

University of Tasmania Regulatory Environment

March 2022

1. PURPOSE

This document provides an overview of the extensive and detailed legal and regulatory framework within which the University of Tasmania operates, including the comprehensive regulatory oversight provided by the national higher education regulator, the [Tertiary Education Quality and Standards Agency \(TEQSA\)](#) and the Commonwealth [Department of Education, Skills and Employment \(DESE\)](#).

It further explains how Tasmanian legislation constitutes the University as a legal entity and enables it to successfully operate within the Commonwealth regulatory and funding regime.

2. STANDARDS AND ENFORCEMENT

2.1 Threshold Standards

The [Higher Education Standards Framework \(Threshold Standards\) 2021](#) provide a regulatory quality and compliance baseline for all higher education providers, across seven domains of institutional activity.

1. Student Participation and Attainment
2. Learning Environment
3. Teaching
4. Research and Research Training
5. Institutional Quality Assurance
6. Governance and Accountability
7. Representation, Information and Information Management

The more than 100 standards in the seven domains above address essentially all aspects of university business and all stages of the student lifecycle, from first enquiry to graduation. As a minimum regulatory baseline, providers are expected to comply with the standards at all times and, importantly, be able to provide evidence of this compliance.

The Threshold Standards are set by the Commonwealth Minister for Education based on the advice of the Higher Education Standards Panel (HESP), an advisory group of experts in higher education management, operations and quality assurance.

2.2 Additional Standards for Overseas Students

The [Educational Services for Overseas Students Act 2003 \(ESOS Act\)](#) provides an additional layer of regulation and protection for students undertaking their studies in Australia on a student visa. The ESOS Act and associated [National Code](#) include standards related to, for example, educational agents, overseas students under 18 years of age, overseas student support services, institutional transfers and visa requirements.

2.3 Course Design Standards

The [Australian Qualifications Framework \(AQF\)](#) is a binding policy for the categorisation of post-secondary education, from Certificate I through to Doctoral Degrees. For each award type, the AQF specifies the broad purpose, volume of learning, and the level of knowledge and skills a graduate of the award will be expected to obtain.

All providers must ensure that all of their award courses are compliant with the relevant AQF specifications as part of approval processes, and regular review and quality assurance activity.

The AQF is administered by the Commonwealth Department of Education, Skills and Employment (DESE). Any changes to the AQF must be agreed by the Commonwealth as well as all State and Territory governments.

2.4 Standards for the Conduct of Research

Developed in collaboration between the [National Health and Medical Research Council \(NHMRC\)](#) and Universities Australia, the [Australian Code for the Responsible Conduct of Research](#) (Research Code), sets minimum standards for all research organisations in areas including ethical approvals for research involving humans and animals, transparency in publishing research results and the management of complaints raised regarding the conduct of research. The Research Code is supported by guides on specific topics including managing breaches, collaborative research, peer review and the management of conflict of interest.

Universities and other research organisations must be able to comply with the requirements of the Research Code in order to remain eligible for grant funding programs administered by the NHMRC and [Australian Research Council \(ARC\)](#). These two bodies oversee a substantial proportion of Australian research grant funding, including prestigious programs such as the Australian Laureate Fellowships.

2.5 Higher Education Regulators and Registration

2.5.1 Tertiary Education Quality and Standards Agency

The [Tertiary Education Quality and Standards Agency](#) (TEQSA) is the independent regulatory body for all Australian higher education providers. Established by the [TEQSA Act 2011](#), the agency has broad powers to assess provider compliance with the Threshold Standards, AQF and ESOS Act (the latter with DESE).

TEQSA registers higher education providers in four categories¹ and approves provider requests for self-accrediting status. Self-accrediting providers can approve their own courses of study without further reference to TEQSA. All other providers must seek TEQSA's approval before a course is offered.

As part of this course approval function, TEQSA is responsible for ensuring all higher education award courses² are designed and delivered in accordance with the AQF. This means that any provider not registered with TEQSA is forbidden from using AQF nomenclature (such as Bachelor Degree) to describe any educational services they offer.

Once registered with TEQSA, providers must undertake a renewal of registration at least once every seven years. The [renewal of registration process](#) requires the submission of evidence of ongoing compliance with the Threshold Standards. This scope includes a core component for all providers, which may be extended to any area of provider operations covered by the Threshold Standards. TEQSA determines the full submission scope based on its own [Risk Assessment Framework](#) and areas of current regulatory interest. The University of Tasmania, for example, underwent the renewal of

¹ Australian University; Overseas University; University College; and Institute of Higher Education

² Courses offered at AQF Level 5 and above, including the Undergraduate Certificate qualification which sits outside the normal AQF levels.

registration process most recently in 2017-2018. Renewal for the maximum seven-year registration period was confirmed as recently as 2019.

