



Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Act 2021

No. 14, 2021

**An Act to amend the law relating to higher
education, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act to amend the law relating to higher
education, and for related purposes**

[Assented to 1 March 2021]

The Parliament of Australia enacts:

No. 14, 2021

*Higher Education Legislation Amendment (Provider Category
Standards and Other Measures) Act 2021*

1

1 Short title

This Act is the *Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Act 2021*.

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 |
| Provisions | 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. | 1 March 2021 |
| 2. Schedule 1, Part 1 | A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | |
| 3. Schedule 1, items 20 to 28 | The day after this Act receives the Royal Assent. | 2 March 2021 |
| 3A. Schedule 1, item 29 | The seventh day after this Act receives the Royal Assent. | 8 March 2021 |
| 3B. Schedule 1, item 30 | The day after this Act receives the Royal Assent. | 2 March 2021 |
| 4. Schedule 2, items 1 to 4 | The day after this Act receives the Royal Assent. | 2 March 2021 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 5. Schedule 2, item 5 | Immediately after the commencement of the provisions covered by table item 4. However, the provision does not commence at all if Schedule 1 to the <i>Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020</i> commences on or before the day on which the provisions covered by table item 4 commence. | Never commenced |

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 Schedules

Legislation 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—Higher education standards and other amendments

Part 1—Higher education standards

Tertiary Education Quality and Standards Agency Act 2011

1 Section 4

Omit:

- Registered higher education providers must have their courses of study accredited before those courses can be provided in connection with regulated higher education awards. Some providers (including Australian universities registered in the Australian university provider category) are authorised to self-accredit their courses of study.

substitute:

- Registered higher education providers must have their courses of study accredited before those courses can be provided in connection with regulated higher education awards. Some providers (including those providers registered in the “Australian University” provider category) are authorised to self-accredit some or all of their courses of study.

2 Section 5 (definition of *Higher Education Standards Framework*)

Repeal the definition, substitute:

Higher Education Standards Framework means:

- (a) the Threshold Standards; and
- (b) any other standards made under paragraph 58(1)(b).

3 Section 5 (definition of *provider category*)

Omit “Provider Category Standards”, substitute “Threshold Standards”.

4 Section 5

Repeal the following definitions:

- (a) definition of *Provider Category Standards*;
- (b) definition of *Provider Course Accreditation Standards*;
- (c) definition of *Provider Registration Standards*.

5 Section 5 (definition of *Threshold Standards*)

Repeal the definition, substitute:

Threshold Standards means the Threshold Standards made under paragraph 58(1)(a).

6 Paragraphs 19(2)(b) and 20(2)(b)

Omit “permits the use of the word ‘university’.”, substitute “is either the ‘Australian University’ or ‘Overseas University’ provider category.”.

7 Paragraph 33(1)(a)

Omit “a provider category that permits the use of the word ‘university’.”, substitute “either the ‘Australian University’ or ‘Overseas University’ provider category.”.

8 Paragraph 36(6)(b)

Omit “a provider category that permits the use of the word ‘university’—”, substitute “either the ‘Australian University’ or ‘Overseas University’ provider category—”.

9 Paragraph 39(1)(b)

Omit “permits the use of the word ‘university’.”, substitute “is either the ‘Australian University’ or ‘Overseas University’ provider category.”.

10 Paragraph 45(1)(a)

Omit “the Australian university provider category”, substitute “the ‘Australian University’ provider category”.

11 After subsection 45(2)

Insert:

- (2A) Subsection (1) does not apply to a registered higher education provider in the “Australian University” provider category if that provider has a specialised focus in accordance with the Threshold Standards.

12 Paragraph 49(1)(b)

Omit “Provider Course Accreditation Standards”, substitute “Threshold Standards”.

13 Subsection 56(1)

Omit “Provider Course Accreditation Standards”, substitute “Threshold Standards”.

14 Subsection 58(1)

Repeal the subsection, substitute:

Making the standards

- (1) The Minister may, by legislative instrument, make the following standards that make up the Higher Education Standards Framework:
- (a) the Threshold Standards;
 - (b) other standards against which the quality of higher education can be assessed.

