university**

*Offence*

- (1) A regulated entity commits an offence if:
  - (a) the entity uses the word “university” to represent itself, or its operations, as a university in relation to:
    - (i) an Australian course of study; or
    - (ii) an overseas course of study, to the extent that the course of study is, or is to be, provided from Australian premises that are related to an overseas higher education award; or
    - (iii) a regulated higher education award; and

- (b) the entity is not a registered higher education provider registered in a provider category that permits the use of the word “university”.

Penalty: 300 penalty units.

*Civil penalty*

- (2) A regulated entity contravenes this subsection if:
  - (a) the entity uses the word “university” to represent itself, or its operations, as a university in relation to:
    - (i) an Australian course of study; or
    - (ii) an overseas course of study, to the extent that the course of study is, or is to be, provided from Australian premises that are related to an overseas higher education award; or
    - (iii) a regulated higher education award; and
  - (b) the entity is not a registered higher education provider registered in a provider category that permits the use of the word “university”.

Civil penalty: 600 penalty units.

*Use of the word “university”*

- (3) Without limiting paragraph (1)(a) or (2)(a), an entity is taken to use the word “university” if the entity:
  - (a) uses a variant of that word; or
  - (b) uses that word, or a variant of that word, by itself or in combination with other words.

## **109 Falsely representing entity as a registered higher education provider**

*Offence*

- (1) A regulated entity commits an offence if:
  - (a) the entity represents that the entity is a registered higher education provider; and
  - (b) the representation is untrue.

Penalty: 300 penalty units.

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*Civil penalty*

- (2) A regulated entity contravenes this subsection if:
- (a) the entity represents that the entity is a registered higher education provider; and
  - (b) the representation is untrue.

Civil penalty: 600 penalty units.

**110 Falsely representing that entity provides a course of study leading to a regulated higher education award**

*Offence*

- (1) A regulated entity commits an offence if:
- (a) the entity represents that it provides all or part of a course of study that leads to a regulated higher education award; and
  - (b) the representation is untrue.

Penalty: 120 penalty units.

*Civil penalty*

- (2) A regulated entity contravenes this subsection if:
- (a) the entity represents that it provides all or part of a course of study that leads to a regulated higher education award; and
  - (b) the representation is untrue.

Civil penalty: 240 penalty units.

**111 Falsely representing course of study is accredited**

*Offence*

- (1) A regulated entity commits an offence if:
- (a) the entity represents that a course of study is an accredited course in relation to an entity; and
  - (b) the representation is untrue.

Penalty: 120 penalty units.

*Civil penalty*

- (2) A regulated entity contravenes this subsection if:
- (a) the entity represents that a course of study is an accredited course in relation to an entity; and
  - (b) the representation is untrue.

Civil penalty: 240 penalty units.

**112 Providing an unaccredited course of study**

*Offence*

- (1) A registered higher education provider commits an offence if:
- (a) one or more entities provide all or part of a course of study; and
  - (b) the course of study leads to a regulated higher education award offered or conferred by the provider; and
  - (c) the course of study is not an accredited course in relation to the provider.

Penalty: 120 penalty units.

*Civil penalty*

- (2) A registered higher education provider contravenes this subsection if:
- (a) one or more entities provide all or part of a course of study; and
  - (b) the course of study leads to a regulated higher education award offered or conferred by the provider; and
  - (c) the course of study is not an accredited course in relation to the provider.

Civil penalty: 240 penalty units.

**113 Breach of condition of registration**

A registered higher education provider contravenes this section if:

- (a) a condition is imposed on the provider's registration; and
- (b) the provider does an act or omits to do an act; and
- (c) the act or omission breaches the condition.

Civil penalty: 120 penalty units.

#### 114 Breach of condition of accreditation

A registered higher education provider contravenes this section if:

- (a) a condition is imposed on the accreditation of a course of study accredited in relation to the provider; and
- (b) the provider does an act or omits to do an act; and
- (c) the act or omission breaches the condition.

Civil penalty: 120 penalty units.

#### Subdivision B—Obtaining a civil penalty order

#### 115 Civil penalty orders

##### *Application for order*

- (1) Within 6 years of a person (the **wrongdoer**) contravening a civil penalty provision, TEQSA may apply, on behalf of the Commonwealth, to:

- (a) the Federal Court; or
- (b) the Federal Magistrates Court;

for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

##### *Court may order wrongdoer to pay pecuniary penalty*

- (2) If the Court is satisfied that the wrongdoer has contravened the civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not exceeding the amount specified for the provision).
- (3) An order under subsection (2) is to be known as a **civil penalty order**.

##### *Determining amount of pecuniary penalty*

- (4) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and

- (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

*Civil evidence and procedure rules apply*

- (5) The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

Note: The standard of proof in civil proceedings is the balance of probabilities: see section 140 of the *Evidence Act 1995*.

*Conduct contravening 2 or more provisions*

- (6) If conduct contravenes 2 or more civil penalty provisions, proceedings may be instituted under this section against a person for the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section for the same conduct.

## **116 Involvement in contravening civil penalty provision**

- (1) A person must not:
  - (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to contravene a civil penalty provision.

*Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the civil penalty provision.

### **117 Recovery of a pecuniary penalty**

A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

### **118 2 or more proceedings may be heard together**

The Federal Court or the Federal Magistrates Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

### **119 Continuing and multiple contraventions of civil penalty provisions**

- (1) If, under a civil penalty provision, an act or thing is required to be done within a particular period or before a particular time, then the obligation to do that act or thing continues (even if the period has ended or the time has passed) until the act or thing is done.
- (2) A person commits a separate contravention of the civil penalty provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) the person refuses or fails to comply with that requirement.
- (3) The Federal Court or the Federal Magistrates Court may make a single order to pay a pecuniary penalty for all the contraventions described in subsection (2), but the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

### **120 Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and



- (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

### **Subdivision C—Civil penalty proceedings and criminal proceedings**

#### **121 Civil proceedings after criminal proceedings**

The Federal Court or the Federal Magistrates Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

#### **122 Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

### **123 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

### **124 Evidence given in proceedings for civil penalty not admissible in criminal proceedings**

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## **Division 3—Enforceable undertakings**

### **125 Acceptance of undertakings**

- (1) TEQSA may accept any of the following undertakings given by a regulated entity:
  - (a) a written undertaking given by the entity that the entity will, in order to comply with this Act or this Act's associated provisions, take specified action;
  - (b) a written undertaking given by the entity that the entity will, in order to comply with this Act or this Act's associated provisions, refrain from taking specified action;
  - (c) a written undertaking given by the entity that the entity will take specified action directed towards ensuring that the entity does not contravene this Act or this Act's associated provisions, or is unlikely to contravene this Act or those associated provisions, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The regulated entity may withdraw or vary the undertaking at any time, but only with the consent of TEQSA.
- (4) TEQSA may, by written notice given to the regulated entity, cancel the undertaking.
- (5) TEQSA may publish the undertaking on the Register.

### **126 Enforcement of undertakings**

- (1) If:
  - (a) a regulated entity has given an undertaking under section 125; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) TEQSA considers that the entity has breached the undertaking;TEQSA may apply, on behalf of the Commonwealth, to the Federal Court or the Federal Magistrates Court for an order under subsection (2).

- (2) If the Court is satisfied that the regulated entity has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the entity to comply with the undertaking;
  - (b) an order directing the entity to pay to the Commonwealth an amount up to the amount of any financial benefit that the entity has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the entity to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.

## **Division 4—Injunctions**

### **127 Injunctions**

#### *Restraining injunctions*

- (1) If a regulated entity has engaged, is engaging or is proposing to engage, in any conduct that would be in contravention of:
- (a) this Act; or
  - (b) this Act's associated provisions;
- the Federal Court or the Federal Magistrates Court may, on the application of TEQSA (on behalf of the Commonwealth), grant an injunction:
- (c) restraining the entity from engaging in the conduct; and
  - (d) if, in the Court's opinion, it is desirable to do so—requiring the entity to do a thing.

#### *Performance injunctions*

- (2) If:
- (a) a regulated entity has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
  - (b) the refusal or failure was, is or would be in contravention of this Act or this Act's associated provisions;
- the Federal Court or the Federal Magistrates Court may, on the application of TEQSA (on behalf of the Commonwealth), grant an injunction requiring the entity to do that thing.

### **128 Interim injunctions**

Before deciding an application for an injunction under section 127, the Federal Court or the Federal Magistrates Court may grant an interim injunction:

- (a) restraining a regulated entity from engaging in conduct; or
- (b) requiring a regulated entity to do a thing.

### **129 Discharging or varying injunctions**

The Federal Court or the Federal Magistrates Court may discharge or vary an injunction granted under this Division.

### **130 Certain limits on granting injunctions not to apply**

#### *Restraining injunctions*

- (1) The power of the Federal Court or the Federal Magistrates Court under this Division to grant an injunction restraining a regulated entity from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the entity intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the entity has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the entity engages in conduct of that kind.

#### *Performance injunctions*

- (2) The power of the Federal Court or the Federal Magistrates Court under this Division to grant an injunction requiring a regulated entity to do a thing may be exercised:
  - (a) whether or not it appears to the Court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
  - (b) whether or not the entity has previously refused or failed to do that thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the entity refuses or fails to do that thing.

### **131 Other powers of the Court unaffected**

The powers conferred on the Federal Court or the Federal Magistrates Court under this Division are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

## **Part 8—Tertiary Education Quality and Standards Agency**

### **Division 1—Establishment, functions and powers of TEQSA**

#### **132 Establishment**

- (1) The Tertiary Education Quality and Standards Agency (*TEQSA*) is established by this section.
- (2) Each State and Territory Minister who is responsible for higher education must be consulted if TEQSA is to be abolished.

#### **133 Constitution**

TEQSA consists of:

- (a) a Chief Commissioner; and
- (b) 4 other Commissioners.

Note 1: TEQSA does not have a legal identity separate from the Commonwealth.

Note 2: The Chief Commissioner and 2 other Commissioners are full-time, while the remaining 2 Commissioners are part-time (see section 138).

#### **134 Functions and powers**

- (1) TEQSA has the following functions:
  - (a) to register regulated entities as registered higher education providers in accordance with this Act;
  - (b) to accredit courses of study in accordance with this Act;
  - (c) to investigate whether this Act or this Act's associated provisions have been or are being complied with, including by:
    - (i) conducting compliance assessments and quality assessments; and
    - (ii) conducting accreditation assessments of accredited courses;

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- (d) to advise and make recommendations to the Minister on matters relating to the quality or regulation of higher education providers, if requested by the Minister or on its own initiative;
- (e) to collect, analyse, interpret and disseminate information relating to:
  - (i) higher education providers; and
  - (ii) regulated higher education awards; and
  - (iii) quality assurance practice, and quality improvement, in higher education; and
  - (iv) the Higher Education Standards Framework;
- (f) to advise and make recommendations to a higher education provider on matters relating to the Threshold Standards, if requested by the provider in the approved form;
- (g) to conduct training to improve the quality of higher education;
- (h) to make resources and facilities available to the Panel for the purposes of enabling the Panel to perform its functions;
- (i) to give the Secretary an independent assessment of information the Secretary provides about higher education providers, that uses assessment criteria provided by the Secretary;
- (j) to cooperate with its counterparts in other countries;
- (k) to develop service standards that TEQSA must meet in performing its functions;
- (l) any function determined under subsection (5);
- (m) such other functions as are conferred on TEQSA by or under this Act or any other Commonwealth law.

