

# Rapid Review of the Australian Skills Quality Authority's Regulatory Practices and Processes

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Education, Skills and Employment

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mpconsulting ™

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## Executive Summary

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As identified through the recent Expert Review of Australia's Vocational Education and Training System (the Joyce Review), 'a significant upgrade' is needed to the architecture of the vocational education and training (VET) sector 'so it can successfully deliver the skills needs for Australia's future'<sup>1</sup>.

Consistent with the Joyce Review recommendations, the Council of Australian Government (COAG) Skills Council is currently developing a VET Reform Roadmap to guide reforms to improve the VET sector.

One area that has been identified for reform is the regulation of VET providers by the Australian Skills Quality Authority (ASQA). A key focus of these reforms is moving from input and compliance controls to a stronger focus on excellence in training outcomes.

Within the broader reform context, this rapid review has focused on how ASQA's regulatory practices and processes might be improved.

While ASQA's overarching vision and purpose remain appropriate, some significant adjustments are needed to ASQA's regulatory approach as follows.

### **Promote and facilitate a culture of effective self-assurance as an integral part of a provider's routine operations.**

- The current system of provider regulation has a strong focus on inputs and compliance controls, rather than on self-assurance by providers that their governance and systems are working to provide quality training outcomes.
- This is evidenced in the VET Quality Framework, ASQA's audit tools and practice and the relationship between ASQA and providers.
- While longer term systemic changes are required to the VET Quality Framework (including the standards), in the short-term, changes can be made to ASQA's regulatory approach to rely more strongly on providers self-assuring, with ASQA testing providers' systems and processes for ensuring sustained compliance, continuous improvement and quality outcomes for students.

### **Drive cooperative relationships between ASQA, providers and other stakeholders.**

- Currently there is a significant trust deficit between the regulator, peak bodies and some regulated entities. The reasons for this are multifaceted and influenced by recent history, including some significant policy, regulatory and industry failures.
- Acknowledging this history and committing to moving forward in a spirit of cooperation and mutual understanding will be critical if reform is to be delivered.
- ASQA will play an important role in this by strengthening its focus on engagement and education and working with the sector to co-design new regulatory tools. Providers will also play an important role by proactively engaging with ASQA to understand ASQA's expectations on an ongoing basis and when non-compliance is identified, and by working with ASQA to address some of the significant systemic issues that impact the sector more broadly.

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<sup>1</sup> Joyce, S 2019, [Strengthening Skills: Expert Review of Australia's Vocational Education and Training System](#), report prepared for Department of the Prime Minister and Cabinet, p. 1.

**Consistently understand provider performance against standards and in the context of their operating environment.**

- Fundamental to the effective and consistent assessment of provider performance is a skilled and appropriately trained workforce that has a consistent understanding of the context in which they are assessing performance, the focus of their assessment and communication of assessment outcomes.
- This does not mean ASQA auditors must come from the VET sector but instead that all share certain qualities (integrity, critical thinking, sound judgement and strong communication skills) and are consistently trained in relation to assessment methodology, interpretation of the standards, the regulatory framework and the regulated sector.
- The review proposes changes to not only strengthen induction and ongoing training of ASQA auditors but also to embed a program of internal quality assurance including regular opportunities for moderation and internal review.

**Embed a variable-touch approach to regulation, guided by regulatory necessity, risk and proportionality**

- There are three critical aspects – intelligence needs to inform understanding of strategic and individual provider risk, monitoring activity needs to be systematic, cost-effective and responsive, and compliance action must be proportionate.
- While ASQA has a comprehensive and best practice approach to identifying both strategic and provider risk, there is opportunity to make improvements to the way that it monitors provider performance expanding beyond audit and utilising other cost-effective and risk-based approaches.
- Importantly there also needs to be greater opportunity for providers to remedy any identified non-compliance in a sustained and systemic way, before notices of intention to impose regulatory sanctions are issued.
- While this supports a more proportionate response (and encourages self-reflection and return to compliance by the majority of genuine and willing providers) ASQA still needs to retain its capacity to take significant and immediate action in the event that providers are not genuine or otherwise represent a significant risk to the achievement of VET outcomes.

**Communicate regulatory decisions and advice in a way that is clear, consistent and timely**

- ASQA audit reports are currently dense, contain significant templated text and do not always effectively describe the identified non-compliance in a meaningful way for providers. Further, limited information is available online about the reasons underlying regulatory decisions (such that learners could use this information to inform their choices) and persistent areas of non-compliance are not well communicated to the sector as a whole.
- Changes are proposed in each of these areas to ensure that regulatory decisions and advice are communicated in a clear, consistent and timely manner.