Note: For varying or revoking a standard, see subsection 33(3) of the *Acts Interpretation Act 1901*.

15 After section 59

Insert:

59A Quality of research

- (1) If TEQSA is considering the Threshold Standards, to the extent they relate to research, in relation to:
- (a) a regulated entity that has applied under section 18 to TEQSA for registration within the “Australian University” provider category; or

- (b) a registered higher education provider that has applied under section 38 to change to the “Australian University” provider category; or
 - (c) a registered higher education provider that is in the “Australian University” provider category;
- TEQSA must have regard to the quality of the research undertaken by the entity or provider.
- (2) In doing so, if an instrument is in force under subsection (7), TEQSA must have regard to the matters determined in the instrument.
 - (3) Subsection (2) does not limit the matters to which TEQSA may have regard.

Matters relating to the quality of research

- (4) TEQSA may, in writing, determine matters relating to the quality of research for the purposes of this section.
- (5) A determination under subsection (4) has no effect unless the Minister has approved it in writing.
- (6) TEQSA must give the Minister such information as the Minister reasonably requires for the purposes of approving the determination.
- (7) A determination under subsection (4) made by TEQSA and approved by the Minister is a legislative instrument made by the Minister on the day on which the determination is approved.

16 Section 61

Omit “Provider Course Accreditation Standards”, substitute “Threshold Standards”.

17 Paragraph 98(d)

Omit “Provider Course Accreditation Standards”, substitute “Threshold Standards”.

18 Paragraphs 108(1)(b) and (2)(b)

Omit “a provider category that permits the use of the word ‘university’.”, substitute “either the ‘Australian University’ or ‘Overseas University’ provider category.”.

19 Application and saving provisions

- (1) The amendments of paragraphs 19(2)(b) and 20(2)(b) of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part apply in relation to an application made on or after the commencement of this item.
- (2) The amendments of paragraphs 33(1)(a), 36(6)(b) and 39(1)(b) of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part apply in relation to a decision made on or after the commencement of this item.
- (3) Subsection 45(2A) of the *Tertiary Education Quality and Standards Agency Act 2011*, as inserted by this Part, applies in relation to working out whether a registered higher education provider is authorised to self-accredit a course of study on or after the commencement of this item.
- (4) The amendment of paragraph 49(1)(b) of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part applies in relation to an application for a course of study to be accredited that:
 - (a) is made on or after the commencement of this item; or
 - (b) was pending immediately before that commencement.
- (5) The amendment of subsection 56(1) of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part applies in relation to an application for renewal that:
 - (a) is made on or after the commencement of this item; or
 - (b) was pending immediately before that commencement.
- (6) Subsection 59A(1) of the *Tertiary Education Quality and Standards Agency Act 2011*, as inserted by this Part, applies in relation to the consideration of the Threshold Standards on or after the commencement of this item, whether the research was undertaken before, on or after that commencement.

- (7) The amendment of paragraph 98(d) of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part applies in relation to a failure referred to in that paragraph that occurs on or after the commencement of this item.
- (8) Subdivision A of Division 1 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a failure referred to in paragraph 98(d) of that Act that occurred before that commencement.
- (9) The amendments of section 108 of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part apply in relation to uses of the word “university” (including uses covered by subsection 108(3) of that Act) on or after the commencement of this item.

Part 2—Other amendments

Tertiary Education Quality and Standards Agency Act 2011

20 Section 5 (paragraph (a) of the definition of *higher education award*)

After “bachelor degree,” insert “undergraduate certificate.”.

21 Section 5

Insert:

higher education student records:

- (a) in relation to an entity that is a registered higher education provider, means a document, or an object, in any form (including any electronic form) that is held by the entity because of the document’s or object’s connection with a person who is or was enrolled in an accredited course provided by the entity; and
- (b) in relation to an entity that is a former registered higher education provider, means a document, or an object, in any form (including any electronic form) that was held by the entity when the entity was a registered higher education provider because of the document’s or object’s connection with a person who was enrolled in an accredited course provided by the entity.

22 Subsection 37A(1)

Omit “, so long as the period has not been previously extended by TEQSA”.

