

MEMORANDUM OF UNDERSTANDING

Australian Skills Quality Authority
Commonwealth Government of Australia

ABN 72 581 687 650

and

Tertiary Education Quality and Standards
Agency

Commonwealth Government of Australia

ABN 50 5658 250 012

MEMORANDUM OF UNDERSTANDING

Table of Contents

1.	Agency Roles and Responsibilities.....	3
2.	Consultation and Collaboration.....	3
3.	Confidentiality and Privacy Considerations.....	4
4.	Memorandum Contact Officers.....	5
5.	Dispute Resolution	5
6.	No Legal Effect.....	5

MEMORANDUM OF UNDERSTANDING

1. Agency Roles and Responsibilities

Australian Skills Quality Authority (ASQA)

ASQA is the national regulator for Australia's vocational education and training (VET) sector, administering legislation including, but not limited to, the *National Vocational Education and Training Regulator Act 2011* (NVR Act), to ensure that NVR registered training organisations¹ (RTOs) comply with the VET Quality Framework. ASQA is also the ESOS agency for certain providers, as defined under section 6C of the *Education Services for Overseas Students Act 2000* (ESOS Act).

Tertiary Education Quality and Standards Agency (TEQSA)

TEQSA was established under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) as the national regulator for Australia's higher education sector. TEQSA's functions, which are set out in section 134 of the TEQSA Act, include registering higher education providers, accrediting higher education courses of study and conducting compliance assessments or quality assessments on matters related to registered higher education providers or courses of study. TEQSA is also the ESOS agency for certain providers, as defined under section 6C of the ESOS Act.

2. Consultation and Collaboration

ASQA and TEQSA commit to consult, cooperate and collaborate to implement a coordinated regulatory approach for providers who are registered, or seek registration, as a NVR registered training organisation and a higher education provider² (referred to as 'co-regulated' providers').

ASQA and TEQSA will administer a coordinated regulatory approach by:

- (a) identifying and employing common data, documentation and other information and intelligence to assess compliance with the NVR Act, VET Quality Framework, the Higher Education Standards Framework, the TEQSA Act, the ESOS Act, the National Code 2018 and (where applicable) the ELICOS Standards and Foundation Standards
- (b) delivering a consistent, risk-based, necessary and proportionate approach to regulation
- (c) consulting each other about the development of legislative instruments
- (d) prompt sharing of information between agencies which is relevant to assessments by the receiving agency
- (e) reducing the potential for duplication that impacts on the regulatory burden for co-regulated providers
- (f) facilitating the direct and timely exchange of provider information, risk assessments and regulatory decisions
- (g) giving due recognition to regulatory decisions and assessments made by the other agency

¹ As defined in the *National Vocational Education and Training Regulator Act 2011*

² As defined in the *Tertiary Education Quality and Standards Agency Act 2011*

MEMORANDUM OF UNDERSTANDING

- (h) using a customised regulatory approach that caters for the unique circumstances of each provider
- (i) employing direct and timely communication on co-regulated provider regulatory and quality assurance matters
- (j) issuing joint publications where appropriate.

The exchange of information between ASQA and TEQSA does not diminish their independence, nor imply that they share responsibilities to carry out their functions or exercise their powers.

2.1. Information sharing

ASQA and TEQSA commit to the exchange of information about all matters where the information is relevant to the performance of either agency's statutory functions. Each agency will keep the other aware of matters and developments relevant to the other agency, to ensure coordinated responses to matters of mutual concern and interest.

Information sharing will range from identifying risk through intelligence sharing through to sharing of evidence of breaches of relevant legislation, subject to confidentiality, and will be prioritised by ASQA and TEQSA accordingly.

'Protocols – Information sharing between the Tertiary Education Quality and Standards Agency (TEQSA) and the Australian Skills Quality Authority (ASQA)' (**the Protocols**) will be established and reviewed on a routine basis with the aim of facilitating the provision from each agency to the other agency timely information relevant to assist their regulatory operations in relation to a co-regulated provider, and the efficient management of regulatory decision-making between both agencies.

2.1. Schedule

Detail of the specified range of information to be shared is set out under the Protocols.

In accordance with the signed memorandum, the Protocols will be updated on an ongoing basis, as agreed by the memorandum contact officers identified in section 6.

3. Confidentiality and Privacy Considerations

ASQA and TEQSA will comply with the Information Privacy Principles set out in the *Privacy Act 1988 (Commonwealth)* and the Australian Privacy Principles (APPs).

For the avoidance of doubt, this Memorandum does not require either party to disclose information where such disclosure may:

- I. be in breach of the Australian Privacy Principles
- II. give rise to liability for defamation
- III. give rise to liability for breach of confidence
- IV. give rise to civil liability for any other reason or
- V. would otherwise be unlawful.

MEMORANDUM OF UNDERSTANDING

4. Memorandum Contact Officers

The contact persons at each agency who are responsible for implementing the memorandum (MoU Managers) are:

Australian Skills Quality Authority

Jane Connellan, Manager, Regulatory Operations Projects

Tertiary Education Quality and Standards Agency

Greg Simmons, Director, Policy and Analysis Group

5. Dispute Resolution

The Parties will use their best endeavours to resolve any differences or difficulties in a pragmatic manner to achieve agreed objectives. If either Party identifies an issue or dispute concerning a matter within the scope of the MoU requiring resolution, then the agreed process for resolving such a matter is as follows:

- a. the MoU Managers will discuss the issue and attempt to resolve the issue within 10 business days
- b. if the MoU Managers are unable to resolve the issue, the issue will be referred to senior managers not previously involved in the issue, for mutual review and determination within 10 business days
- c. if the issue remains unresolved, the Parties may refer the issue for external dispute resolution (including mediation or arbitration) on an agreed basis.

Despite the existence of a dispute, each agency will (unless requested in writing by the other agency not to do so) continue to perform its functions under this MoU. The parties will bear equally the cost of any third person engaged under clause 5(c).

MEMORANDUM OF UNDERSTANDING

6. No Legal Effect

This Memorandum is not intended to create legal relations between the parties and is of no binding legal effect. However, ASQA and TEQSA agree to apply their best endeavours to implement this Memorandum in good faith. Where parties share information under this Memorandum they do so as representatives of their respective organisations.

Australian Skills Quality Authority

Name: SAXON RICE

Title: CHIEF EXECUTIVE OFFICER Date: 12/03/2020

Signature:



Tertiary Education Quality and Standards Agency

Name: ANTHONY McCLARAN

Title: CEO Date: 12.3.20

Signature:

