



Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011

No. 74, 2011

**An Act to deal with consequential and transitional
matters arising from the enactment of the *Tertiary
Education Quality and Standards Agency Act 2011*,
and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 74, 2011

An Act to deal with consequential and transitional matters arising from the enactment of the *Tertiary Education Quality and Standards Agency Act 2011*, and for other purposes

[Assented to 29 June 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) 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.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 29 June 2011 |
| 2. Schedule 1, Part 1 | Immediately after the later of: (a) the commencement of Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> ; and (b) the commencement of item 1 of Schedule 1 to the <i>National Vocational Education and Training Regulator (Consequential Amendments) Act 2011</i> . However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur. | 29 January 2012 |
| 3. Schedule 1, items 15 to 24 | At the same time as Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> commences. However, if item 1 of Schedule 1 to the <i>National Vocational Education and Training Regulator (Consequential Amendments) Act 2011</i> commences at or before that time, the provision(s) do not commence at all. | Does not commence |

| Commencement information | | |
|------------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 4. Schedule 1, item 25 | <p>Immediately after the later of:</p> <p>(a) the commencement of the provision(s) covered by table item 3; and</p> <p>(b) the commencement of Schedule 1 to the <i>Education Services for Overseas Students Legislation Amendment Act 2011</i>.</p> <p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p> | Does not commence |
| 5. Schedule 1, items 26 to 39 | <p>At the same time as Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> commences.</p> <p>However, if item 1 of Schedule 1 to the <i>National Vocational Education and Training Regulator (Consequential Amendments) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.</p> | Does not commence |
| 6. Schedule 1, Part 3 | At the same time as section 3 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> commences. | 29 July 2011 |
| 7. Schedule 1, Part 4 | Immediately after the commencement of Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> . | 29 January 2012 |
| 8. Schedule 2, Part 1, Division 1 | Immediately after the commencement of Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> . | 29 January 2012 |
| 9. Schedule 2, Part 1, Division 2 | <p>Immediately after the commencement of Part 2 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i>.</p> <p>However, if Schedule 1 to the <i>Higher Education Support Amendment (No. 1) Act 2011</i> has not commenced at or before that time, the provision(s) do not commence at all.</p> | 29 January 2012 |
| 10. Schedule 2, Part 1, Division 3 | Immediately after the commencement of Part 2 of the <i>Tertiary Education Quality and</i> | Does not commence |

| Commencement information | | |
|---------------------------------|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| | <p><i>Standards Agency Act 2011.</i></p> <p>However, if Schedule 1 to the <i>Higher Education Support Amendment (No. 1) Act 2011</i> commences at or before that time, the provision(s) do not commence at all.</p> | |
| 11. Schedule 2, Part 2 | <p>Immediately after the later of:</p> <p>(a) the commencement of section 5 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i>; and</p> <p>(b) the commencement of section 3 of the <i>National Vocational Education and Training Regulator Act 2011.</i></p> <p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p> | 29 July 2011 |
| 12. Schedule 3 | At the same time as section 3 of the <i>Tertiary Education Quality and Standards Agency Act 2011</i> commences. | 29 July 2011 |

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.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Education Services for Overseas Students Act 2000

Part 1—Amendments after VET law commences

1 Section 5 (before paragraph (a) of the definition of *authorised employee*)

Insert:

- (aa) if, under subsection 170(2), the Secretary delegates a power to TEQSA that TEQSA considers requires powers to be exercised under Part 7—a person who is an authorised officer (within the meaning of the TEQSA Act); or

2 Section 5

Insert:

Commonwealth designated authority for a State, in relation to a provider, means TEQSA or the National VET Regulator.

3 Section 5 (definition of *designated authority*)

Repeal the definition, substitute:

designated authority has the meaning given by section 7A.

4 After section 7

Insert:

7A Meaning of *designated authority*

- (1) The *designated authority* for a State, in relation to a provider, is as follows:

| Meaning of <i>designated authority</i> | | |
|---|--|-------------------------------------|
| Item | For a provider, to the extent that it is: | the designated authority is: |
| 1 | a registered higher education provider (within the meaning of the TEQSA Act) | TEQSA |
| 2 | an NVR registered training organisation | the National VET Regulator |

Meaning of *designated authority*

| Item | For a provider, to the extent that it is: | the designated authority is: |
|-------------|--|---|
| | (within the meaning of the <i>National Vocational Education and Training Regulator Act 2011</i>) | |
| 3 | a provider of: (a) an English Language Intensive Course for Overseas Students; or (b) a Foundation program | the entity determined under subsection (3) |
| 4 | a provider not covered by items 1 to 3 | the person responsible under the law of the State for approving providers to provide courses to overseas students for the State |

(2) However, if the provider is covered by more than one item of the table, the Minister may, by legislative instrument:

- (a) determine that one or more entities are the *designated authorities* for the State in relation to the provider; and
- (b) specify the circumstances in which each of those entities is the *designated authority* for the State in relation to the provider.

(3) The Minister may, by legislative instrument, determine an entity to be the *designated authority* for a State in relation to a provider covered by table item 3.

5 Paragraph 89A(1)(b)

Omit “the National VET Regulator”, substitute “a Commonwealth designated authority”.

6 Paragraph 89A(1A)(b)

Omit “the National VET Regulator”, substitute “a Commonwealth designated authority”.

7 Paragraph 89A(1B)(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) a provider is approved by a Commonwealth designated authority to provide courses; or

- (ii) a provider is approved by a Commonwealth designated authority, and by a designated authority that is not a Commonwealth designated authority, to provide courses; and

8 Paragraph 89A(1B)(b)

Omit “Regulator tells the Secretary that the Regulator”, substitute “Commonwealth designated authority tells the Secretary that it”.

9 After paragraph 170(1)(a)

Insert:

- (aa) TEQSA; or

10 Before paragraph 170(2)(a)

Insert:

- (aa) TEQSA; or

11 Before subsection 170(3) (before the heading)

Insert:

(2A) If the Minister or the Secretary delegates a power under this section to TEQSA, TEQSA may, by writing, subdelegate the power to a member of the staff of TEQSA (within the meaning of the TEQSA Act) who:

- (a) is an SES employee or acting SES employee; or
(b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.

12 Subsection 170(4)

Omit “the subdelegation”, substitute “a subdelegation under subsection (2A) or (3)”.

13 Saving of existing determinations

- (1) This item applies to a determination in force under paragraph (b) of the definition of *designated authority* in section 5 of the *Education Services for Overseas Students Act 2000* immediately before the commencement of this item.

- (2) The determination continues to have effect, at and after that commencement, as if it were a determination under subsection 7A(3) of that Act as amended by this Part.

14 Things done by, or in relation to, a designated authority

- (1) This item applies if, before the commencement of this item, a thing was done by, or in relation to, a designated authority under the *Education Services for Overseas Students Act 2000*.
- (2) The thing is taken, after that commencement, to have been done by, or in relation to, the relevant designated authority (within the meaning of that Act as amended by this Part).
- (3) The Minister may, by writing, determine that subitem (2) does not apply in relation to a specified thing done by, or in relation to, a designated authority.
- (4) To avoid doubt, doing a thing includes making an instrument.
- (5) A determination under subitem (3) is not a legislative instrument.