Note: An example for paragraph (m) is TEQSA's functions under the *Education Services for Overseas Students Act 2000*.

- (2) Without limiting paragraph (1)(m), that paragraph includes a function conferred on TEQSA by an authorisation made for the purposes of a Commonwealth law.

Note: An example would be if the Minister authorised TEQSA to consider whether to consent to a company using "university" in its name for the purposes of section 147 of the *Corporations Act 2001*.

- (3) TEQSA may perform its functions within or outside Australia.



- (4) TEQSA has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (5) The Minister may, by legislative instrument, determine other functions for TEQSA that relate to higher education.

### **135 Independence of TEQSA**

Subject to section 136, TEQSA is not subject to direction from anyone in relation to the performance of its functions or the exercise of its powers.

### **136 Minister may give directions to TEQSA**

- (1) The Minister may, by legislative instrument, give a direction to TEQSA if the Minister considers that the direction is necessary to protect the integrity of the higher education sector.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) However, the Minister must not give a direction about, or in relation to, a particular regulated entity.
- (3) TEQSA must comply with a direction given under subsection (1).

### **137 TEQSA has privileges and immunities of the Crown**

TEQSA has the privileges and immunities of the Crown in right of the Commonwealth.

## Division 2—Appointment of Commissioners

### 138 Appointment

- (1) The Chief Commissioner is to be appointed by the Minister, by written instrument, on a full-time basis.
- (2) Two further Commissioners are to be appointed by the Minister, by written instrument, on a full-time basis.
- (3) Two further Commissioners are to be appointed by the Minister, by written instrument, on a part-time basis.
- (4) A person may only be appointed as the Chief Commissioner, or as a Commissioner, if:
  - (a) the Minister is satisfied that the person has appropriate qualifications, knowledge or experience; and
  - (b) the Minister has consulted the Research Minister about the proposed appointment.

Note: A Commissioner is eligible for reappointment: see the *Acts Interpretation Act 1901*.

### 139 Term of appointment

A Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

### 140 Remuneration and allowances

- (1) A Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is determined, in writing, by the Minister.
- (2) A Commissioner is to be paid the allowances that are determined, in writing, by the Minister.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **141 Leave of absence**

- (1) A full-time Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chief Commissioner may grant leave of absence to a part-time Commissioner on the terms and conditions that the Chief Commissioner determines.

### **142 Outside employment**

- (1) A full-time Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's approval.
- (2) A part-time Commissioner must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

### **143 Disclosure of interests to the Minister**

- (1) A Commissioner must give written notice to the Minister of all interests, pecuniary or otherwise, that the Commissioner has or acquires that conflict or could conflict with the proper performance of the Commissioner's functions.
- (2) The notice must be given to the Minister as soon as practicable after the Commissioner becomes aware of the potential for conflict of interest.

### **144 Other terms and conditions**

A Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

### **145 Resignation**

- (1) A Commissioner may resign his or her appointment by giving the Minister a written resignation.

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- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

Note: If the Chief Commissioner resigns, he or she also resigns his or her position as the Chief Executive Officer. This does not prevent a person who is both the Chief Commissioner and Chief Executive Officer from being reappointed only as a Commissioner.

### **146 Termination of appointment**

- (1) The Minister may terminate the appointment of a Commissioner:
- (a) for misbehaviour or physical or mental incapacity; or
  - (b) if the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (c) if the Commissioner is a full-time Commissioner and is absent, except on leave of absence, for 14 consecutive days or for 30 days in any 12 months; or
  - (d) if the Commissioner is a part-time Commissioner and is absent, except on leave of absence, from 3 consecutive TEQSA meetings; or
  - (e) the Commissioner engages in paid employment contrary to section 142; or
  - (f) if the Commissioner fails, without reasonable excuse, to comply with section 143 or 150.
- (2) The Minister must terminate the appointment of a Commissioner if the Commissioner becomes an executive officer of a higher education provider.

### **147 Acting appointments**

#### *Acting Chief Commissioner*

- (1) The Minister may, by written instrument, appoint a Commissioner to act as the Chief Commissioner:

- (a) during a vacancy in the office of the Chief Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chief Commissioner:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

*Acting Commissioner*

- (2) The Minister may, by written instrument, appoint a person to act as a Commissioner (other than the Chief Commissioner):
  - (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Commissioner:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

*Requirements before appointing a person to act*

- (3) A person may only be appointed to act as the Chief Commissioner, or as a Commissioner, if:
  - (a) the Minister is satisfied that the person has appropriate qualifications, knowledge or experience; and
  - (b) the Minister has consulted the Research Minister about the proposed appointment.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

## Division 3—TEQSA procedures

### Subdivision A—Meetings

#### 148 Times and places of meetings

- (1) The Chief Commissioner must ensure that such meetings are held as are necessary for the efficient performance of TEQSA's functions.
- (2) Meetings are to be held at such times and places as the Chief Commissioner decides.
- (3) The Chief Commissioner must convene a meeting if requested, in writing, by at least 2 of the other Commissioners.

#### 149 Conduct of meetings

##### *Presiding at meetings*

- (1) The Chief Commissioner presides at all meetings at which he or she is present.
- (2) If the Chief Commissioner is not present at a meeting, a full-time Commissioner:
  - (a) nominated by the Chief Commissioner; and
  - (b) present at the meeting;must preside.

##### *Quorum*

- (3) At a meeting of TEQSA, a quorum is constituted by 3 Commissioners.