23 After subsection 38(1)

Insert:

- (1A) In relation to an application under paragraph (1)(b), if TEQSA considers that the provider category in which the provider is registered should not be changed, TEQSA may decide not to change that category.

24 Subsection 38(2)

Omit “doing so”, substitute “making a decision under subsection (1) or (1A)”.

25 Section 40

After “subsection 38(1)”, insert “or (1A)”.

26 Subsection 57A(1)

Omit “, so long as the period has not been previously extended by TEQSA”.

27 Section 183 (table)

After:

A decision under section 38 to change the category in which a registered higher education provider is registered

insert:

A decision under section 38 not to change the category in which a registered higher education provider is registered

28 At the end of Division 2 of Part 10

Add:

Subdivision C—Higher education student records

197AA Higher education student records to be provided to TEQSA

(1) If:

- (a) an entity that is a registered higher education provider has effectively ceased to operate; or
- (b) an entity’s registration as a registered higher education provider is cancelled;

TEQSA may, by written notice given to a person who is, or was, an executive officer of the entity, require the person to provide to TEQSA a copy of such of the higher education student records relating to the entity as are specified in the notice within the period specified in the notice.

- (2) The period specified in the notice must be at least 14 days after the notice is given.

Offence

- (3) A person commits an offence if:
- (a) the person is given a notice under subsection (1); and
 - (b) the person possesses or controls the higher education student records specified in the notice; and
 - (c) the person fails to comply with the notice.

Penalty: 150 penalty units.

Civil penalty

- (4) A person contravenes this subsection if:
- (a) the person is given a notice under subsection (1); and
 - (b) the person possesses or controls the higher education student records specified in the notice; and
 - (c) the person fails to comply with the notice.

Civil penalty: 300 penalty units.

197AB TEQSA may request higher education student records

If:

- (a) either:
 - (i) an entity that is a registered higher education provider has effectively ceased to operate; or
 - (ii) an entity's registration as a registered higher education provider is cancelled; and
- (b) TEQSA considers that a person (the **holder**) may hold higher education student records relating to the entity; and
- (c) the holder is not a person who is, or was, an executive officer of the entity;

TEQSA may, by notice in writing, request the holder to provide to TEQSA a copy of such of those records as are specified in the notice.

197AC Provision of higher education student records to another registered higher education provider

If:

- (a) a person (the *student*) is enrolled in an accredited course provided by an entity (the *first entity*) that is a registered higher education provider; and
- (b) the student transfers to another registered higher education provider (the *second entity*);

then:

- (c) the student may request the first entity to provide to the second entity a copy of the higher education student records relating to the student; or
- (d) the second entity may request, in writing, the first entity to provide to the second entity a copy of the higher education student records relating to the student.

197AD TEQSA's management of higher education student records

TEQSA may provide a copy of a higher education student record it holds to a registered higher education provider if:

- (a) the person to whom the record relates has enrolled, or is seeking to enrol, in an accredited course provided by the provider and the person requests TEQSA, in writing, to provide the copy; or
- (b) with the consent of the person to whom the record relates, the provider requests TEQSA, in writing, to provide the copy because that person has enrolled, or is seeking to enrol, in an accredited course provided by the provider.

197AE Compensation

- (1) If the operation of section 197AA would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the

Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

29 After section 204

Insert:

204A Use of Australian domain names with the word “university” etc.

- (1) A person must not use a domain name:
- (a) with either:
 - (i) the word “university” in the domain name; or
 - (ii) a word or expression, that has the same or a similar meaning to the word “university” and that is determined in an instrument under subsection (3), in the domain name; and
 - (b) where the domain name includes an Australian top-level domain;
- unless there is an approval in force under subsection (4) in relation to the person’s use of that domain name.

Scope of prohibition

- (2) Subsection (1) applies in relation to a person’s use of a domain name on or after the commencement of this section if:
- (a) the licence for the use of that domain name was issued on or after that commencement; and
 - (b) no licence for the use of that domain name had been issued before that commencement to the licensee of the licence referred to in paragraph (a).

List of words or expressions

- (3) The Minister may, by legislative instrument, determine words or expressions for the purposes of subparagraph (1)(a)(ii).