**Coordinate and appropriately share information with other regulatory agencies, policy makers and funding bodies**

- Policy makers need feedback from those who administer the law. Likewise, those who administer the law need to understand the objectives of the regulation in order to be focused on achieving that objective, not just enforcing isolated rules.<sup>2</sup> Strengthening ASQA's strategic

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<sup>2</sup> OECD, 2000, [Reducing the risk of policy failure: Challenges for regulatory compliance](#).

engagement with policy makers, the Senior Skills Official Network (SSON), Industry Reference Committees (IRCs), Skills Service Organisations (SSOs) provides critical feedback loops. Likewise sharing intelligence with funding bodies and other regulators enables a co-ordinated response to non-compliance that threatens to damage the reputation of the VET sector.

### **Restructuring ASQA's governance**

- If ASQA is to embark on a significant program of reform, it requires a governance structure that can support the extent of the change. Changes to leadership teams, organisational structure and focus will strengthen oversight and managerial capacity, and support implementation of reforms relating to engagement and education, performance assessment, and proportionate action in response to non-compliance. The establishment of an expert advisory council (recently announced by the Government) will also improve access to high-level ongoing expert advice, including in relation to ASQA's strategic objectives and approach to regulation.

While the rapid review has identified opportunities to strengthen ASQA's internal regulatory practices and processes, mpconsulting acknowledges that the expectations of ASQA, in regulating such a large and diverse sector, are many and varied. The recommendations of this review target short, medium and longer-term actions to better position ASQA as a respected and contemporary regulator.

## Recommendations

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### Long term vision for ASQA: Moving from input and compliance controls to a focus on self-assurance and excellence in training outcomes

1. Develop a shared understanding of what 'quality' and 'outcomes' look like, how these should be reflected in outcomes-focused standards and performance assessed by ASQA.
2. Develop new standards in consultation with the sector, with a view to decreasing prescriptive detail and increasing the focus on quality training delivery and outcomes for students and employers.
3. Develop resources to support providers to meet the standards including self-assessment tools to encourage continuous improvement.
4. Adjust ASQA's approach to performance monitoring in line with revised standards and a focus on provider self-assurance.
5. Publish more information regarding provider performance to support students and employers to differentiate between providers.
6. Realign ASQA's cost recovery arrangements to reflect ASQA's new approach to performance monitoring.

### Clarifying and modernising ASQA's role and regulatory culture

7. Build a common understanding of ASQA's role and regulatory approach, what stakeholders can and cannot expect of ASQA and areas of shared stakeholder responsibility.

### Aligning governance arrangements with ASQA's renewed focus

8. Change ASQA's organisational structure and focus to strengthen strategic oversight and managerial capacity to:
  - support implementation of critical reforms (including in relation to engagement and education, performance assessment and proportionate response to non-compliance)
  - support change management
  - strengthen internal systems and quality controls.
9. Establish an advisory council to improve access to high-level ongoing expert advice including in relation to ASQA's strategic objectives and approach to regulation.

### Strengthening engagement and education

10. Strengthen ASQA's strategic stakeholder engagement and education, including to:
  - build provider capacity for self-assurance
  - co-design new regulatory tools with the sector (for example, to support self-assessment)
  - identify common areas of non-compliance and develop consistent guidance for external stakeholders and for ASQA.

11. Strengthen strategic engagement with SSON, IRCs and SSOs to establish a feedback loop regarding broader VET reform, training packages, their intent and their implementation by providers.

### Using intelligence to effectively monitor strategic risk and provider performance

12. Expand ASQA's post-market monitoring to include risk-based and routine monitoring to support public confidence in the regulation of the sector.

### Aligning audit practice to focus on self-assurance

13. Review the provider self-assessment tool and the annual declaration on compliance, such that they better support providers to identify and address non-compliance and drive continuous improvement.
14. Adopt a range of monitoring activities that can be selected based on risk and the purpose for monitoring, to better align regulatory effort to risk.

### Appropriate and proportionate regulatory action where non-compliance is identified

15. More clearly distinguish the functions of monitoring provider performance and determining the most appropriate regulatory response where non-compliance is identified to improve consistency of audit outcomes and proportionality of regulatory response.
16. Give providers opportunity to remedy any identified non-compliance within 20 working days, or in accordance with an undertaking to remedy (providing a longer period within which to address the non-compliance on a more systemic and sustained basis).
17. Enhance opportunity to undertake early dispute resolution.