Outside of the renewal of registration process, TEQSA may at any time require providers to submit evidence of their compliance with any of the Threshold Standards. This includes regular, sector-wide checks on areas of high regulatory risk including, for example, third party delivery of teaching, contract cheating or institutional management of sexual assault and harassment. As part of these assessments, the agency will seek to determine that there are robust policies and procedures in place to mitigate against risk, that underlying organisational structures and administrative processes are sufficient to operationalise policy, and that there is adequate reporting and monitoring to identify, and remediate, any instances of non-compliance.

Further to renewal of registration and ongoing compliance monitoring processes, the TEQSA Act requires all providers to notify TEQSA within 14 days of a situation where it has either not met, or reasonably believes it will be unable to meet, its obligations under the Threshold Standards. This is referred to as a material change notification. In response to a notification, TEQSA may, for example, direct a provider to deliver a full account of the circumstances surrounding the breach or suspected breach, conduct an internal or external review of the matter, or provide a detailed action plan that both remediates the immediate issues and ensures that future, similar breaches of the Threshold Standards are avoided.

Providers must also submit material change notifications to advise the regulator of major operational changes, including the appointment of a new Chancellor or Vice-Chancellor or the provider entering into a third-party teaching arrangement with another institution.

TEQSA has far reaching powers to ensure compliance with the TEQSA Act, Threshold Standards, ESOS Act and National Code. These extend to civil and criminal action taken against providers or individuals for serious breaches of legislation. TEQSA is also empowered to suspend or cancel the registration of any higher education provider, as well apply conditions to the registration of a provider. These conditions may include:

- Prohibiting the provider from admitting students to a certain course or courses;
- Reducing the length of the provider's registration period from the standard seven years;
- Requiring the provider to submit evidence of ongoing compliance with relevant standards on a schedule determined by TEQSA;
- Requiring that a provider cease a relationship with a third-party service provider, such as a partner university or educational agent; or
- Suspending or cancelling a provider's self-accrediting authority.

All conditions are published on TEQSA's website.

2.5.2 Commonwealth Register of Institutions and Courses for Overseas Students

Providers must be registered with the [Commonwealth Register of Institutions and Courses for Overseas Students \(CRICOS\)](#) in order to offer courses to people studying in Australia on student visas. CRICOS is established by the ESOS Act and managed by TEQSA and DESE.

Institutional CRICOS registration and renewal of registration are separate to TEQSA registration processes, though many providers elect to align their renewal submissions.

All courses available to students on student visas must also be individually registered with CRICOS. This applies to all courses, including those offered by providers with self-accrediting authority. All registered courses are searchable via the CRICOS website. To register a course with CRICOS, providers must submit information including: standard course duration in weeks; delivery location and mode; projected overseas student enrolments; estimated fees for overseas students; any work-based training requirements; and any third-party delivery arrangements for the course.

2.6 Professional Accreditation of Courses and Majors

Some university degrees are subject to the accreditation of external bodies or agencies.

Per the requirements of the Threshold Standards,³ if professional accreditation is required for graduates to practise in a particular field, universities are forbidden from offering a course in that field until accreditation is obtained. This requirement is common to the health professions, teacher education, engineering and nautical sciences, and social work.

For other disciplines, such as accounting or computer science, external professional accreditation may not be required for graduates to practise in the field but may remain highly desirable for prospective students and employers alike.

Usually, a graduate of a course accredited by an external professional body will register with that body as a member of the relevant profession. Accrediting bodies may set additional registration requirements beyond the completion of the course, including ongoing requirements for professional learning or development.

In all cases, external accrediting bodies have full discretion in setting their own requirements for providers to meet. Depending on the discipline, accrediting bodies may dictate highly specific course content requirements, or may alternatively take a competencies-based approach reflecting the skills and attributes a graduate requires to succeed in the profession.

In their decision-making, accrediting bodies may require extensive documentation from providers regarding the relevant course of study, over and above what may be required by internal university committees, and in formats set by the accrediting bodies themselves. Accrediting bodies may also require site visits and facilities audits as part of the accreditation process.

Most externally accredited courses undergo review and reaccreditation processes on a five-year cycle. The accrediting body determines the conditions by which a provider can amend a course of study outside of the regular review cycle and in what circumstances the accrediting body must be notified of a change.