Approval of use of domain names

- (4) The Minister may, in writing, approve a person's use of a specified domain name. The Minister may give an approval on the Minister's own initiative or on application.
- (5) The Minister must give a copy of the approval to:
 - (a) the person; and
 - (b) the licensor that issues licences for the use of a domain name to which paragraphs (1)(a) and (b) apply.
- (6) An approval under subsection (4) comes into force at the time it is given.
- (7) If a person makes an application for an approval and the Minister refuses to give the approval, the Minister must give written notice of the refusal and of the reasons for the refusal to:
 - (a) the person; and
 - (b) the licensor that issues licences for the use of a domain name to which paragraphs (1)(a) and (b) apply.
- (8) In deciding whether or not to give an approval under subsection (4), the Minister must have regard to:
 - (a) whether the person is a registered higher education provider; and
 - (b) the matters determined in an instrument under subsection (10).
- (9) Subsection (8) does not limit the matters to which the Minister may have regard.
- (10) The Minister must, by legislative instrument, determine matters for the purposes of paragraph (8)(b).

Licence details to be given to the Minister

- (11) The Minister may, in writing, request the licensor that issues licences for the use of a domain name to which paragraphs (1)(a) and (b) apply to give the Minister the following details in relation to the period specified in the request:
 - (a) the name of each person to whom such a licence has been issued;

- (b) the domain name covered by the licence;
- (c) contact details for the person to the extent known by the licensor.

(12) The licensor must comply with a request under subsection (11).

Delegation

(13) The Minister may, in writing, delegate the Minister's functions and powers under this section (except subsections (3) and (10)) to an SES employee, or acting SES employee, in the Department.

Approval not a legislative instrument

(14) An approval under subsection (4) is not a legislative instrument.

30 Application provisions

- (1) The amendment of section 37A of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part applies in relation to an extension given on or after the commencement of this item, whether the registration occurred before, on or after that commencement.
- (2) The amendments of sections 38, 40 and 183 of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part apply in relation to a decision made on or after the commencement of this item, whether the application to change provider category was made before, on or after that commencement.
- (3) The amendment of section 57A of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part applies in relation to an extension given on or after the commencement of this item, whether the accreditation occurred before, on or after that commencement.
- (4) Section 197AA of the *Tertiary Education Quality and Standards Agency Act 2011*, as added by this Part, applies in relation to the following:
 - (a) a registered higher education provider that effectively ceases to operate on or after the commencement of this item;
 - (b) the cancellation of a registered higher education provider's registration on or after that commencement.

- (5) Section 197AB of the *Tertiary Education Quality and Standards Agency Act 2011*, as added by this Part, applies in relation to the following:
- (a) a registered higher education provider that effectively ceased to operate before, on or after the commencement of this item;
 - (b) the cancellation of a registered higher education provider's registration before, on or after that commencement.
- (6) Paragraph 197AC(b) of the *Tertiary Education Quality and Standards Agency Act 2011*, as added by this Part, applies in relation to a transfer that occurs on or after the commencement of this item, whether the enrolment referred to in paragraph 197AC(a) of that Act occurred before, on or after that commencement.

Schedule 2—Indigenous student assistance grants

Higher Education Support Act 2003

1 Paragraph 3-5(1)(aa)

Omit “students”, substitute “persons”.

2 Sections 8-1 and 38-1

Omit “Indigenous students”, substitute “Indigenous persons”.

3 Paragraph 38-10(1)(a)

Omit “Indigenous students”, substitute “*Indigenous persons (who may or may not be students)”.

4 Paragraph 38-10(1)(b)

Repeal the paragraph, substitute:

(b) increasing the number of:

- (i) *Indigenous persons enrolling in courses leading to *higher education awards; and
- (ii) students who are Indigenous persons progressing in and completing courses leading to higher education awards.

5 Subclause 1(1) of Schedule 1

Insert:

Indigenous person has the same meaning as in the *Indigenous Education (Targeted Assistance) Act 2000*.

*[Minister's second reading speech made in—
House of Representatives on 2 September 2020
Senate on 30 November 2020]*

(111/20)

No. 14, 2021

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Standards and Other Measures) Act 2021*

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