Part 2—Amendments if VET law has not commenced

15 Section 5 (definition of *approved provider*)

Omit “the designated authority”, substitute “the relevant designated authority”.

16 Section 5 (definition of *authorised employee*)

Repeal the definition, substitute:

authorised employee means:

- (a) if, under subsection 170(2), the Secretary has delegated a power to TEQSA that TEQSA considers requires powers to be exercised under Part 7—a person who is an authorised officer (within the meaning of the TEQSA Act); or
- (b) in any other case—a person who:
 - (i) is authorised in writing by the Secretary to exercise powers under Part 7; and
 - (ii) is an employee of the Department; and
 - (iii) holds the classification of APS 5 or higher, or an equivalent classification.

17 Section 5 (definition of *designated authority*)

Repeal the definition, substitute:

designated authority for a State, in relation to a provider, means:

- (a) to the extent that the provider is a registered higher education provider (within the meaning of the TEQSA Act)—TEQSA; or
- (b) in any other case—the person responsible under the law of the State for approving providers to provide courses to overseas students for the State.

18 Subsection 10(5)

After “is registered”, insert “for a course”.

19 Paragraph 14(1)(b)

Repeal the paragraph, substitute:

- (b) the source of the information is not the relevant designated authority.

20 Subsection 14(2)

Repeal the subsection, substitute:

- (2) The Secretary must give the information to the relevant designated authority.

21 Subsection 14(3)

Omit “the designated authority”, substitute “the relevant designated authority”.

22 Paragraph 14A(1)(a)

Repeal the paragraph, substitute:

- (a) a provider is approved by a designated authority for a State to provide courses to overseas students; and
(aa) the designated authority has imposed a condition on the provider relating to its provision of those courses; and

23 Paragraph 14A(2)(a)

Repeal the paragraph, substitute:

- (a) a provider is approved by a designated authority for a State to provide courses to overseas students; and
(aa) the designated authority has imposed a condition on the provider relating to its provision of those courses; and

24 Subsection 14A(4)

Omit “the designated authority”, substitute “the relevant designated authority”.

25 Paragraph 14B(1)(b)

Repeal the paragraph, substitute:

- (b) the relevant designated authority.

26 Paragraph 27(1B)(b)

Repeal the paragraph, substitute:

- (b) any advice of the relevant designated authority.

27 Paragraph 43(1)(b)

Repeal the paragraph, substitute:

- (b) the source of the information is not a designated authority in relation to the provider.

28 Subsection 43(2)

Omit “the designated authority”, substitute “each relevant designated authority”.

29 Subsection 43(2)

Omit “the authority”, substitute “one or more of those authorities”.

30 Paragraph 43(3)(a)

Omit “the designated authority”, substitute “each relevant designated authority”.

31 Paragraph 43(3)(b)

Omit “the designated authority”, substitute “a relevant designated authority”.

32 Subsection 89(1)

Omit “the designated authority”, substitute “the relevant designated authority”.

33 Subsection 89A(1)

Repeal the subsection, substitute:

- (1) If:
 - (a) either:
 - (i) a provider is approved by a designated authority for a State to provide courses for a State; or
 - (ii) a provider is approved by a designated authority for a State to provide courses for a State and another designated authority to provide other courses for the State; and
 - (b) TEQSA is not a designated authority mentioned in paragraph (a); and
 - (c) a designated authority mentioned in paragraph (a) tells the Secretary that the authority (having regard to the matters

referred to in subsection 9B(2)) is no longer satisfied that the provider is fit and proper to be registered;
the registration of the provider (other than a provider covered by subsection 9B(1)) is suspended for all courses for the State by force of this subsection.

Note: Section 95 sets out the effect of suspension.

(1A) If:

- (a) the registration of a provider is suspended under subsection (1); and
- (b) the provider is also approved by TEQSA to provide courses for a State;

the registration of the provider is also suspended for those courses for all States by force of this subsection.

Note: Section 95 sets out the effect of suspension.

(1B) If:

- (a) either:
 - (i) a provider is approved by TEQSA to provide courses; or
 - (ii) a provider is approved by TEQSA and another designated authority to provide courses; and
- (b) TEQSA tells the Secretary that TEQSA (having regard to the matters referred to in subsection 9B(2)) is no longer satisfied that the provider is fit and proper to be registered;

the registration of the provider (other than a provider covered by subsection 9B(1)) is suspended for all courses for all States by force of this subsection.

Note: Section 95 sets out the effect of suspension.

34 Subsection 89A(2)

Omit “the designated authority”, substitute “the relevant designated authority”.

35 Subsection 92B(1)

Omit “the designated authority” (first occurring), substitute “the relevant designated authority”.

36 Section 170

Repeal the section, substitute:

170 Delegation

Minister's delegation

- (1) The Minister may, by signed writing, delegate any or all of the Minister's powers under this Act to:
 - (a) the Secretary; or
 - (b) TEQSA; or
 - (c) an SES employee or acting SES employee in the Department.

Secretary's delegation

- (2) The Secretary may, by signed writing, delegate any or any of the Secretary's powers under this Act to:
 - (a) TEQSA; or
 - (b) an SES employee or acting SES employee in the Department.

Subdelegation

- (3) If the Minister or the Secretary delegates a power under this section to TEQSA, TEQSA may, by writing, subdelegate the power to a member of the staff of TEQSA (within the meaning of the TEQSA Act) who:
 - (a) is an SES employee or acting SES employee; or
 - (b) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to the subdelegation in a corresponding way to the way in which they apply in relation to a delegation.

37 Saving of existing authorisations

A person who is an *authorised employee* within the meaning of the *Education Services for Overseas Students Act 2000* immediately before the commencement of this item continues to be, at and after that commencement, an authorised employee for the purposes of that Act.

38 Things done by, or in relation to, a designated authority

- (1) This item applies if, before the commencement of this item, a thing was done by, or in relation to, a designated authority under the *Education Services for Overseas Students Act 2000*.

Schedule 1 Education Services for Overseas Students Act 2000

Part 2 Amendments if VET law has not commenced

- (2) The thing is taken, after that commencement, to have been done by, or in relation to, the relevant designated authority (within the meaning of that Act as amended by this Part).
- (3) The Minister may, by writing, determine that subitem (2) does not apply in relation to a specified thing done by, or in relation to, a designated authority.
- (4) To avoid doubt, doing a thing includes making an instrument.
- (5) A determination under subitem (3) is not a legislative instrument.

39 Saving of existing delegations

A delegation in force under section 170 of the *Education Services for Overseas Students Act 2000* immediately before the commencement of this item continues to have effect, at and after that commencement, as if it were a delegation under that section as amended by this Part.

Part 3—Amendments about access

40 Section 124

Before “An”, insert “(1)”.

41 Section 124

Omit “another employee of the Department with an”, substitute “a person covered by subsection (2) who has the”.

42 At the end of section 124

Add:

- (2) This subsection covers a person if the person is:
 - (a) an employee of the same Agency (within the meaning of the *Public Service Act 1999*) as the authorised employee; or
 - (b) a constituent member (however described) of that Agency.

43 Subsection 125(1)

Omit “another employee of the Department with an”, substitute “a person covered by subsection (3) who has the”.

44 At the end of section 125

Add:

- (3) This subsection covers a person if the person is:
 - (a) an employee of the same Agency (within the meaning of the *Public Service Act 1999*) as the authorised employee; or
 - (b) a constituent member (however described) of that Agency.

Part 4—Other amendments

45 Section 5

Insert:

TEQSA (short for Tertiary Education Quality and Standards Agency) means the body established by section 132 of the TEQSA Act.

46 Section 5

Insert:

TEQSA Act means the *Tertiary Education Quality and Standards Agency Act 2011*.

Schedule 2—Other amendments

Part 1—Amendments about higher education support

Division 1—Main amendments

Higher Education Support Act 2003

1 Section 1-15

Repeal the section.

2 Section 3-25

Repeal the section.

3 Subsection 5-1(2) (table item 1)

Omit “an audit by a *quality auditing body”, substitute “*TEQSA”.

4 After section 16-25

Insert:

16-27 Body must be a registered higher education provider

Despite section 16-25, the Minister must not approve a body corporate as a higher education provider unless the body is a *registered higher education provider.

5 Subsection 16-40(1)

Repeal the subsection, substitute:

- (1) A body corporate that is a *registered higher education provider may apply, in writing, to the Minister for approval as a higher education provider under this Act.

6 After section 16-40

Insert:

16-42 Minister may seek information from TEQSA

For the purposes of approving a body corporate as a higher education provider under this Act, the Minister may seek information from *TEQSA that:

- (a) relates to the body corporate's application for approval as a higher education provider; or
- (b) relates to the body corporate's ability to comply, or compliance, with the *quality and accountability requirements.

7 Subdivision 19-C

Repeal the Subdivision, substitute:

Subdivision 19-C—The quality requirements

19-15 Provider must maintain quality

A higher education provider must operate, and continue to operate, at a level of quality:

- (a) that meets the Threshold Standards (within the meaning of the *TEQSA Act); and
- (b) that meets the requirements imposed by or under the TEQSA Act on, or in relation to, the provider.

8 Paragraphs 19-77(c) and (d)

Repeal the paragraphs, substitute:

- (c) the provider's authority conferred by or under the *TEQSA Act to self-accredit one or more *courses of study; or
- (d) TEQSA's accreditation of a course of study that is an *accredited course in relation to the provider.

9 After section 19-77

Insert:

19-78 Notice of events significantly affecting TEQSA registration

- (1) A higher education provider must by writing inform the Minister of any event significantly affecting:
 - (a) the provider; or
-

(b) a *related body corporate of the provider;
that relates to the provider's registration as a *registered higher
education provider.

- (2) If a higher education provider informs the Minister of an event
under section 19-77, the provider need not inform the Minister of
the event under this section.

10 After subsection 19-80(2)

Insert:

- (2A) To avoid doubt, if the Minister makes a determination under
subsection (2) in relation to *TEQSA, the determination is not a
direction for the purposes of subsection 136(2) of the *TEQSA Act.

11 Subsection 19-102(4)

Omit "sections 104-50 and 225-25", substitute "section 104-50".

12 Section 22-1

Before "A body", insert "(1)".

13 At the end of section 22-1

Add:

- (2) If a body ceases to be approved as a higher education provider, the
Minister must ensure that *TEQSA is notified, in writing, of the
cessation.

14 Paragraph 22-10(2A)(b)

Repeal the paragraph, substitute:

- (b) the body is no longer authorised by or under the *TEQSA Act
to self-accredit a *course of study that the body was
authorised to self-accredit at that time; and

15 At the end of section 22-10

Add:

Bodies that are no longer registered under the TEQSA Act

- (6) The Minister may revoke a body's approval as a higher education
provider if:

Schedule 2 Other amendments

Part 1 Amendments about higher education support

- (a) the body is no longer a *registered higher education provider;
and
- (b) the Minister complies with the requirements of section 22-20.

16 After section 22-20

Insert:

22-22 Minister may seek information from TEQSA

For the purposes of determining whether to revoke a body's approval as a higher education provider, the Minister may seek information from *TEQSA.

17 Before paragraph 90-1(a)

Insert:

- (aa) the course of study is an *accredited course in relation to the provider; and

18 Paragraph 104-10(1)(b)

Repeal the paragraph, substitute:

- (b) if the unit is being undertaken as part of a course of study with a higher education provider:
 - (i) the course of study is an *accredited course in relation to the provider; or
 - (ii) if the provider is a *self-accrediting entity—the course of study is an *enabling course.

19 After paragraph 118-1(1)(c)

Insert:

- (ca) the undergraduate course of study is an *accredited course in relation to the home provider; and

20 Section 206-1 (table item 5)

Repeal the item.

21 Chapter 6

Repeal the Chapter.

22 Subsection 238-10(1) (table item 6A)

Repeal the item.

23 Subclause 1(1) of Schedule 1 (definition of *accredited course*)

Repeal the definition, substitute:

accredited course means a *course of study (other than an *enabling course) that:

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

24 Subclause 1(1) of Schedule 1 (definition of *Australian Qualifications Framework*)

Repeal the definition, substitute:

Australian Qualifications Framework means the framework for recognition and endorsement of qualifications:

- (a) that is established by the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education; and
- (b) that is to give effect to agreed standards in relation to the provision of education in Australia;

as in force from time to time.

25 Subclause 1(1) of Schedule 1 (definition of *Australian university*)

Repeal the definition, substitute:

Australian university means a *registered higher education provider:

- (a) that, for the purposes of the *TEQSA Act, is registered in a provider category that permits the use of the word “university”; and
- (b) that:
 - (i) is established by or under, or recognised by, a law of the Commonwealth, a State or a Territory; or
 - (ii) is registered as a company under Part 2A.2 of the *Corporations Act 2001*.

26 Subclause 1(1) of Schedule 1 (definition of *government accreditation authority*)

Repeal the definition.

27 Subclause 1(1) of Schedule 1 (definition of *National Protocols*)

Repeal the definition.

28 Subclause 1(1) of Schedule 1 (definition of *non self-accrediting entity*)

Repeal the definition, substitute:

non self-accrediting entity means a body corporate that:

- (a) is a *registered higher education provider; and
- (b) has no authorisation conferred by or under the *TEQSA Act to self-accredit any *course of study that leads to a *higher education award.

29 Subclause 1(1) of Schedule 1 (definition of *offering*)

Repeal the definition.

30 Subclause 1(1) of Schedule 1 (definition of *operating*)

Repeal the definition.

31 Subclause 1(1) of Schedule 1 (definition of *quality auditing body*)

Repeal the definition.

32 Subclause 1(1) of Schedule 1

Insert:

registered higher education provider has the same meaning as in the *TEQSA Act.