3. FUNDING, FEES AND REQUIREMENTS

3.1 Tuition Fees

The [Higher Education Support Act 2003 \(HESA\)](#) and its [associated guidelines](#) are administered by DESE and are the primary instruments for the public funding of universities. Major funding streams enabled by HESA, include:

- The Commonwealth Grant Scheme, which funds the government contribution of all Commonwealth Supported Places for eligible students;

³ Standard 3.1.5

- Block grants supporting university research; and
- Grants intended to support students from disadvantaged backgrounds and underrepresented groups to access higher education.

In order to be eligible for funding under HESA, universities must provide DESE with comprehensive and granular data regarding student applications and offers, enrolments, completions and staffing. Required fields are provided by [Higher Education Information Management System \(HEIMS\)](#). To access research block grants, universities must also participate in the [Higher Education Research Data Collection](#) of research income data.

Some of the funding streams enabled by HESA, such as the [Indigenous Student Success Program](#)⁴ and [Higher Education Participation and Partnerships Program](#) also require annual reporting or audit activity to ensure the funds are being appropriately expended.

Further HESA guidelines set requirements for the charging of student fees, including:

- Maximum tuition fees payable by Commonwealth supported students;
- Minimum fees payable by overseas students both in Australia and offshore; and
- Ancillary charges, such as the Student Services and Amenities Fee.

3.2 Tuition Protection Service

HESA (for Commonwealth supported students) and the ESOS Act (for overseas students) together, but in separate legislative instruments, establish the [Tuition Protection Service \(TPS\)](#). Administered by the Department of Education, the TPS works to protect students whose provider closes or otherwise fails to deliver a course of study that the student has paid for.

The TPS is funded via levies on all higher education providers based on a combination of total student enrolment and assessed provider risk.

4. INTERNAL GOVERNANCE AND QUALITY ASSURANCE

While the Commonwealth establishes the standards, compliance regime and funding frameworks under which universities operate, in most cases it is State or Territory legislation which establishes individual institutions and provides the necessary structures to meet Commonwealth requirements.

In Tasmania, the [University of Tasmania Act 1992](#) (UTAS Act) provides for the creation of:

- The University Council, as the University's governing body;
- The Academic Senate as the University's chief academic decision-making and advisory body; and
- The positions of Chancellor, Deputy-Chancellor/s and Vice-Chancellor.

In addition to this, the UTAS Act requires an annual report on the University's governance and operations be submitted to the Governor and copied to the State Minister for Education.

4.1 University Council

The [University Council Ordinance](#) outlines the powers and functions Council reserves for itself. These include approving the mission and strategic direction of the University, conferring and revoking

⁴ Administered by the National Indigenous Australians Agency

degrees, approving the annual university budget, establishing a positive university culture and ensuring the University operates ethically and in line with its values.

The Ordinance also includes information on the role of the Chancellor and Deputy Chancellor/s; the powers and functions delegated to the Vice-Chancellor and the establishment and operation of Council committees, being:

- Audit and Risk Committee (establishment per the requirements of the UTAS Act);
- Ceremonial and Honorary Degrees Committee;
- Remunerations and Nominations Committee;
- Strategic Resourcing Committee; and
- University Foundation Committee.

In addition to satisfying the requirements of the UTAS Act, the University Council ensures the University complies with the Threshold Standards, specifically standards 6.1 Corporate Governance and 6.2 Corporate Governance and Accountability.

4.2 Academic Senate

As the principal academic body of the University, Academic Senate has a broad role in monitoring academic standards and providing advice to Council on academic matters.

Academic Senate approves all courses of study for delivery and plays an active role in the ongoing monitoring of research and teaching quality. This includes receiving regular reports on matters including research outputs and impact, student retention and pass rates, student satisfaction and graduate outcomes. Academic Senate is empowered to request Colleges and Divisions develop action plans to address areas of underperformance.

The extensive decision-making responsibilities of the Academic Senate are supported by the following subcommittees:

- University Learning and Teaching Committee;
- University Admissions Committee;
- Student Experience Committee;
- University Course and Unit Proposals Committee; and
- University Research Committee.

Academic Senate and its subcommittees are critical to the University's compliance with several of the Threshold Standards, such as: 3.1 Course Design; 5.1 Course Approval and Accreditation; 5.3 Monitoring, Review and Improvement; and 6.3 Academic Governance

5. ADDITIONAL LEGISLATIVE REQUIREMENTS

5.1 Access and Participation

Multiple programs, at all levels of government, have been established to support students from disadvantaged backgrounds or underrepresented groups to participate in higher education. For example, the Commonwealth Higher Education Partnerships and Participation Program, supports universities to increase enrolments from low socioeconomic status, Indigenous and regional students, and support these students to succeed in their chosen courses.