##### *Rules of procedure*

- (4) TEQSA may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

*Voting*

- (5) The person presiding at a meeting of TEQSA has a deliberative vote but, if the votes are equal, does not have a casting vote.

*Minutes*

- (6) TEQSA must ensure that minutes of its meetings are kept.

**150 Disclosure of interests**

- (1) If a Commissioner has an interest, pecuniary or otherwise, in a matter being considered, or about to be considered, at a meeting, the Commissioner must disclose the nature of that interest to the other Commissioners.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Commissioner's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless TEQSA otherwise determines, the Commissioner:
  - (a) must not be present during TEQSA's deliberation on the matter; and
  - (b) must not take part in TEQSA's decision on the matter.
- (5) For the purposes of TEQSA making a determination under subsection (4), the Commissioner:
  - (a) must not be present during any of TEQSA's deliberations for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting.

**Subdivision B—Decisions without meetings**

**151 Decisions without meetings**

- (1) A decision is taken to have been made at a meeting of TEQSA if:
  - (a) without meeting, a majority of Commissioners indicate agreement with the proposed decision in accordance with the method determined by TEQSA under subsection (2); and

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- (b) all Commissioners were informed of the proposed decision, or reasonable efforts were made to inform all Commissioners of the proposed decision.
- (2) Subsection (1) applies if TEQSA:
  - (a) has determined that it applies; and
  - (b) has determined the method by which Commissioners are to indicate agreement with proposed decisions.

**152 Record of decisions**

TEQSA must keep a record of decisions made in accordance with section 151.



## **Division 4—Chief Executive Officer**

### **153 Chief Executive Officer**

- (1) There is to be a Chief Executive Officer of TEQSA.
- (2) The Chief Commissioner is the Chief Executive Officer.

### **154 Functions and powers of the Chief Executive Officer**

- (1) The Chief Executive Officer is responsible for the management and administration of TEQSA.
- (2) All acts and things done in the name of, or on behalf of, TEQSA by the Chief Executive Officer are taken to have been done by TEQSA.

### **155 Minister may give directions to Chief Executive Officer**

- (1) The Minister may, by legislative instrument, give written directions to the Chief Executive Officer about the performance of his or her functions.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) The Chief Executive Officer must comply with a direction under subsection (1).
- (3) Subsection (2) does not apply to the extent that the direction relates to the Chief Executive Officer's performance of functions, or exercise of powers, under the *Public Service Act 1999* in relation to TEQSA.

## Division 5—Staff

### 156 Staff

- (1) The staff of TEQSA are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Chief Executive Officer and the staff of TEQSA together constitute a Statutory Agency; and
  - (b) the Chief Executive Officer is the Head of that Statutory Agency.

### 157 Staff to be made available to TEQSA

- (1) TEQSA is to be assisted by:
  - (a) officers and employees of Commonwealth authorities whose services are made available to TEQSA in connection with the performance of TEQSA's functions or the exercise of its powers; and
  - (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The Chief Executive Officer may arrange for officers or employees of an appropriate State or Territory authority to be made available to TEQSA to perform services in connection with the performance of TEQSA's functions or the exercise of its powers.
- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person to whom the arrangement relates.
- (4) When performing services for TEQSA under this section, a person is subject to the directions of the Chief Executive Officer.

## **Division 6—Fees**

### **158 Fees**

- (1) TEQSA may, by legislative instrument, determine fees that TEQSA may charge for things done in the performance of its functions.
- (2) TEQSA may, in the determination under subsection (1), determine the way in which a fee is to be worked out.
- (3) TEQSA may, in the determination under subsection (1), determine other matters relating to the payment of fees, including:
  - (a) the circumstances in which fees may be paid in instalments; and
  - (b) the circumstances in which fees may be set off against another amount payable; and
  - (c) the circumstances in which fees may be waived.
- (4) The fees determined under subsection (1) must not be such as to amount to taxation.

## **Division 7—Planning**

### **Subdivision A—Strategic plans**

#### **159 Developing strategic plans**

- (1) TEQSA must prepare a written strategic plan, for a 3-year period, that:
  - (a) defines the principal objectives of TEQSA in performing its functions during that 3-year period; and
  - (b) gives a broad outline of the strategies to be pursued by TEQSA to achieve those objectives.
- (2) A strategic plan is to relate to:
  - (a) for the first strategic plan—the 3-year period beginning on 1 July 2011; and
  - (b) for later strategic plans—a period beginning on the 1 July immediately following the end of the 3-year period to which the previous plan related.
- (3) A strategic plan prepared under subsection (1) is not a legislative instrument.

#### **160 Approving strategic plans**

- (1) TEQSA must give a copy of a strategic plan to the Minister for approval on or before:
  - (a) for the first strategic plan—the end of the period of 3 months beginning on the day this Act receives the Royal Assent; and
  - (b) for later strategic plans—either:
    - (i) 31 January in the last year of the 3-year period to which the previous plan related; or
    - (ii) such later day as the Minister allows.
- (2) Subsection (1) does not apply to a strategic plan if the Minister decides the plan does not need approval.
- (3) A strategic plan comes into force on:
  - (a) if the plan needs Ministerial approval—the later of:
    - (i) the day it is approved by the Minister; and

- (ii) the first day of the period to which it relates; or
- (b) otherwise—the first day of the period to which it relates.

## **161 Varying strategic plans**

### *Varying plans with Ministerial approval*

- (1) TEQSA may, with the Minister's approval, vary a strategic plan.
- (2) When giving the Minister a proposed variation, TEQSA must also give the Minister a proposal for any consequential variation of a relevant annual operational plan.
- (3) The Minister may, at any time, request TEQSA to vary a strategic plan. TEQSA must comply with the request.
- (4) A variation approved by the Minister takes effect on the day it is approved.