### Meaningful reporting on provider performance

18. Revise the report that is given to providers following audit to more comprehensively describe any non-compliance as identified issues against the student-centred journey; reduce the amount of non-essential text; and distinguish between minor non-compliances or areas for improvement and more significant non-compliances.



**19.** Notify government agencies of provider non-compliance after the provider has had the opportunity to respond to the audit report (except where there is significant and immediate risk to public funding, students or others as a result of the identified non-compliance).

**20.** In the short term, build on the information ASQA publishes in respect of regulatory decisions to include the main reasons for the decision, so as to improve transparency of decision-making.

**21.** In the long-term, publish a summary of ASQA's findings regarding the provider's performance against the standards.

### **Supporting ASQA staff to deliver the outcomes**

**22.** Strengthen induction training for ASQA auditors and decision-makers, including to support consistent regulatory practice, decision-making and documentation.

**23.** Implement a formal program for continuing professional development for ASQA auditors and decision-makers.

**24.** Implement a program of internal quality assurance, including regular:

- opportunities for moderation of audit outcomes and decision-making
- internal review of audit reports and compliance outcomes.

# Chapter 1 – About this review

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## Context and scope of review

On 30 October 2019, the Australian Government announced \$18.1 million towards the reform of the Australian Skills Quality Authority (ASQA) to support the fair, transparent and effective regulation of the VET sector and high-quality student outcomes<sup>3</sup>.

To inform the reform of ASQA, mpconsulting was engaged by the Department of Education, Skills and Employment (the Department) in late 2019 to conduct a rapid review of ASQA's internal regulatory practices and processes.

The scope of the rapid review was to:

- evaluate the effectiveness of ASQA's internal regulatory practices and processes (including ASQA's [Regulatory Risk Framework](#), how it undertakes audits, how it makes and internally reviews regulatory decisions, and processes related to the review of ASQA decisions)
- identify and recommend any changes to ASQA's processes to support consistent, risk-based and contemporary regulatory decision-making and education
- identify and recommend any changes required to ASQA's governance arrangements to clarify roles and responsibilities, improve accountability, improve efficiency of resources, and improve focus on strategic direction and performance
- identify areas in which changes could be made to the [VET Quality Framework](#) to drive improvements across the sectors.

The scope of this review has been influenced by the timeframes for the review, the focus of previous reviews and the matters of critical interest to stakeholders.

For example, in relation to regulatory practice, the rapid review has focused on issues such as:

- identification of risk
- ensuring consistency of practice
- communication of audit outcomes
- regulatory response to provider non-compliance
- driving a culture of self-assurance, quality delivery and student outcomes.

The rapid review has not examined in detail:

- the balance and utilisation of resources within ASQA
- the internally facing functions of ASQA such as finance, human resources, etc.
- the IT platforms and systems used by ASQA (beyond the extent to which they support good regulatory practice)
- specific cases raised by individual providers.

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<sup>3</sup> Department of Employment, Skills, Small and Family Business 2019, '[ASQA Reform](#)', viewed on 16 December 2019.

## Our process

To inform this review, mpconsulting:

- **reviewed ASQA’s internal documents**, processes and practices, including:
  - strategic documents, such as ASQA’s workforce plan, diversity and inclusion strategy, learning and development strategy, performance development framework policy, induction handbook
  - guidance for auditors such as audit handbooks, templates and tools
  - online platforms used to collect information and support audit practice
  - risk profiling documents
- **reviewed externally facing resources** published on ASQA’s website, such as:
  - strategic documents, including ASQA’s [Corporate Plan](#), [Annual Reports](#), [Regulatory Risk Framework](#), [Regulatory Strategy](#)
  - guidance for the sector, including [ASQA audit resources](#), [audit FAQs](#), [fact sheets](#), [general directions](#), [presentations](#) to industry, [strategic review reports](#), [forms and guides](#), the [Users’ Guide to the Standards for RTOs 2015](#)
- **reviewed relevant legislation and standards** (see [Attachment A](#) for a full list of ASQA enabling and supporting legislation)
- **reviewed relevant national and international best practice guidelines**, including:
  - [OECD documents](#) relating to regulatory policy and governance
  - [Australian National Audit Office](#) (ANAO) better practice guides and audit insights
  - Department of Prime Minister and Cabinet’s [Regulator Performance Framework](#)
  - Department of Finance guidance regarding [Managing Commonwealth Resources](#)
  - Council of Australian Governments’ (COAG) [Best Practice Regulation Guide for Ministerial Councils and National Standard Setting Bodies](#)
- **reviewed audit reports** from across all States and Territories (including auditor notes, audit outcome decision records and supporting information)
  - A sample of more than 50 reports and supporting information were reviewed in detail.
- **held discussions with, and received submissions from, ASQA staff**, including but not limited to:
  - the Senior Management Group (including the Chief Commissioner and Chief Executive Officer, Commissioner Regulatory Operations, General Manager Regulatory Support and Governance, General Manager Regulatory Operations and Manager – Governance, Policy and Quality)
  - auditors and Managers Regulatory Operations (MROs) in each State and Territory
  - members of the corporate support team (including to gain an understanding of the training and supports available to auditors)
  - staff in the risk, data and intelligence areas (including to understand how intelligence is used to inform the selection of providers and training products to be audited and to determine the focus of audits)
  - legal officers
  - staff involved in the review of applications from providers

