

Navitas submission on Proposed changes to the publication of TEQSA's decisions

March 2017

Consultation Questions and Navitas Responses

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

Navitas strongly agrees with the principles of transparency, compliance, fairness and consistency.

However, we believe that Part (d) of the Transparency principle requires further clarification. It reads: 'Transparency – TEQSA is committed to transparency in its regulatory and quality assurance activities in order to: (d) ensure that students and other stakeholders have *current information* about higher education in Australia, including TEQSA's work in the higher education sector.' (Emphasis added).

We believe that (d) should be further defined as '*have current information about higher education in Australia, including TEQSA's final decisions and work in the higher education sector*'. For clarity, current published information should not include interim findings, as providers still have an opportunity to respond and provide further evidence that demonstrates adherence to the Higher Education Standards Framework. Indeed, if TEQSA were to publish interim decisions this would undermine the third key principle of reporting, which is a provider's right to procedural fairness. Navitas would further propose publishing interim findings, which are subsequently addressed by the provider during the review period, could undermine the second objective of transparency, which relates to confidence in TEQSA's approach and Australia's reputation for regulatory and quality assurance more broadly.

Finally, Navitas supports statements made by the Group of Eight and reported in the *Campus Morning Mail*¹ on Tuesday 14 March 2017 that TEQSA's proposed changes to publishing decisions risks the reputation of Australian education built over decades. We endorse the following statement that '*allowing regulatory decisions to be published before the affected parties have had an opportunity to access any review of that decision would appear to remove any procedural fairness and diminish the scope for natural justice for providers... [T]he proposal poses the very great risk of damaging Australia's domestic and international reputation. Such a proposal is also likely to adversely affect a provider's existing student body; potentially without any basis*'.

In short, Navitas does not believe that TEQSA should publish decisions where a provider is still part-way through a review process. Publishing interim findings is a denial of procedural fairness.

¹http://campusmorningmail.com.au/sendpress/email/?sid=NjM0OQ&eid=Njg5MzMy&utm_medium=email&utm_source=sendpress&utm_campaign

Navitas supports publishing TEQSA's final decision. One measure TEQSA may wish to consider, as proposed by the Group of Eight, is reducing the time it takes to consider an appeal for review, which is currently 90 days.

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

Navitas does not support publication of information about a decision prior to completion of the review process. We believe this approach is inconsistent with TEQSA's principle of procedural fairness and runs the risk of undermining public confidence in TEQSA's role as regulator and Australia's regulatory and quality assurance framework here and internationally.

Navitas believes publication of any decision prior to completion of the review process does not consider the provider's right of reply or the ultimate outcome. Importantly, early publication of a decision that has not been finalised, has the potential to damage – unfairly and severely – the reputation of the provider, its students and graduates.

This type of reputational damage is extremely hard to repair with key stakeholder groups, including prospective students, influencers (e.g. parents), industry and current and future employers. This is particularly pronounced and serious in a world where the 24-hour news cycle and social media means that reputational damage through inaccurate or untested reporting is a real concern.

Finally, publishing information about decisions without any context or specificity could also contravene TEQSA's guiding principle of 'proportionality' in regulation. That is, in publishing an interim decision TEQSA would have to balance 'the interests of students with the potential impact of TEQSA's actions on the provider and the reputation of the sector'.²

Navitas does not believe that anyone's interests are served by publishing decisions that are not final.

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

Navitas does not support the proposal to publish information about the rejection for initial registration and course accreditation for the following reasons:

- Significant potential to dissuade quality providers from investing in development of innovative education programs for fear of public scrutiny and reputational damage;
- Significant potential to dissuade quality emerging providers from applying for initial registration for fear of public scrutiny and reputational damage;
- Potential to damage reputation of quality providers by publishing information without relevant historical context (e.g. history of providing quality accredited programs);

² http://www.teqsa.gov.au/sites/default/files/TEQSAsnapshot_Eng.pdf

- Potential to devalue the skills, experiences and qualification of graduates who have completed their studies with the named institute;
- Reputational damage arising from a rejection that is unlikely to be 'undone' by successful future applications;
- Potential to cause damage to quality providers within an industry sector or group (e.g. private providers) through association; and
- It is unreasonable to assume that all new applications for initial registration or the accreditation of a new course will have the requisite level of detail, evidence and / or be fully complete. It is wholly reasonable and proportionate to allow applicants / applications to be re-submitted based on the feedback from the regulator. Applicants should not therefore be subjected to the severe potential reputational risk that comes with the publication of a rejection for an initial registration or course accreditation.

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

Navitas does not support the amendments to the National Register Guidelines for the reasons outlined above.

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

Navitas does not agree with the proposal to publish news announcements and media releases about decisions that are not yet final to reject applications for registration or course accreditation. We endorse the statement by the Group of Eight that *'the specific proposal to issue media releases following regulatory decisions is one aspect of the broader proposal that is likely to have a deleterious effect on the sector'*.

TEQSA's own processes for registration and accreditation should be sufficient to safeguard the interests of current and future students, in connection with government regulation and information, e.g. QILT, and to assure the quality of Australia's large, diverse and complex higher education sector.

TEQSA's role is to register and evaluate the performance of higher education providers against the Higher Education Standards Framework - specifically, the Threshold Standards, which all providers must meet in order to enter and remain within Australia's higher education system. The public can access information about key TEQSA decisions via the National Register of higher education providers. Freedom of Information provision provides a further guarantee of transparency.

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