33 Subclause 1(1) of Schedule 1 (definition of *self-accrediting entity*)

Repeal the definition, substitute:

self-accrediting entity means a body corporate that:

- (a) is a *registered higher education provider; and
- (b) is authorised by or under the *TEQSA Act to self-accredit one or more *courses of study that lead to a *higher education award.

34 Subclause 1(1) of Schedule 1

Insert:

TEQSA (short for Tertiary Education Quality and Standards Agency) means the body established by section 132 of the *TEQSA Act.

35 Subclause 1(1) of Schedule 1

Insert:

TEQSA Act means the *Tertiary Education Quality and Standards Agency Act 2011*.

36 Application of amendments

- (1) Section 16-27 of the *Higher Education Support Act 2003* (as inserted by this Division) applies in relation to an application for approval made on or after this item commences.
- (2) Section 16-40 of the *Higher Education Support Act 2003* (as amended by this Division) applies in relation to an application for approval made on or after this item commences.
- (3) Section 19-78 of the *Higher Education Support Act 2003* (as inserted by this Division) applies in relation to an event happening before, on or after this item commences.
- (4) Section 90-1 of the *Higher Education Support Act 2003* (as amended by this Division) applies in relation to an enrolment in a unit of study if the enrolment commences on or after this item commences.
- (5) Section 104-10 of the *Higher Education Support Act 2003* (as amended by this Division) applies in relation to an enrolment in a unit of study if the enrolment commences on or after this item commences.
- (6) Section 118-1 of the *Higher Education Support Act 2003* (as amended by this Division) applies in relation to a period of 6 months commencing on or after this item commences.

Division 2—Amendments of new law about approvals

Higher Education Support Act 2003

37 Paragraph 16-25(1)(d)

Repeal the paragraph.

38 Paragraphs 16-25(1)(db) and (dc)

Repeal the paragraphs, substitute:

(db) the course of study is an *accredited course in relation to the body; and

39 Application of amendments

The amendments made by this Division apply in relation to an application for approval made on or after this item commences.

Division 3—Amendments of old law about approvals

Higher Education Support Act 2003

40 Paragraph 16-25(d)

Repeal the paragraph.

41 Paragraphs 16-25(db) and (dc)

Repeal the paragraphs, substitute:

(db) the course of study is an *accredited course in relation to the body; and

42 Application of amendments

The amendments made by this Division apply in relation to an application for approval made on or after this item commences.

Part 2—Amendments after VET law commences

Tertiary Education Quality and Standards Agency Act 2011

43 Section 5 (definition of *vocational education and training course*)

Repeal the definition, substitute:

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.

Schedule 3—Transitional provisions

Part 1—Preliminary

1 Interpretation

(1) In this Schedule:

accredited course has the same meaning as in the TEQSA Act.

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

AUQA means the Australian Universities Quality Agency Limited (ABN 59 092 938 200).

Australian premises has the same meaning as in the TEQSA Act.

course of study has the same meaning as in the TEQSA Act.

higher education provider has the same meaning as in the TEQSA Act.

overseas course of study has the same meaning as in the TEQSA Act.

overseas higher education award has the same meaning as in the TEQSA Act.

Panel has the same meaning as in the TEQSA Act.

Provider Category Standards has the same meaning as in the TEQSA Act.

Provider Course Accreditation Standards has the same meaning as in the TEQSA Act.

Provider Registration Standards has the same meaning as in the TEQSA Act.

Qualification Standards has the same meaning as in the TEQSA Act.

registered higher education provider has the same meaning as in the TEQSA Act.

registration authority means a person or body responsible under a State or Territory law relating to higher education for:

(a) deciding whether to register a higher education provider under that law; or

(b) deciding whether to accredit a course of study under that law.

Paragraph (b) does not include a higher education provider authorised to self-accredit one or more courses of study.

State or Territory law relating to higher education means a State or Territory law relating to higher education, but not to the extent that the law relates to vocational education and training.

TEQSA (short for Tertiary Education Quality and Standards Agency) means the body established by section 132 of the TEQSA Act.

TEQSA Act means the *Tertiary Education Quality and Standards Agency Act 2011*.

Threshold Standards has the same meaning as in the TEQSA Act.

transition time means the time Part 2 of the TEQSA Act commences.

- (2) For the purposes of this Schedule:
- (a) a higher education provider is taken to be registered under a State or Territory law even if the State or Territory law uses another term to describe registration; and
 - (b) a higher education provider:
 - (i) that is established by or under, or recognised by, a law of the Commonwealth, a State or a Territory; and
 - (ii) that exists immediately before the transition time;is taken to be registered immediately before that time under a State or Territory law relating to higher education; and
 - (c) a higher education provider's deemed registration under paragraph (b) is taken to include the authority to self-accredit courses of study; and
 - (d) a course of study is taken to be accredited in relation to a higher education provider under a State or Territory law relating to higher education even if the State or Territory law uses another term to describe accreditation.

Note: Subparagraph (b)(i) covers a law that specifically establishes, or specifically recognises, the provider. It does not cover a general law like the *Corporations Act 2001* under which a provider may be established.

- (3) This Schedule 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.

Part 2—Transferring existing State registrations to TEQSA system etc.

Division 1—Transferring existing State registrations etc.

2 State registered provider automatically registered for the TEQSA Act

- (1) If a higher education provider was, immediately before the transition time, registered under one or more State or Territory laws relating to higher education, the provider is taken to be a registered higher education provider for the purposes of the TEQSA Act.

Note 1: This automatic registration means, for example, that the provider must comply with conditions imposed from time to time on the registration (see section 24 of that Act).

Note 2: For the meaning of *transition time*, see subitem 1(1).

- (2) The provider's registration is for the period:
- (a) starting at the transition time; and
 - (b) ending at the later of:
 - (i) if the provider is covered by a table item in subitem (3)—the end of the day set out in that table item; and
 - (ii) if the provider is not covered by a table item in subitem (3)—the latest time the provider would cease to be registered under a State or Territory law referred to in subitem (1) or, if applicable, subitem 4(1) (ignoring the enactment of the TEQSA Act); and
 - (iii) the end of the period specified in the most recent notice (if any) given under section 37 (about renewals of registration) of the TEQSA Act in relation to the registration.

Note 1: This automatic registration may be renewed under Division 3 of Part 3 of the TEQSA Act.

Note 2: If the provider is covered by a table item in subitem (3), the day set out in that table item is the day its registration is to end for the purposes of section 35 (about renewing registration) of the TEQSA Act.