- **reviewed submissions from external stakeholders** particularly as they related to their perceptions of ASQA and experiences of ASQA’s audit practice. mpconsulting was provided with 50 submissions from stakeholders including providers, peak bodies and individuals with expertise and experience in the VET sector
- **consulted with other similar regulators** including the [Tertiary Education Quality and Standards Agency](#) (TEQSA), the [Training Accreditation Council Western Australia](#) (TACWA) and [Victorian Registration and Qualifications Authority](#) (VRQA).

## Our approach

In undertaking the rapid review, the following considerations have informed our approach.

- **Prior reviews have made recommendations relating to ASQA’s regulatory role and approach**
  - We are mindful that there have been a number of recent reviews that go to similar matters including [Strengthening Skills: Expert Review of Australia’s Vocational Education and Training System](#) led by the Honourable Steven Joyce (Joyce review), and [All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011](#) undertaken by Professor Valerie Braithwaite (Braithwaite review).
  - To minimise duplication of effort we have drawn on these reviews (and submissions made to these reviews) where possible and have been mindful of the recommendations of these reviews (including calls for ASQA to adopt a more educative approach to regulation and improve its regulatory model to ensure a focus on areas which impact on student outcomes).
- **Any changes to ASQA’s practices must take into account broader reform initiatives occurring in the VET sector**
  - The rapid review is just one part of the Australian Government’s commitment to strengthening the VET sector. In the 2019-20 Budget, the government committed \$585.3 million to the [Skills Package – Delivering Skills for Today and Tomorrow](#), which includes a much wider range of reform aimed to help train highly skilled and qualified workers to meet the needs of businesses.
  - The COAG Skills Council is currently developing a [VET Reform Roadmap](#) that will guide reforms to improve the VET sector. Reforms stemming from this work will also impact on ASQA’s role and regulatory practice going forward.
  - Recommendations from this Rapid Review will need to be appropriately staged including in line with broader reform.
- **The diversity of the sector is acknowledged, including the differing experience and expectations of the regulator**
  - As highlighted throughout this report, the VET sector in Australia is vast and diverse, with wide-ranging expectations regarding the role of ASQA.
  - A diverse sector means ASQA must necessarily be flexible in its approach to regulating the sector, while also maintaining consistency in both expectations and performance across the sector.

- **The costs of regulation should be minimised**
  - ASQA operates on a cost recovery basis whereby providers are charged for ASQA’s regulatory services. Any changes to ASQA’s regulatory approach must seek to minimise both indirect and direct regulatory costs and avoid any unnecessary regulatory burden (including through effective and efficient regulatory activities).
  
- **Reforms should be in line with best practice regulation and fit for purpose**
  - The principles of best practice regulation have been considered in developing the recommendations in this report, including that any changes result from clearly identified policy goals, have a sound legal and empirical basis, minimise costs and market distortions, promote innovation, are clear and practical for users and are consistent with other like regulators and policies.
  - The recommendations have also been reviewed to ensure that any changes in approach remain consistent with the [Standards for VET Regulators 2015](#) that describe a series of outcomes that VET regulators (including ASQA) must achieve.

## Chapter 2 – About ASQA

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### ASQA's role

ASQA was established on 1 July 2011 by the enactment of the [National Vocational Education and Training Regulator Act 2011](#) (NVR Act) and related legislation (for a full list of ASQA enabling and supporting legislation, please refer to [Attachment A](#)).

Prior to ASQA's establishment, VET regulation was undertaken by State and Territory regulators. ASQA's establishment involved the referral of powers to the Commonwealth from most states (except Victoria and Western Australia) and the exercise of the Commonwealth's constitutional powers in the regulation of VET in the territories.

The objects of the NVR Act underpin the role of ASQA:

- to provide for national consistency in the regulation of VET
- to regulate VET using:
  - a standards-based quality framework
  - risk assessments, where appropriate
- to protect and enhance:
  - quality, flexibility and innovation in VET
  - Australia's reputation for VET nationally and internationally
- to provide a regulatory framework that encourages and promotes a VET system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population
- to protect students undertaking, or proposing to undertake, Australian VET by ensuring the provision of quality VET
- to facilitate access to accurate information relating to the quality of VET.

[ASQA's website](#) describes ASQA's vision:

*Students, employers and governments have full confidence in the quality of vocational education and training outcomes delivered by Australian registered training organisations.*

The [ASQA Corporate Plan 2019-20](#) further defines ASQA's role, purpose and the focus of regulation:

- **ASQA's role:** Australia's national VET regulator.
- **ASQA's purpose:** To provide nationally consistent, risk-based regulation of VET that contributes to an informed, quality VET sector that meets Australia's needs.

- **ASQA regulates:**
  - providers that deliver VET courses to domestic students in Australia or offer Australian qualifications internationally
  - providers that deliver VET courses to overseas students
  - certain providers that deliver English Language Intensive Courses for Overseas Students (ELICOS)
  - VET courses to ensure they meet an established industry, legislative or community need.

## ASQA's operating environment

ASQA regulates within a complex regulatory environment.

- **There is a large number of students**
  - In 2018, an estimated 4.1 million students enrolled in nationally recognised VET across Australia.<sup>4</sup>
  - While most students are seeking quality VET, some seek a qualification with minimal or no training and assessment or are motivated by other factors (such as Australian residency), which can add an additional challenge for ASQA in identifying non-compliant providers.
- **There is a large number of providers**
  - As at 31 December 2019, ASQA was responsible for regulating 3,773 providers<sup>5</sup>.
  - 3,694 of these providers were registered as an RTO, 717 were registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to deliver training to overseas students on student visas and 273 were ELICOS providers (noting that organisations may be registered as an RTO, a CRICOS provider and/or as an ELICOS provider, with 194 organisations registered for all three).
  - The VET sector has a substantially larger number of providers compared to the higher education sector, with three times as many VET students than higher education students.<sup>6</sup>
  - Australia also has significantly more VET providers than comparable overseas markets and the lowest ratio of working-age population to providers.<sup>7</sup>
- **Providers are diverse in size, organisation type and offering**
  - The VET market is characterised by a small number of large providers (with approximately 10,000 students) and a significant number of medium sized providers (with around 1,000 students). The top 100 providers in terms of size represent approximately half of the total student population. Nearly 2,000 providers (around 40% of the total) have 100 or fewer students and these providers tend to deliver highly specialised courses with minimal government funding.<sup>8</sup>

<sup>4</sup> National Centre for Vocational Education Research 2018, [Total VET students and courses 2018](#), Adelaide.

<sup>5</sup> In Victoria and Western Australia, some RTOs are regulated by the State regulators (VRQA and TACWA respectively) so this number does not include these providers.

<sup>6</sup> Korbelt, P & Misko, J 2016, 'VET provider market structures: history, growth and change', National Centre for Vocational Education Research, Adelaide, p. 3.

<sup>7</sup> Korbelt, P & Misko, J 2016, 'VET provider market structures: history, growth and change', National Centre for Vocational Education Research, Adelaide, p. 3.

<sup>8</sup> National Centre for Vocational Education Research 2019, *Australian vocational education and training statistics: Total VET students and courses 2018*, National Centre for Vocational Education Research, Adelaide

- VET providers can include technical and further education (TAFE) institutes, adult and community education providers, agricultural colleges, private providers, community organisations, industry skill centres, professional associations, commercial and enterprise training providers, schools and universities.<sup>9</sup>
  - Modes of delivery include full-time, part-time, online education, distance education, apprenticeships, traineeships and through Recognition of Prior Learning (RPL).
- **ASQA processes a high volume of applications from providers**
    - In 2018-19, ASQA processed 12,550 applications.