### *Ministerial approval not required for minor variations*

- (5) Despite subsection (1), TEQSA may vary a strategic plan without the approval of the Minister if the variation is of a minor nature. The variation takes effect on the day it is made.
- (6) If TEQSA makes a variation of a minor nature, TEQSA must inform the Minister of the variation as soon as is practicable.

## **Subdivision B—Annual operational plans**

### **162 Developing annual operational plans**

- (1) TEQSA must give the Minister an annual operational plan relating to the 12-month period beginning on 1 July in each year. TEQSA must do so:
  - (a) for the first operational plan—before the end of the period of 3 months beginning on the day this Act receives the Royal Assent; and
  - (b) for later operational plans—before 30 April in that year.
- (2) An annual operational plan must:
  - (a) set out particulars of the action that TEQSA intends to take during the period to which the plan relates in order to give

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effect to, or further, the principal objectives set out in the strategic plan applicable to the period; and

- (b) include such performance indicators as TEQSA considers appropriate against which TEQSA's performance can be assessed during the period to which the plan relates.
- (3) An annual operational plan is not a legislative instrument.

**163 Approving annual operational plans**

- (1) The Minister may, by written notice given to TEQSA:
  - (a) approve an annual operational plan; or
  - (b) if the Minister thinks the plan is inconsistent with the relevant strategic plan—request TEQSA to revise and resubmit the annual operational plan accordingly.
- (2) An annual operational plan comes into force at the later of:
  - (a) the day it is approved by the Minister; and
  - (b) the first day of the period to which it relates.

**164 Varying annual operational plans**

Section 161 (other than subsection 161(2)) applies to annual operational plans in the same way as it applies to strategic plans.

## **Division 8—Annual reports**

### **165 Annual reports**

- (1) TEQSA must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during the year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains provisions about annual reports.

- (2) TEQSA must include in the report the following:
  - (a) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
  - (b) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

## **Part 9—Higher Education Standards Panel**

### **Division 1—Establishment and functions**

#### **166 Establishment**

The Higher Education Standards Panel is established by this section.

#### **167 Constitution**

- (1) The Panel consists of:
  - (a) a Panel Chair; and
  - (b) at least 4, and up to 10, other members.

Note: The Panel does not have a legal identity separate from the Commonwealth.

- (2) When appointing the Panel members, the Minister must:
  - (a) ensure the Panel members collectively possess an appropriate balance of professional knowledge and demonstrated expertise, including in higher education and the development of quality standards; and
  - (b) have regard to the interests of:
    - (i) the States and Territories; and
    - (ii) students undertaking, or proposing to undertake, higher education; and
    - (iii) the staff of higher education providers; and
  - (c) consult the Research Minister about the proposed appointments.

#### **168 Functions**

- (1) The functions of the Panel are:
  - (a) to advise and make recommendations to the Minister or the Research Minister:
    - (i) on making and varying; and
    - (ii) on other matters relating to;



- the Higher Education Standards Framework, if requested by that Minister or on the Panel's own initiative; and
- (b) to advise and make recommendations to TEQSA on matters relating to the Higher Education Standards Framework, if requested by TEQSA or on the Panel's own initiative.
- (2) The Panel must consult interested parties when performing its functions.
- (3) The Panel may, by writing, establish advisory committees to assist it in performing any of its functions.
- (4) An instrument under subsection (3) is not a legislative instrument.

### **169 Panel has privileges and immunities of the Crown**

The Panel has the privileges and immunities of the Crown in right of the Commonwealth.

## **Division 2—Appointment of Panel members**

### **170 Appointment**

- (1) A Panel member is to be appointed by the Minister, by written instrument, on a part-time basis.

Note: A Panel member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A Commissioner cannot be appointed:
  - (a) as a Panel member; or
  - (b) to act as a Panel member.
- (3) After consulting the Research Minister, the Minister must appoint one of the Panel members to be the Panel Chair.

### **171 Term of appointment**

- (1) A Panel member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (2) A Panel member cannot be appointed for more than 3 consecutive periods.

### **172 Remuneration and allowances**

- (1) A Panel member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Panel member is to be paid the remuneration that is determined, in writing, by the Minister.
- (2) A Panel member is to be paid the allowances that are determined, in writing, by the Minister.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **173 Leave of absence**

- (1) The Minister may grant leave of absence to the Panel Chair on the terms and conditions that the Minister determines.

- (2) The Panel Chair may grant leave of absence to a Panel member on the terms and conditions that the Panel Chair determines.

#### **174 Outside employment**

A Panel member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

#### **175 Disclosure of interests to the Minister**

- (1) A Panel member must give written notice to the Minister of all interests, pecuniary or otherwise, that the Panel member has or acquires that conflict or could conflict with the proper performance of the Panel member's functions.
- (2) The notice must be given to the Minister as soon as practicable after the Panel member becomes aware of the potential for conflict of interest.

#### **176 Other terms and conditions**

A Panel member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

#### **177 Resignation**

- (1) A Panel member may resign his or her appointment by giving the Minister a written resignation.

Note: If the Panel Chair resigns, he or she also resigns his or her position as a Panel member. This does not prevent him or her from being reappointed only as a Panel member.

- (2) A resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

#### **178 Termination of appointment**

The Minister may terminate the appointment of a Panel member:

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the Panel member:
  - (i) becomes bankrupt; or

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- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (iii) compounds with his or her creditors; or
- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) if the Panel member is absent, except on leave of absence, from 3 consecutive meetings of the Panel; or
- (d) if the Panel member engages in paid employment contrary to section 174; or
- (e) if the Panel member fails, without reasonable excuse, to comply with section 175 or subsection 182(4).

**179 Acting appointments**

- (1) The Minister may, by written instrument, appoint a person to act as a Panel member:
  - (a) during a vacancy in the office of the Panel member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Panel member:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (2) When appointing a person to act as a Panel member, the Minister must have regard to the matters in subsection 167(2).

Note 1: A Commissioner cannot be appointed to act as a Panel member (see subsection 170(2)).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

## **Division 3—Panel meetings**

### **180 Holding meetings**

- (1) The Panel Chair may convene such meetings as are necessary for the efficient performance of the Panel's functions.
- (2) The Panel Chair must convene a meeting of the Panel if requested to do so by TEQSA.
- (3) A Commissioner may attend all or part of a Panel meeting.

### **181 Quorum**

At a meeting of the Panel, a quorum is constituted by a majority of the Panel members.

### **182 Procedure of meetings**

- (1) The Minister may, by writing, determine matters relating to the operation of the Panel.
- (2) If no determination is in force for the purposes of subsection (1), the Panel may operate in the way it determines.
- (3) The Panel Chair must ensure that minutes of meetings are kept.

#### *Disclosure of interest by a member*

- (4) If:
  - (a) a Panel member has an interest, pecuniary or otherwise, in a matter being considered, or about to be considered, at a meeting; and
  - (b) the interest could conflict with the proper performance of the Panel member's functions;the Panel member must disclose that interest to the other Panel members as soon as practicable.

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*Disclosure to be recorded in the minutes of the meeting*

- (5) Any disclosure under subsection (4), and any decision made by the Panel in relation to the disclosure, must be recorded in the minutes of the meeting.

*Determination not a legislative instrument*

- (6) A determination made under subsection (1) is not a legislative instrument.

## **Part 10—Administrative law matters**

### **Division 1—Review of decisions**

#### **183 Reviewable decisions**

For the purposes of this Act, each of the following decisions of TEQSA is a *reviewable decision*:

Note 1: Reviewable decisions of delegates of TEQSA may be reviewed by the Administrative Appeals Tribunal following a process of internal review by TEQSA.

Note 2: Reviewable decisions not made by delegates may be reviewed by the Administrative Appeals Tribunal (see section 187).

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#### **Reviewable decisions**

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A decision under paragraph 19(1)(a) that an application for registration in a particular provider category is inappropriate

A decision under paragraph 19(1)(a) that it would be appropriate for an application for registration to be in a particular provider category, when that provider category differs from that sought by the applicant

A decision under subsection 21(3) to extend the time within which TEQSA may decide an application for registration

A decision under section 21 to register an applicant for registration in a particular provider category

A decision under section 21 to reject an application for registration

A decision under subsection 32(1) to impose a condition on a registration

A decision under subsection 32(2) to vary a condition imposed on a registration

A decision under section 36 to refuse to renew a registration

A decision under section 38 to change the category in which a registered higher education provider is registered

A decision under section 41 to refuse to authorise a registered higher education provider to self-accredit one or more courses of study

A decision under section 43 to reject an application to withdraw a registration

A decision under subsection 49(3) to extend the time within which TEQSA may decide an application for accreditation

A decision under section 49 to reject an application for accreditation

A decision under subsection 53(1) to impose a condition on an accreditation

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**Reviewable decisions**

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A decision under subsection 53(2) to vary a condition imposed on an accreditation

A decision under section 56 to refuse to renew an accreditation

A decision under section 99 to shorten the period of an accreditation

A decision under section 99 to cancel an accreditation

A decision under section 100 to shorten the period of a registration

A decision under section 101 to cancel a registration

A decision under subsection 198(4) to enter details on the Register

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**184 Applying for internal review of reviewable decisions made by delegates of TEQSA**

- (1) This section applies to a reviewable decision if the decision is made by a delegate of TEQSA.
- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to TEQSA for TEQSA to review the decision.
- (3) The application must:
  - (a) be in the approved form; and
  - (b) set out the reasons for the application; and
  - (c) be accompanied by the fee (if any) determined under section 158 for a review under section 185.

Note: The approved form could, for example, require verification by statutory declaration of certain statements.
- (4) The application must be made within:
  - (a) 30 days after the applicant is informed of the decision; or
  - (b) such longer period as TEQSA allows.

**185 Internal review by TEQSA**

- (1) Upon receiving an application under section 184, TEQSA must review the reviewable decision.
- (2) TEQSA may:
  - (a) affirm, vary or revoke the reviewable decision; and
  - (b) if TEQSA revokes the decision, make such other decision as TEQSA thinks appropriate.



- (3) TEQSA's review must be done by:
  - (a) if the reviewable decision was made by a delegate who was a member of the staff of TEQSA—another delegate who:
    - (i) is a Commissioner; or
    - (ii) occupies a position senior to that occupied by the first-mentioned delegate; and
  - (b) otherwise—TEQSA.
- (4) TEQSA's decision on review has effect (except for the purposes of section 183) as if it were made under the provision under which the reviewable decision was made.
- (5) TEQSA must, within 30 days of making its decision on review, notify the applicant, in writing, of:
  - (a) the decision; and
  - (b) the reasons for the decision.

#### **186 Deadline for internal review**

- (1) TEQSA must make its decision on review of a reviewable decision within 90 days after receiving the application for review.
- (2) TEQSA is taken, for the purposes of this Part, to have made a decision under subsection 185(2) affirming the reviewable decision if it has not notified the applicant of its decision on review before the end of that 90-day period.

#### **187 Review by the Administrative Appeals Tribunal**

An application may be made to the Administrative Appeals Tribunal for review of:

- (a) a reviewable decision if the decision was not made by a delegate of TEQSA; or
- (b) a decision of TEQSA under subsection 185(2).