- (3) The table is as follows:
-

| Last day of automatic registration for certain providers | | |
|---|--|-------------------|
| Item | Provider | Last day |
| 1 | The Australian National University | 31 December 2012 |
| 2 | The Flinders University of South Australia | 31 December 2012 |
| 3 | Monash University | 31 December 2012 |
| 4 | Murdoch University | 31 December 2012 |
| 5 | University of Technology, Sydney | 31 December 2012 |
| 6 | University of the Sunshine Coast | 31 December 2012 |
| 7 | Victoria University | 31 December 2012 |
| 8 | Batchelor Institute of Indigenous Tertiary Education | 31 December 2012 |
| 9 | Melbourne College of Divinity | 31 December 2012 |
| 10 | Southern Cross University | 31 March 2015 |
| 11 | University of Newcastle | 30 April 2015 |
| 12 | Swinburne University of Technology | 31 May 2015 |
| 13 | Griffith University | 30 June 2015 |
| 14 | Australian Catholic University | 31 August 2015 |
| 15 | The University of Adelaide | 30 September 2015 |
| 16 | Curtin University of Technology | 31 October 2015 |
| 17 | University of Canberra | 31 October 2015 |
| 18 | University of Notre Dame | 31 October 2015 |
| 19 | Royal Melbourne Institute of Technology | 31 March 2016 |
| 20 | The University of Queensland | 31 March 2016 |
| 21 | Macquarie University | 31 May 2016 |
| 22 | The University of Western Australia | 31 May 2016 |
| 23 | University of Ballarat | 30 June 2016 |
| 24 | University of Southern Queensland | 30 June 2016 |
| 25 | University of New England | 31 July 2016 |
| 26 | University of South Australia | 31 August 2016 |
| 27 | La Trobe University | 30 September 2016 |
| 28 | Charles Sturt University | 31 October 2016 |

Schedule 3 Transitional provisions

Part 2 Transferring existing State registrations to TEQSA system etc.

Last day of automatic registration for certain providers

| Item | Provider | Last day |
|------|-------------------------------------|-----------------|
| 29 | Bond University | 30 April 2017 |
| 30 | The University of Melbourne | 31 May 2017 |
| 31 | Central Queensland University | 31 October 2017 |
| 32 | University of Wollongong | 31 March 2018 |
| 33 | Charles Darwin University | 31 May 2018 |
| 34 | University of Western Sydney | 31 May 2018 |
| 35 | Deakin University | 30 June 2018 |
| 36 | James Cook University | 30 June 2018 |
| 37 | University of New South Wales | 30 June 2018 |
| 38 | The University of Sydney | 31 August 2018 |
| 39 | Edith Cowan University | 31 October 2018 |
| 40 | Queensland University of Technology | 31 October 2018 |
| 41 | University of Tasmania | 31 October 2018 |

- (4) Paragraph (2)(b) has effect subject to the following provisions of the TEQSA Act:
- (a) subsection 36(3) (about renewing registration) and section 43 (about withdrawing registration);
 - (b) Division 1 of Part 7 (about cancelling registration and other administrative sanctions).

Note: The registration may also end early under paragraph 8(4)(b) (about TEQSA not lifting a suspension of the registration).

- (5) Subitem (2) applies to the registration instead of section 23 (about commencement and duration of registration) of the TEQSA Act.
- (6) Subitems (1) and (2) have effect subject to Division 3 (about suspensions of automatic registrations).

3 Notice of provider category for TEQSA registration

Advance notice of likely provider category

- (1) If it is likely that a higher education provider will be taken to be a registered higher education provider under subitem 2(1), TEQSA must

give the provider advance notice of the provider category in which the provider is likely to be registered.

- (2) TEQSA must give the notice in writing at least 3 months before the transition time.

Notice of provider category

- (3) TEQSA must, no later than 30 days after the transition time, give the provider written notice of the provider category in which the provider is registered.

Note: Whether the provider is authorised to self-accredit courses of study depends on the provider's position under the State or Territory law (see Division 5).

- (4) This item applies to the registration instead of section 22 (about notifications) of the TEQSA Act.

Division 2—Pending review decisions about State registrations

4 Pending review decisions about State registrations

- (1) A higher education provider is taken to be a registered higher education provider for the purposes of the TEQSA Act if:
- (a) before the transition time:
 - (i) the provider has applied for review of a decision by a registration authority; or
 - (ii) the period for applying for review of a decision by a registration authority has not ended; and
 - (b) as a result of a review of that decision, a decision (the *State review decision*) is made:
 - (i) under a State or Territory law relating to higher education; and
 - (ii) after the transition time;
that would (ignoring the enactment of the TEQSA Act) result in the provider being registered under that law; and
 - (c) the provider notifies TEQSA, in the approved form, of the State review decision.

Note: This automatic registration means, for example, that the provider must comply with conditions imposed from time to time on the registration (see section 24 of that Act).

Schedule 3 Transitional provisions

Part 2 Transferring existing State registrations to TEQSA system etc.

- (2) If item 2 does not apply to the provider, the provider's registration is for the period:
- (a) starting at the transition time; and
 - (b) ending at the later of:
 - (i) the time the provider would cease to be registered under the relevant State or Territory law (ignoring the enactment of the TEQSA Act); and
 - (ii) the end of the period specified in the most recent notice (if any) given under section 37 (about renewals of registration) of the TEQSA Act in relation to the registration.

Note 1: If both item 2 and this item apply to the provider, the provider's registration is for the period worked out under subitem 2(2).

Note 2: This automatic registration may be renewed under Division 3 of Part 3 of the TEQSA Act.

- (3) Paragraph (2)(b) has effect subject to the following provisions of the TEQSA Act:
- (a) subsection 36(3) (about renewing registration) and section 43 (about withdrawing registration);
 - (b) Division 1 of Part 7 (about cancelling registration and other administrative sanctions).
- (4) Subitem (2) applies to the registration instead of section 23 (about commencement and duration of registration) of the TEQSA Act.

5 Notice of provider category for TEQSA registration

- (1) TEQSA must give the provider notice of the provider category in which the provider is registered.

Note: Whether the provider is authorised to self-accredit courses of study depends on the provider's position under the State or Territory law (see Division 5).

- (2) TEQSA must give the notice in writing within 30 days after TEQSA is notified of the State review decision under paragraph 4(1)(c).
- (3) This item applies to the registration instead of section 22 (about notifications) of the TEQSA Act.

Division 3—Suspended automatic TEQSA registrations

6 Automatic TEQSA registration is suspended

- (1) This Division applies if, immediately before the transition time, a higher education provider has a suspended registration under a State or Territory law relating to higher education (the *State registration*).
- (2) The provider's registration as a registered higher education provider because of item 2 (the *automatic TEQSA registration*) is suspended for 120 days starting at the transition time.
- (3) This suspension does not prevent TEQSA from doing anything under this Act, or the TEQSA Act, in relation to the registration.

Note: For example, the provider must still be notified under item 3 of its provider category and other details of its automatic TEQSA registration.

7 Automatic lifting of suspension if pending review of State suspension

- (1) The suspension of the provider's automatic TEQSA registration is lifted if:
 - (a) before the transition time:
 - (i) the provider has applied for review of a decision by a registration authority; or
 - (ii) the period for applying for review of a decision by a registration authority has not ended; and
 - (b) as a result of a review of that decision, a decision (the *State review decision*) is made:
 - (i) under a State or Territory law relating to higher education; and
 - (ii) after the transition time;
that would (ignoring the enactment of the TEQSA Act) result in the suspension of the provider's State registration being lifted; and
 - (c) within 60 days after the transition time, the provider notifies TEQSA, in the approved form, of the State review decision.
- (2) The suspension is lifted on the day the provider notifies TEQSA under paragraph (1)(c).