Beyond this, there is a considerable body of Federal and State legislation which requires higher education providers to ensure that all students and staff are treated fairly and equitably. These include, for example:

- Sex Discrimination Act 1984 (Cth);
- Racial Discrimination Act 1975 (Cth);
- Anti-Discrimination Act 1998 (Tas); and
- Disability Services Act 2011 (Tas).

Legislation of this kind applies to a broad range of organisations, but there is nuance to the manner in which it is applied in a higher education context, particularly in terms of the relationship between universities and students.

For example, the Commonwealth [Disability Discrimination Act 1992](#), forbids an educational provider from, among other things:

- Refusing admission to a person on the grounds of their disability;
- Limiting a student's access to facilities or services on the grounds of their disability; and
- Developing curricula that would exclude a person with a disability from participating in a course of study.

This means that universities must ensure, as far as is reasonably possible, that their facilities, learning resources and support services can be accessed by all people. Where a student's disability precludes their participation in a planned learning activity, providers must make all reasonable adjustments to ensure that the student is able to participate, or where this is not possible, undertake an equivalent learning experience.

As a consequence of these requirements, higher education providers invest significant resources in ensuring their teaching spaces, library facilities and online learning resources can be accessed by all people. This includes both infrastructure investments that prioritise accessibility and support services tailored to individual student learning needs.

While universities will make every effort to ensure all people are supported to succeed in their studies, there are some courses with inherent requirements, which may prevent people with certain disabilities from participating in core components of the course. For example, a certain level of visual acuity may be required to undertake a nursing qualification that involves a large amount of practical learning experiences with real patients. In only such cases may a provider refuse to admit a student to the course on the grounds of their disability. Providers must publish any such inherent requirements in their course information.

5.2 Other Legislative Requirements

Australian universities are subject to a range of other Commonwealth, State and international legislation and regulation. Some examples are provided in Appendix A and include legislation related to:

- Foreign influence and autonomous sanctions;
- Intellectual property;
- Employment;
- Workplace health and safety;
- Taxation, accounting and property;

- Governance and accountability;
- Sustainability; and
- Privacy.

Appendix A: Examples of Legislation Impacting on University Operations

Legislative Category	Examples
Vocational Education	National Education and Training Regulator Act 2011 (Cth)
Research	Australian Research Council Act 2001 (Cth) National Health and Medical Research Council Act 1992 (Cth) Autonomous Sanctions Act 2011 (Cth) National Statement on Ethical Conduct in Human Research (Cth) Poisons Act 1971 (Tas) Therapeutic Goods Act 1989 (Cth) Therapeutic Goods Act 2001 (Tas)
Tax, Finance and Property	Australian Charities and Not-for-profits Commission Act 2012 (Cth) Australian Accounting Standards Board (AASB) Accounting Standards (Cth) Fringe Benefits Tax Act 1986 (Cth) National Rental Affordability Scheme Regulations 2008 (Cth) Residential Tenancy Act 1997 (Tas) Building Act 2016 (Tas) Audit Act 2008 (Tas) Payroll Tax Act 2008 (Tas)
Governance and Accountability	University of Tasmania Act 1992 (Tas) Integrity Commission Act 2009 (Tas) Public Interest Disclosures Act 2001 (Tas) Right to Information Act 2009 (Tas)
Work Health and Safety	Safe Work Australia Act 2008 (Cth) Work Health and Safety Act 2012 (Tas) Work Health and Safety Act 2011 (NSW)
Employment	Fair Work Act 2009 (Cth)
Equity (Staff)	Sex Discrimination Act 1984 (Cth) Racial Discrimination Act (Cth) Workplace Gender Equality Act (Cth) Age Discrimination Act 2004 (Cth) Anti Discrimination Act 1998 (Tas) Disability Services Act 2011 (Tas)
Sustainability	National Greenhouse and Energy Reporting Act 2007 (Cth)
Information Technology	Security of Critical Infrastructure Act 2018 (Cth)
Records	Archives Act 1983 (Tas)
Intellectual Property	Designs Act 2003 (Cth) Trade Marks Act 1995 (Cth)
Trade and Commerce	Corporations Act 2001 (Cth)
Privacy	Privacy Act 1988 (Cth) Protection Act 2004 (Tas) General Data Protection Regulation (International)

Foreign matters

Foreign Influence Transparency Scheme Act 2018 (Cth)
Australia's Foreign Relations (State and Territory's Arrangements)
Act 2020