## **Division 2—Information management**

### **Subdivision A—Restriction on disclosure or use of information**

#### **188 Offence of unauthorised disclosure or use of information**

- (1) A person commits an offence if:
- (a) the person obtains higher education information because he or she is, or has been, any of the following (an *entrusted person*):
    - (i) a Commissioner;
    - (ii) a Panel member;
    - (iii) the Chief Executive Officer;
    - (iv) a member of the staff of TEQSA;
    - (v) a person performing a service for TEQSA; and
  - (b) the person:
    - (i) discloses the information to another person; or
    - (ii) uses the information.

Penalty: Imprisonment for 2 years.

#### *Exceptions*

- (2) Subsection (1) does not apply if:
- (a) the disclosure or use is made for the purposes of this Act or otherwise in connection with the performance of the person's duties as an entrusted person; or
  - (b) the disclosure or use is required or authorised by or under a law of the Commonwealth or a State or Territory.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### **Subdivision B—Information sharing**

#### **189 Disclosing information about breaches of regulatory requirements**

- (1) TEQSA may disclose the kinds of higher education information referred to in subsection (2) to:

- (a) a person who holds any office or appointment under a law of the Commonwealth, or under a law of a State or Territory; or
  - (b) a member, or special member, of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (c) a member of the police force, or police service, of a State or Territory; or
  - (d) an employee:
    - (i) of a Commonwealth authority or of a State or Territory authority; and
    - (ii) of a kind specified in the Information Guidelines for the purposes of this section; or
  - (e) in the case of a registered provider (within the meaning of the *Education Services for Overseas Students Act 2000*)—the TPS Director, within the meaning of that Act; or
  - (f) a regulatory authority of another country that has responsibility relating to the quality or regulation of higher education.
- (2) The kinds of higher education information are as follows:
- (a) information that relates to an offence, or possible offence, against this Act, this Act's associated provisions or the *Education Services for Overseas Students Act 2000*;
  - (b) information that relates to a contravention, or possible contravention, of:
    - (i) this 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.

### **190 Disclosing information about proposed cancellations of registration**

- (1) TEQSA may advise the Minister of a State or Territory responsible for higher education if:
  - (a) TEQSA has serious concerns about a registered higher education provider for whom an accredited course is being provided in the State or Territory; or

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- (b) TEQSA proposes to cancel the registration of a registered higher education provider for whom an accredited course is being provided in the State or Territory.
- (2) If TEQSA advises the Minister of the State or Territory under subsection (1), TEQSA may also advise:
  - (a) a person who holds any office or appointment under a law of the Commonwealth, or under a law of the State or Territory concerned; or
  - (b) employees of the Commonwealth of a kind specified in regulations made for the purposes of this paragraph; or
  - (c) employees of the State or Territory of a kind specified in regulations made for the purposes of this paragraph.

**191 Disclosing information to Tertiary Admission Centres**

TEQSA may advise a Tertiary Admission Centre if:

- (a) TEQSA cancels the accreditation of a course of study; or
- (b) TEQSA imposes a condition on the registration of a higher education provider that restricts the number of students that may enrol in a particular course of study accredited in relation to the provider; or
- (c) TEQSA cancels the registration of a registered higher education provider.

**192 Disclosing information to the Minister and Secretary**

For the purposes of administering laws relating to higher education, TEQSA may disclose higher education information to:

- (a) the Minister; or
- (b) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; or
- (c) the Secretary.

**193 Disclosing information to professional bodies etc.**

TEQSA may disclose higher education information to a body responsible for the regulation of an occupation in a State or Territory.

### **194 Disclosing information to certain government bodies etc.**

TEQSA may disclose higher education information to:

- (a) a Commonwealth authority, or a State or Territory authority, if:
  - (i) the authority is of a kind specified in the Information Guidelines for the purposes of this section; and
  - (ii) 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; or
- (b) a Royal Commission.

### **195 Disclosing information under international cooperative arrangements**

TEQSA may disclose higher education information to a regulatory authority of another country if:

- (a) cooperative arrangements exist with that other authority or country that relate to the assessment or regulation of higher education; and
- (b) the release of the information is consistent with those arrangements.

### **196 Disclosing information to the public**

TEQSA may disclose to the public higher education information that relates to anything done, or omitted to be done, under this Act.

### **197 Information about national security**

Sections 193, 194, 195 and 196 do not apply to national security information (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

## **Part 11—National Register of Higher Education Providers**

### **198 National Register of Higher Education Providers**

- (1) TEQSA must establish and maintain a register of:
  - (a) registered higher education providers; and
  - (b) each entity that was a registered higher education provider and whose registration has been cancelled other than because of a reason set out in the Register Guidelines.
- (2) The register is to be known as the National Register of Higher Education Providers.
- (3) The Register Guidelines may set out details that TEQSA must enter on the Register in respect of each registered higher education provider.
- (4) Subsection (3) does not prevent TEQSA from entering other details on the Register in respect of a registered higher education provider.
- (5) The Register is to be made available for inspection on the internet.

## Part 12—Miscellaneous

### 199 Delegation—general

- (1) TEQSA may, by writing, delegate any or all of TEQSA's functions and powers to:
- (a) a Commissioner; or
  - (b) a member of the staff of TEQSA who holds the classification of APS Executive Level 1 or higher, or an equivalent classification; or
  - (c) a Commonwealth authority; or
  - (d) a person who holds any office or appointment under a law of the Commonwealth.

Note 1: This subsection extends, for example, to TEQSA's functions and powers under the *Education Services for Overseas Students Act 2000*.