8 Lifting suspension if no pending review of State suspension

- (1) TEQSA must decide whether to lift the suspension of the provider's automatic TEQSA registration if:
-

Schedule 3 Transitional provisions

Part 2 Transferring existing State registrations to TEQSA system etc.

- (a) the provider notifies TEQSA, in the approved form and within 60 days after the transition time, that item 7 cannot apply to the suspension; or
 - (b) the suspension is not lifted under item 7 within 60 days after the transition time.
 - (2) TEQSA must make its decision within 30 days after subitem (1) begins to apply.
 - (3) If under subitem (1) TEQSA decides to lift the suspension, TEQSA must, within 30 days, give the provider written notice of that decision.
- Note: TEQSA may impose conditions on the provider's automatic TEQSA registration in return for lifting the suspension (see section 32 of the TEQSA Act).
- (4) If under subitem (1) TEQSA decides not to lift the suspension:
 - (a) TEQSA must, within 30 days, give the provider written notice of that decision and its reasons for that decision; and
 - (b) the provider's automatic TEQSA registration ends on the day specified in the notice given under paragraph (a) (which must be a day that occurs on or after the date of the notice).

Division 4—Automatic transitional registration for some overseas providers

9 Automatic transitional registration

- (1) A higher education provider is taken to be a registered higher education provider for the purposes of the TEQSA Act if:
 - (a) immediately before the transition time, the provider offers or confers an overseas higher education award for the completion of an overseas course of study provided from Australian premises related to the award; and
 - (b) immediately before the transition time, the provider is not required to be registered under a State or Territory law relating to higher education; and
 - (c) before the transition time, TEQSA receives from the provider a notice, in the approved form, requesting that the provider be taken to be a registered higher education provider because of this item.
 - (2) Division 3 of Part 3 of the TEQSA Act does not apply to this registration (the *transitional registration*).
-

Note: The provider cannot apply under the TEQSA Act to have this transitional registration renewed. Instead, it may apply under Division 1 of Part 3 of the TEQSA Act for registration under that Part.

10 Notice of provider category for transitional registration

Advance notice of likely provider category

- (1) If TEQSA receives the higher education provider's notice under paragraph 9(1)(c) at least 60 days before the transition time, the TEQSA must give the provider advance notice of:
 - (a) the likely provider category for the likely transitional registration; and
 - (b) whether the provider is likely to be able to self-accredit one or more courses of study.
- (2) TEQSA must give the notice in writing no later than 30 days after it receives the provider's notice under paragraph 9(1)(c).

Notice of provider category

- (3) TEQSA must, no later than 30 days after the transition time, give the higher education provider written notice of:
 - (a) the provider category for the transitional registration; and
 - (b) whether the provider may self-accredit one or more courses of study.
- (4) This item applies to the transitional registration instead of section 22 (about notifications) of the TEQSA Act.

11 Commencement and duration of transitional registration

Provider applies for ongoing registration

- (1) Subitem (2) applies to the higher education provider if, within 120 days after the transition time, the provider:
 - (a) applies for registration under section 18 of the TEQSA Act; and
 - (b) continues with that application under section 20 of that Act.
- (2) The provider's transitional registration is for the period:
 - (a) starting at the transition time; and

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Part 2 Transferring existing State registrations to TEQSA system etc.

- (b) ending when TEQSA notifies the provider, under section 22 of the TEQSA Act, of TEQSA's decision to grant or reject the application.

Provider does not apply for ongoing registration

- (3) If subitem (2) does not apply to the higher education provider, the provider's transitional registration is for the period:
 - (a) starting at the transition time; and
 - (b) ending 120 days after the transition time.
- (4) Paragraphs (2)(b) and (3)(b) have effect subject to Division 1 of Part 7 (about cancelling registration and other administrative sanctions).
- (5) This item applies to the transitional registration instead of section 23 (about commencement and duration of registration) of the TEQSA Act.

Division 5—Transferring an authorisation to self-accredit courses of study

12 Transferring an authorisation to self-accredit courses of study

- (1) A registered higher education provider's registration arising under Division 1 includes the authority to self-accredit one or more courses of study if, immediately before the transition time, the provider's corresponding registration under a State or Territory law relating to higher education included a similar authority.
- (2) A registered higher education provider's registration arising under Division 2 includes the authority to self-accredit one or more courses of study if the State review decision (as described in paragraph 4(1)(b)) would (ignoring the enactment of the TEQSA Act) have resulted in the provider being authorised to self-accredit those courses of study.
- (3) Nothing in this item prevents an authorisation to self-accredit one or more courses of study from being restricted or removed under the TEQSA Act.

Division 6—No inference that Standards met

13 No inference that Standards met

An inference that a higher education provider meets the Threshold Standards is not to be made only because the provider is taken to be a registered higher education provider under this Part.

Part 3—Pending applications for State registration or re-registration

14 Deciding pending applications for State registration or re-registration

If:

- (a) before the transition time, a higher education provider applies to a registration authority for registration, or re-registration, under a State or Territory law relating to higher education; and
- (b) the registration authority does not decide the application before the transition time; and
- (c) after the transition time, either the registration authority, or the provider in the approved form, notifies TEQSA of the undecided application;

TEQSA must make a decision under section 21 of the TEQSA Act to grant or reject the application.

15 TEQSA Act operates in a modified way for TEQSA's consideration of the application

- (1) The TEQSA Act has effect in relation to the application with the changes described in this item.
- (2) The application is taken to be made under section 18 of the TEQSA Act if and when TEQSA receives from the provider:
 - (a) all information, documents and assistance about the application that TEQSA requests; and
 - (b) so much as TEQSA requires of the fee determined under the TEQSA Act for a preliminary assessment under Part 3 of that Act.
- (3) The TEQSA Act has effect as if the following changes were made:

| Changes to be made for the application | | | |
|---|-----------------------------------|--|--|
| Item | In this provision ... | a reference to ... | is a reference to ... |
| 1 | subsection 19(3) of the TEQSA Act | the preliminary assessment application fee | the required payment described in paragraph (2)(b) |
| 2 | section 21 of the TEQSA Act | 9 months | 6 months |

16 Automatic transitional TEQSA registration while TEQSA considers pending application for re-registration

- (1) If the application mentioned in paragraph 14(a) was for re-registration, the provider is taken to be a registered higher education provider for the purposes of the TEQSA Act.

Note: This automatic registration means, for example, that the provider must comply with conditions imposed from time to time on the registration (see section 24 of that Act).

- (2) The provider's registration is for the period:
- (a) starting at the transition time; and
 - (b) ending when TEQSA notifies the provider, under section 22 of the TEQSA Act, of TEQSA's decision to grant or reject the application.
- (3) TEQSA must give the provider written notice of the following matters within 30 days after being notified of the application under paragraph 14(c):
- (a) the provider category in which the provider is registered;
 - (b) whether the provider may self-accredit one or more courses of study.
- (4) Paragraph (2)(b) has effect subject to Division 1 of Part 7 (about cancelling registration and other administrative sanctions).
- (5) Division 3 of Part 3 of the TEQSA Act does not apply to a registration that exists because of this item.
- Note: The provider cannot apply under the TEQSA Act to have this transitional registration renewed.
- (6) This item applies to the registration instead of sections 22 and 23 of the TEQSA Act.

