

Navitas Submission – TEQSA Consultation on Proposed Fit and Proper Person Considerations

December 2017

Consultation questions

Question 1: Do you agree with the proposed fit and proper person considerations?

Response

Navitas supports and advocates for a regulatory environment that is transparent, fair, consistent, and reduces regulatory burden and red tape on providers.

Navitas welcomes measures that create a regulatory environment that ensures that registered providers of Higher Education meet the Threshold Standards; and that each person who makes or participates in making decisions that affect the whole, or a substantial part, of the applicant's affairs, is a fit and proper person.

Navitas congratulates the Tertiary Education Quality and Standards Agency (TEQSA) for consulting with industry and generally supports the proposals outlined in the TEQSA Consultation Paper on *Proposed Fit and Proper Person Considerations (October 2017)*.

Navitas believes the majority of proposed amendments will allow TEQSA to determine whether a person is fit and proper under the Act, particularly if TEQSA continues to apply risk based principles in its investigations. In particular, a risk-based approach will help TEQSA to determine whether historical regulatory actions taken against a provider should negatively impact a FPP determination against an individual.

Navitas particularly commends the proposal to amend subsection 7A(2) of the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) to include references to:

- Item (a): Whether the person has been convicted of an offence against a law of the Commonwealth or of a State or Territory or a law of a foreign country, and if so, the seriousness of the offence;
- Item (b): Whether the person has ever been a member of a corporate governing body (however described), or a person who made or participated in making decisions that affect the whole, or a substantial part, of the affairs of an education provider that has:
 - (i) breached an offence or civil penalty provision in the Act;
 - (ii) had its registration cancelled or not renewed; (*please refer to additional note below*)
 - (v) not complied with a condition on its registration or course accreditation;
 - (ix) had its ESOS Act registration cancelled, or a condition imposed on its ESOS Act registration;
 - (x) been issued an infringement notice under the ESOS Act;
 - (xi) committed an offence under the ESOS Act.
- Item (c): Whether the person has ever provided false or misleading information to a Commonwealth, State or Territory authority, in circumstances where it is reasonable to assume that the person knew that the information was false or misleading;
- Item (d): Whether the person has ever been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
- Item (e): Whether the person has ever become bankrupt, applied to take the benefit of a law for the benefit of bankrupt or insolvent debtors, compounded with his or her creditors or assigned his or her remuneration for the benefit of creditors;
- Item (f): Whether the person has ever been found not to be a fit and proper person for the purposes of the (i) Act; (ii) ESOS Act; (iii) National Vocational Education and Training

Regulator Act 2011, or the equivalent State or Territory legislation; (iv) VET Student Loans Act 2016; (v) Australian Education Act 2013; (vi) Higher Education Support Act 2003; or (vii) any other Commonwealth, State or Territory authority

Although Navitas supports the key elements of the proposed amendments, we believe that further consideration and clarification be given to the implementation of the following items. This is to ensure a transparent, fair, consistent regulatory environment that reduces red tape on providers:

- Item (b): whether the person has ever been a member of a corporate governing body (however described), or a person who made or participated in making decisions that affect the whole, or a substantial part, of the affairs of an education provider that has:
 - (ii) had its registration cancelled or not renewed;

We would note that, where the registration of a provider has been cancelled at the request of the provider, a risk-based approach by TEQSA might indicate no issues relevant to the evaluation of a FPP application.
 - (iii) had the accreditation of a course of study cancelled or not renewed;

We would note that, where the accreditation of a course has been cancelled at the request of the provider, a risk-based approach by TEQSA might indicate no issues relevant to the evaluation of a FPP application.
 - (iv) had a condition imposed on its registration;

We would note that this proposed amendment seems to contradict the intent of item (b) (v), which we support. Conditions may be imposed on the registration of a provider for a range of reasons that may not necessarily impact the FPP application of an organisation or an individual. Imposing conditions on registration may be an appropriate tool for TEQSA to manage provider risk, and, where a provider continues to meet those conditions, there may be no issues relevant to the evaluation of a FPP application. Therefore, Item (b) (iv) seems unnecessary when Item (b) (v) is entirely consistent with a risk-based approach to FPP.
 - (vi) had its registration shortened;

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 - (vii) been the subject of a compliance assessment by TEQSA;

We would note that this proposed amendment would seem to be inconsistent with the principles of natural justice, to pre-judge the outcome of a compliance audit and to contradict the intent of item (b) (ii) and (b) (v).

TEQSA conducts compliance audits in order to evaluate an application for accreditation, determine whether to impose conditions or cancel a provider's registration. The outcomes of a compliance audit, rather than the conduct of a compliance audit, should impact the FPP evaluation of an organisation or an individual.
 - (viii) been the subject of sanctions by Australian Skills Quality Authority (ASQA) or the equivalent State or Territory body;

We would note that ASQA may impose a range of sanctions on a VET provider ranging from a requirement to maintain records to cancelling registration. A risk-based approach might determine that a requirement by ASQA for a provider to maintain better VET records need not necessarily impact negatively on a FPP evaluation by TEQSA.
- Item (g): whether the public is likely to have confidence in the person's suitability to be involved in an organisation that provides higher education;

We would note that this proposed amendment in its current articulation is ambiguous and could be open to considerable interpretation.

- Item (h): any other relevant matter.

We would note that this proposed amendment is a 'coverall' item, which will allow TEQSA considerable discretion in determining whether FFP requirements are met.

Question 2: Are there any other matters you think should be included in the fit and proper person considerations?

Response

As outlined above Navitas supports the majority of changes proposed as they provide greater transparency and regulatory certainty. We have noted some areas of concern however we have no suggestions for additional matters to be considered.

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