Note 2: TEQSA may also subdelegate powers delegated to TEQSA under section 170 of the *Education Services for Overseas Students Act 2000*.

#### *Powers not delegable under subsection (1)*

- (2) Subsection (1) does not apply to the power to make any of the following decisions:
- (a) a decision under section 21 to grant or reject an application for registration;
  - (b) a decision under section 32 to impose, vary or revoke a condition on a registration;
  - (c) a decision under section 36 on an application for renewal of registration;
  - (d) a decision under section 38 to change the category in which the provider is registered;
  - (e) a decision under section 41 on an application to self-accredit one or more courses of study;
  - (f) a decision under section 49 to grant or reject an application for a course of study to be accredited;
  - (g) a decision under section 53 to impose, vary or revoke a condition on an accreditation;
  - (h) a decision under section 56 on an application for renewal of the accreditation of a course of study;

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- (i) a decision under subsection 63(2) (about requiring information etc.) to give a notice to a person;
- (j) a decision under Division 1 of Part 7 (about cancelling registration and other administrative sanctions);
- (k) a decision to refer a matter to the Director of Public Prosecutions for action in relation to a possible offence against this Act or this Act's associated provisions;
- (l) a decision to apply for a civil penalty order;
- (m) a decision to seek an undertaking under Division 3 of Part 7;
- (n) a decision to apply for an injunction under Division 4 of Part 7;
- (o) a determination under subsection 158(1) (about determining fees);
- (p) a decision to review a reviewable decision in a case covered by paragraph 185(3)(b).

**200 Delegation—powers delegable only to Commissioners**

TEQSA may, by writing, delegate to a Commissioner TEQSA's powers to make the following decisions:

- (a) a decision under section 49 on an application for a course of study to be accredited;
- (b) a decision under section 53 to impose, vary or revoke a condition imposed on an accreditation;
- (c) a decision under section 56 on an application for renewal of an accreditation.

**201 Delegates must comply with directions**

In exercising functions or powers under a delegation under section 199 or 200, the delegate must comply with any written directions of TEQSA.

**202 Protection from criminal or civil actions**

- (1) No action, suit or proceeding (whether criminal or civil) lies against a protected person in relation to anything done, or omitted to be done, in good faith by the person:
  - (a) in accordance, or purportedly in accordance, with this Act; or



- (b) in the performance, or purported performance, of TEQSA's functions; or
- (c) in the exercise, or purported exercise, of TEQSA's powers.

Note: This section extends to, for example, a thing done in good faith in accordance with a delegation under section 199 or 200.

- (2) The *protected persons* are as follows:
- (a) the Minister;
  - (b) a Commissioner;
  - (c) a member of the staff of TEQSA;
  - (d) a Commonwealth authority;
  - (e) a person who holds any office or appointment under a law of the Commonwealth;
  - (f) a person performing a service for TEQSA.

### 203 Review of impact of Act

The Minister must, before 1 January 2016, cause a review to be started of the impact on the higher education sector of this Act.

### 204 Guidelines

TEQSA may, by legislative instrument, make Guidelines, specified in the second column of the table, providing for matters:

- (a) required or permitted by the corresponding provision mentioned in the third column of the table to be provided; or
- (b) necessary or convenient to be provided for carrying out or giving effect to that provision.

<b>Guidelines</b>		
<b>Item</b>	<b>Guidelines</b>	<b>Provision</b>
1	Information Guidelines	section 189
2	Register Guidelines	section 198

### 205 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Table of Acts****Notes to the *Tertiary Education Quality and Standards Agency Act 2011*****Note 1**

The *Tertiary Education Quality and Standards Agency Act 2011* as shown in this compilation comprises Act No. 73, 2011 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tertiary Education Quality and Standards Agency Act 2011</i>	73, 2011	29 June 2011	Ss. 3–8, 10–12, 58, 132–197 and 199–205: 29 July 2011 Ss. 9, 13–57, 59–131 and 198: 29 Jan 2012 Remainder: Royal Assent	
<i>Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011</i>	74, 2011	29 June 2011	Schedule 2 (item 43): (a)	—
<i>Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012</i>	9, 2012	20 Mar 2012	Schedule 1 (items 39, 44, 62): 1 July 2012	Sch. 1 (items 44, 62)
<i>Statute Law Revision Act 2012</i>	136, 2012	22 Sept 2012	Schedule 4 (items 45–50): Royal Assent	Sch. 4 (item 50)

**Act Notes**

- (a) Subsection 2(1) (item 11) of the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedule 2, Part 2	Immediately after the later of: (a) the commencement of section 5 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> ; and (b) the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011</i> .	29 July 2011 (paragraph (a) applies)
	However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
<b>Division 3</b>	
S. 5 .....	am. No. 74, 2011
<b>Part 8</b>	
<b>Division 2</b>	
S. 147.....	am. No. 136, 2012
Note to s. 147(3).....	ad. No. 136, 2012
<b>Part 9</b>	
<b>Division 2</b>	
S. 179.....	am. No. 136, 2012
Note to s. 179(2)	
Renumbered Note 1 .....	No. 136, 2012
Note 2 to s. 179(2).....	ad. No. 136, 2012
<b>Part 10</b>	
<b>Division 2</b>	
<b>Subdivision B</b>	
S. 189.....	am. No. 9, 2012

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012 (No. 9, 2012)*

**Schedule 1**

**44 Application—defaults after commencement**

The amendments made by this Schedule apply in relation to any default by a registered provider, or an overseas student or intending overseas student, that occurs after this item commences.

**62 Constitutional safety net**

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:  
*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.  
*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

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**Table A**

*Statute Law Revision Act 2012* (No. 136, 2012)

**Schedule 4**

**50 Saving—appointments**

The amendments made by this Part do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.