17 Consequences if fees already paid to registration authority

If the provider has paid a fee to the registration authority for the application mentioned in paragraph 14(a), TEQSA may waive all or part of any fee payable under the TEQSA Act for the application.

Part 4—Transferring existing State accreditations to TEQSA system etc.

Division 1—Transferring existing State accreditations etc.

18 State accredited courses automatically accredited for the TEQSA Act

- (1) This Division applies in relation to each course of study that, immediately before the transition time, was accredited:
- (a) by one or more registration authorities under State or Territory laws relating to higher education; and
 - (b) in relation to an entity that, because of Division 1 or 2 of Part 2, becomes a registered higher education provider for the purposes of the TEQSA Act.
- (2) The course of study is taken to be course accredited by TEQSA in relation to the provider for the purposes of the TEQSA Act.

Note 1: This means, for example, that the provider must comply with conditions imposed from time to time on the accreditation (see section 52 of that Act).

Note 2: This Division does not apply to those providers authorised to self-accredit courses of study. An authority to self-accredit under a State or Territory law is automatically transferred under item 12 (see also paragraph 1(2)(c)).

- (3) The accreditation of the course of study is for the period:
- (a) starting at the transition time; and
 - (b) ending at the later of:
 - (i) the latest time the course of study would cease to be accredited under a State or Territory law referred to in subitem (1) or, if applicable, subitem 19(1) (ignoring the enactment of the TEQSA Act); and
 - (ii) the end of the period specified in the most recent notice (if any) given under section 57 (about renewals of accreditation) of the TEQSA Act in relation to the accreditation.

Note: This automatic accreditation may be renewed under Division 4 of Part 4 of the TEQSA Act.

Schedule 3 Transitional provisions

Part 4 Transferring existing State accreditations to TEQSA system etc.

- (4) Paragraph (3)(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) of the TEQSA Act;
 - (c) Division 1 of Part 7 (about cancelling accreditation and other administrative sanctions) of the TEQSA Act.

Note: The accreditation may also end early under paragraph 22(4)(b) (about TEQSA not lifting a suspension of the accreditation).

- (5) Subitem (3) applies to the accreditation instead of section 51 (about commencement and duration of accreditation) of the TEQSA Act.
- (6) Subitems (2) and (3) have effect subject to Division 3 (about suspensions of automatic accreditations).

Division 2—Pending review decisions about State accreditations

19 Pending review decisions about State accreditations

- (1) A course of study is taken to be accredited by TEQSA, in relation to a higher education provider, for the purposes of the TEQSA Act if:
- (a) before the transition time:
 - (i) the provider has applied for review of a decision by a registration authority; or
 - (ii) the period for applying for review of a decision by a registration authority has not ended; and
 - (b) as a result of a review of that decision, a decision (the *State review decision*) is made:
 - (i) under a State or Territory law relating to higher education; and
 - (ii) after the transition time;that would (ignoring the enactment of the TEQSA Act) result in the course of study being accredited under that law; and
 - (c) the provider notifies TEQSA, in the approved form, of the State review decision.

Note 1: This automatic accreditation means, for example, that the provider must comply with conditions imposed from time to time on the accreditation (see section 52 of that Act).

Note 2: This Division does not apply to those providers authorised to self-accredit courses of study. An authority to self-accredit under a State or Territory law is automatically transferred under item 12 (see also paragraph 1(2)(c)).

- (2) If item 18 does not apply in relation to the course of study, the accreditation of the course of study is for the period:
- (a) starting at the transition time; and
 - (b) ending at the later of:
 - (i) the time the course of study would cease to be accredited under the relevant State or Territory law (ignoring the enactment of the TEQSA Act); and
 - (ii) the end of the period specified in the most recent notice (if any) given under section 57 (about renewals of accreditation) of the TEQSA Act in relation to the accreditation.

Note 1: If both item 18 and this item apply in relation to the course of study, its accreditation is for the period worked out under subitem 18(3).

Note 2: This automatic accreditation may be renewed under Division 4 of Part 4 of the TEQSA Act.

- (3) Paragraph (2)(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) of the TEQSA Act;
 - (c) Division 1 of Part 7 (about cancelling accreditation and other administrative sanctions) of the TEQSA Act.
- (4) Subitem (2) applies to the accreditation instead of section 51 (about commencement and duration of accreditation) of the TEQSA Act.

Division 3—Suspended automatic TEQSA accreditations

20 Automatic TEQSA accreditation is suspended

- (1) This Division applies if, immediately before the transition time, a course of study has a suspended accreditation (the *State accreditation*):
- (a) by a registration authority under a State or Territory law relating to higher education; and
 - (b) in relation to an entity that, because of Division 1 or 2 of Part 2, becomes a registered higher education provider for the purposes of the TEQSA Act.

Schedule 3 Transitional provisions

Part 4 Transferring existing State accreditations to TEQSA system etc.

- (2) The course of study's accreditation because of item 18 in relation to the provider (the *automatic TEQSA accreditation*) is suspended for 120 days starting at the transition time.
- (3) This suspension does not prevent TEQSA from doing anything under this Act, or the TEQSA Act, in relation to the accreditation.

21 Automatic lifting of suspension if pending review of State suspension

- (1) The suspension of the course of study's automatic TEQSA accreditation is lifted if:
 - (a) before the transition time:
 - (i) the provider has applied for review of a decision by a registration authority; or
 - (ii) the period for applying for review of a decision by a registration authority has not ended; and
 - (b) as a result of a review of that decision, a decision (the *State review decision*) is made:
 - (i) under a State or Territory law relating to higher education; and
 - (ii) after the transition time;
that would (ignoring the enactment of the TEQSA Act) result in the suspension of the State accreditation being lifted; and
 - (c) within 60 days after the transition time, the provider notifies TEQSA, in the approved form, of the State review decision.
- (2) The suspension is lifted on the day the provider notifies TEQSA under paragraph (1)(c).

22 Lifting suspension if no pending review of State suspension

- (1) TEQSA must decide whether to lift the suspension of the course of study's automatic TEQSA accreditation if:
 - (a) the provider notifies TEQSA, in the approved form and within 60 days after the transition time, that item 21 cannot apply to the suspension; or
 - (b) the suspension is not lifted under item 21 within 60 days after the transition time.
-

- (2) TEQSA must make its decision within 30 days after subitem (1) begins to apply.
- (3) If under subitem (1) TEQSA decides to lift the suspension, TEQSA must, within 30 days, give the provider written notice of that decision.
- Note: TEQSA may impose conditions on the automatic TEQSA accreditation in return for lifting the suspension (see section 53 of the TEQSA Act).
- (4) If under subitem (1) TEQSA decides not to lift the suspension:
- (a) TEQSA must, within 30 days, give the provider written notice of that decision and its reasons for that decision; and
 - (b) the automatic TEQSA accreditation ends on the day specified in the notice given under paragraph (a) (which must be a day that occurs on or after the date of the notice).