Types of applications	Number of applications processed in 2018-19	
	NVR Act	ESOS Act
<b>Application for initial registration</b> (under NVR s.16 or ESOS s.9)	272	157
<b>Application for renewal of registration</b> (under NVR s.16 or ESOS s.10D)	731	148
<b>Application to add one or more courses</b> (under NVR s.32 or ESOS s.10H)  *this includes <b>applications to change an existing CRICOS registration</b> (for example, to increase or reduce approved overseas student capacity, add or remove permanent delivery locations, attach previously approved courses to previously approved locations, change published course duration or tuition costs)	1,747	1,526*
<b>Notification of material change</b> (under NVR s.25 or ESOS s.17A)	2,159	279
<b>Notifications of minor changes</b> to recorded details (officer reviews)	1,446	N/A
<b>Notifications of minor changes</b> to recorded details (processed automatically)	3,942	N/A
<b>Notifications to withdraw registration</b> (under NVR s.42 or to discontinue registration under ESOS s.10M)	131	12
<b>Total number of applications processed annually</b>	10,428	2,122
		<b>12,550</b>

- **A history of State-based regulation**
  - Prior to ASQA’s establishment in 2011, VET regulation was undertaken by State and Territory regulators. ASQA’s establishment involved the referral of powers to the Commonwealth from most states (except Victoria and Western Australia) and the exercise of the Commonwealth’s constitutional powers in the regulation of VET in the territories.
  - ASQA was formed through the amalgamation of many of the previous State and Territory based VET regulatory bodies. The transition process included staff from former state regulatory agencies transferring to ASQA.
- **Policy, governance, funding and regulatory arrangements are complex**
  - The Commonwealth and State and Territory governments have joint responsibility for the VET sector. These arrangements are set out in the [National Agreement for Skills and Workforce Development](#) (NASWD) which was agreed by the COAG in 2012.
  - The States and Territories variously operate RTOs (such as TAFEs) and oversee VET within their jurisdictions. The Commonwealth is increasingly involved in VET policy and quality assurance.

<sup>9</sup> Australian Skills Quality Authority, [VET sector overview](#).



- VET can be funded by individual students, employers, the states and territories within their jurisdictions, the Commonwealth through a range of targeted programs or a combination of these.
- The VET regulatory framework is underpinned by multiple, interrelated legislative instruments and the relationships between different legislative instruments and frameworks is not always clear.
- **Australia’s VET sector is economically significant**
  - VET is a significant contributor to Australia’s domestic economy and is the primary mechanism used to meet the skilling needs of the Australian community.
  - VET also contributes greatly to the valuable export education market. Internationally, Australia’s education system is well regarded and highly attractive to international students. In 2019, the VET sector accounted for approximately 33 per cent of all overseas student enrolments in Australia<sup>10</sup>. In 2017, the VET sector generated \$5.2 billion in export income for Australia<sup>11</sup>.
- **The sector has been impacted by events that have influenced the relationship between ASQA and the regulated entities**
  - For example, the VET FEE-HELP (VFH) scheme was established in June 2008 to provide eligible students access to government loans to remove up front cost barriers to tertiary education and training. VFH loans were incurred by students and course fees paid directly to the education provider and students were required to repay the loan once their income reaches a threshold. The VFH scheme ceased at the end of 2016 with the ANAO determining that poor design, and a lack of monitoring and control, led to costs blowing out and the unethical behaviour of some providers impacting on vulnerable students. While the VFH scheme was administered by the former Department of Education and Training, ASQA was responsible for responding to the heightened risk to students posed by a number of VFH providers. This program failure resulted in significant reputational damage to the sector and prioritised the need for ASQA to be seen as a strong and effective regulator, which has impacted considerably on the regulatory culture of ASQA.<sup>12</sup>

The rapid review has been conscious of the environment in which ASQA regulates and the importance of regulatory practices and processes that can adapt and respond to the challenges of the sector.

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<sup>10</sup> Department of Education and Training, [International Student Data 2019](#), Canberra.

<sup>11</sup> Department of Education and Training, June 2018, [Research Snapshot: Export income to Australia from international education activity in 2017](#), Canberra.

<sup>12</sup> Auditor-General, 2016, [ANAO Report No. 31 2016-17: Administration of the VET FEE-HELP Scheme](#), Canberra.

## Chapter 3 – Overview of ASQA’s approach to regulation

### Requirements for providers

#### The VET Quality Framework

To deliver VET courses, organisations must apply to become an RTO. All RTOs must meet a range of mandatory requirements designed to ensure that training and assessment is delivered to the high standards expected by students, industry and employers.