Division 4—No inference that Standards met

23 No inference that Standards met

An inference that a course of study meets the Provider Course Accreditation Standards is not to be made only because the course of study is taken to be accredited because of this Part.

Part 5—Pending applications for State accreditation or re-accreditation

24 Deciding pending applications for State accreditation or re-accreditation

If:

- (a) before the transition time, a higher education provider applies to a registration authority for accreditation, or re-accreditation, of a course of study under a State or Territory law relating to higher education; and
- (b) the registration authority does not decide the application before the transition time; and
- (c) after the transition time, either the registration authority, or the provider in the approved form, notifies TEQSA of the undecided application;

TEQSA must make a decision under section 49 of the TEQSA Act to grant or reject the application.

25 TEQSA Act operates in a modified way for TEQSA's consideration of the application

- (1) The TEQSA Act has effect in relation to the application with the changes described in this item.
- (2) The application is taken to be made under section 46 of the TEQSA Act if and when TEQSA receives from the provider:
 - (a) all information, documents and assistance about the application that TEQSA requests; and
 - (b) so much as TEQSA requires of the fee determined under the TEQSA Act for a preliminary assessment under Part 4 of that Act.
- (3) The TEQSA Act has effect as if the following changes were made:

Changes to be made for the application

| Item | In this provision ... | a reference to ... | is a reference to ... |
|------|-----------------------------------|--|--|
| 1 | subsection 47(2) of the TEQSA Act | the preliminary assessment application fee | the required payment described in paragraph (2)(b) |
| 2 | section 49 of the TEQSA Act | 9 months | 6 months |

26 Automatic transitional TEQSA accreditation while TEQSA considers pending application for re-accreditation

- (1) If the application mentioned in paragraph 24(a) was for re-accreditation, the course of study is taken to be accredited by TEQSA, in relation to the provider, for the purposes of the TEQSA Act.

Note: This automatic accreditation means, for example, that the provider must comply with conditions imposed from time to time on the accreditation (see section 52 of that Act).

- (2) The accreditation is for the period:
- (a) starting at the transition time; and
 - (b) ending when TEQSA notifies the provider, under section 50 of the TEQSA Act, of TEQSA's decision to grant or reject the application.
- (3) Paragraph (2)(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) Division 1 of Part 7 (about cancelling accreditation and other administrative sanctions) of the TEQSA Act.
- (4) Division 4 of Part 4 of the TEQSA Act does not apply to an accreditation that exists because of this item.

Note: The provider cannot apply under the TEQSA Act to have this transitional accreditation renewed.

- (5) This item applies to the accreditation instead of sections 50 and 51 of the TEQSA Act.

27 Consequences if fees already paid to registration authority

Schedule 3 Transitional provisions

Part 5 Pending applications for State accreditation or re-accreditation

If the provider has paid a fee to the registration authority for the application mentioned in paragraph 24(a), TEQSA may waive all or part of any fee payable under the TEQSA Act for the application.

Part 6—Making the first Threshold Standards

28 Relevant Threshold Standards

- (1) For each of the Threshold Standards described in subitem (2), this Part applies if:
 - (a) the Minister proposes to make standards of that kind under section 58 of the TEQSA Act; and
 - (b) standards of that kind have not previously been made under that section.
- (2) The relevant standards are as follows:
 - (a) the Provider Registration Standards;
 - (b) the Provider Category Standards;
 - (c) the Provider Course Accreditation Standards;
 - (d) the Qualification Standards.

29 Making the first of those Threshold Standards

- (1) Subsections 58(3) and (4) of the TEQSA Act do not apply in relation to the making of the proposed standards.

Note: Those subsections will apply each later time the Minister proposes to vary, revoke or remake those standards.

- (2) Before making the proposed standards, the Minister must:
 - (a) consult each of the following parties about the proposed standards:
 - (i) the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education;
 - (ii) the Minister administering the *Australian Research Council Act 2001*;
 - (iii) TEQSA;
 - (iv) any other interested parties; and
 - (b) have regard to any representations received from those parties.
- (3) If the proposed standards are made, the Panel must start to review them within the first year of the Panel's operation.

Part 7—Audits

30 TEQSA is to complete AUQA audits etc.

- (1) For the purposes of the *Higher Education Support Act 2003*:
 - (a) TEQSA may complete an audit of a higher education provider that AUQA started before the time (the *changeover time*) section 3 of the TEQSA Act commences; and
 - (b) TEQSA may audit a higher education provider if AUQA had, before the changeover time, scheduled the audit to be carried out during 2011 or 2012.
- (2) Subitem (3) applies if, before the changeover time, a thing was done by, or in relation to, AUQA for an audit covered by subitem (1).
- (3) For the purposes of the *Higher Education Support Act 2003*, the thing is taken, after the changeover time, to have been done by, or in relation to, TEQSA.
- (4) The Minister may, by writing, determine that subitem (3) does not apply in relation to a specified thing done by, or in relation to, AUQA.
- (5) To avoid doubt, doing a thing includes making an instrument.
- (6) A determination under subitem (4) is not a legislative instrument.
- (7) To avoid doubt, TEQSA may carry out a quality assessment or compliance assessment of a registered higher education provider under the TEQSA Act at any time even if this item applies in relation to the provider.

Part 8—Review of decisions

31 Rights of review of certain decisions

The following decisions of TEQSA are taken to be reviewable decisions for the purposes of Part 10 of the TEQSA Act:

- (a) a decision under subitem 3(3), 5(1), 10(3) or 16(3) about the provider category in which a higher education provider will be registered;
- (b) a decision under subitem 8(1) not to lift a suspension of a higher education provider's registration;
- (c) a decision under subitem 10(3) or 16(3) that a higher education provider cannot self-accredit one or more courses of study;
- (d) a decision under item 17 or 27 to refuse to waive all or part of a fee;
- (e) a decision under subitem 22(1) not to lift a suspension of the accreditation of a course of study.

Note: Part 10 of the TEQSA Act also allows review of TEQSA's decisions under that Act that relate to this Schedule. For example, internal and AAT review could be sought of a decision under section 32 of that Act to impose a condition on an automatic registration arising under Part 2 of this Schedule.

Part 9—Transfer of records

32 Transferring records to TEQSA

- (1) This item applies to any records or documents:
 - (a) that relate to a higher education provider to whom this Schedule applies; and
 - (b) that are in the custody of a registration authority before or after the transition time.
- (2) TEQSA may request the registration authority to give it a copy of the records or documents.
- (3) The registration authority may comply with the request.

Part 10—Miscellaneous

33 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

- (a) the enactment of the TEQSA Act; or
 - (b) the amendments or repeals made by this Act.
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*[Minister's second reading speech made in—
Senate on 23 March 2011
House of Representatives on 22 June 2011]*

(48/11)