In summary, RTOs must comply with all components of the [VET Quality Framework](#). This includes complying with the:

- [Standards for RTOs 2015](#) (the Standards for RTOs)
- [Australian Qualifications Framework](#) (AQF)
- [Fit and Proper Person Requirements 2011](#) (FPP Requirements)
- [Financial Viability Risk Assessment Requirements 2011](#) (FVRA Requirements)
- [Data Provision Requirements 2012](#)

#### The ESOS Framework

In Australia, training providers must be approved for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) before they can teach overseas students (people on a student visa issued by the Australian Government). Organisations seeking to deliver VET courses to overseas students must register as an RTO and as a CRICOS provider. Organisations seeking to deliver English Language Intensive Courses for Overseas Students (ELICOS) only need to register as a CRICOS provider.

CRICOS providers must meet the requirements of the [Education Services for Overseas Framework](#), which includes the:

- [Education Services for Overseas Students Act 2000](#) (ESOS Act)
- [Education Services for Overseas Students Regulations 2019](#)
- [Education Services for Overseas Students \(Registration Charges\) Act 1997](#)
- [National Code of Practice for Providers of Education and Training to Overseas Students 2018](#) (the National Code)
- [National Standards for Foundation Programs](#)
- [ELICOS Standards 2018](#).

#### The standards

ASQA regulates organisations under the following standards:

- The [Standards for RTOs](#) are enabled by the NVR Act and were endorsed by the COAG Skills Council in 2014.

- The [National Code](#) is enabled by the ESOS Act and was introduced in 2018.
- The [ELICOS Standards](#) are enabled by the ESOS Act and were introduced in 2018.

ASQA also accredits courses that are nationally recognised and meet an established industry, enterprise, educational, legislative or community need.

ASQA does this by assessing courses against the [Standards for VET Accredited Courses 2012](#) and the [AQF](#). Each VET accredited course receives a national code and appears on the national register, [training.gov.au](http://training.gov.au).

## The student-centred audit approach

In 2016, ASQA implemented a [student-centred audit approach](#) aimed at providing a greater focus on the student journey and practices of RTOs.

Under this approach, the clauses under each set of standards (i.e. the Standards for RTOs, the National Code and the ELICOS Standards) are grouped based on the five key phases of the student journey including marketing and recruitment, enrolment, support and progression, training and assessment and completion (see [Figure 1](#)). Audits are structured around the RTO’s practices and behaviours relating to each phase of the student journey.

**Figure 1: ASQA’s student centred audit approach**

Key phases of the student journey	Examples of provider practice and behaviour	Primary standards/ clauses in the Standards for RTOs 2015	Primary standards/ clauses in the National Code 2018	Primary standards/ clauses in the ELICOS Standards 2018
<b>Marketing and recruitment</b>	The training provider’s marketing practices provide accurate and factual information to allow prospective students to make informed decisions.	4.1	1.1, 1.2, 1.3, 1.4	–
<b>Enrolment</b>	The training provider ensures students have the existing skills, knowledge and experience required to successfully undertake the course.	5.1, 5.2, 5.3, 7.3	2.1, 2.2, 3.1, 3.3, 3.4, 8.5	P1.2, P3.1
<b>Support and progression</b>	The training provider assesses student needs and provides appropriate support services to enable student progression.	1.7	5.2, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.9, 8.1, 8.3, 8.4, 8.6, 8.7, 8.9	P6.9, P7.2
<b>Training and assessment</b>	Trainers assigned to deliver training are qualified. The training provider has sufficient and appropriate resources for training and assessment. The amount of training and mode of delivery is consistent with requirements.	1.1, 1.2, 1.3, 1.8, 1.13 to 1.18, 1.20	11.1, 11.2, 8.18, 8.19, 8.20, 8.21	P1.1, P4.1, P5.1, P5.2, P6.4, P6.7, P6.8, P7.3
<b>Completion</b>	Only students assessed as meeting course or training package requirements are issued with certification.	3.1		P4.2
<b>Other requirements</b>				
<b>Regulatory compliance and governance</b>	The training provider has appropriate compliance and governance processes in place such as holding public liability insurance, managing its third parties and agents. The training provider meets additional obligations if delivering to under-18s.	2.3, 2.4, 8.2	2.4, 2.5, 3.6, 4.4, 4.5, 4.6, 5.4, 5.5, 5.6, 5.7, 6.7, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7	P2.1

## ASQA's regulatory activities

ASQA is the national regulator for:

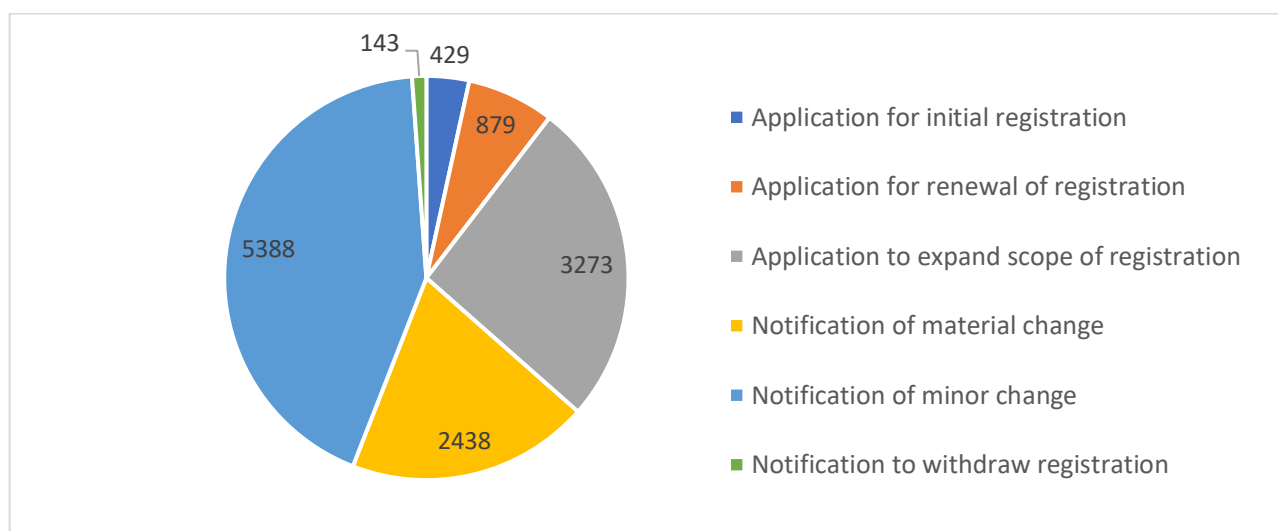
- RTOs that deliver VET qualifications and accredited training courses to domestic students and students reside offshore (Victoria and Western Australia have maintained responsibility for regulating RTOs that only train domestic students and only operate in either or both of these states)
- providers registered on CRICOS that deliver VET courses to overseas students studying in Australia on student visas
- certain CRICOS providers that deliver ELICOS to overseas students studying in Australia on student visas.

ASQA regulates such providers by:

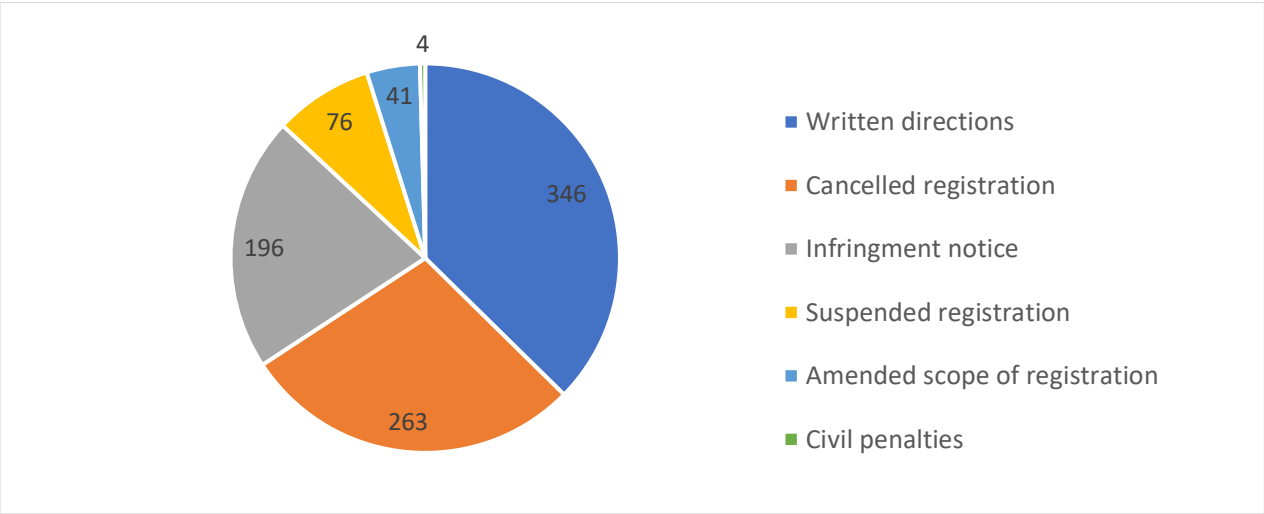
- assessing applications for registration as a provider (either as an RTO or as a CRICOS provider)
- ensuring providers comply with their annual obligations (including in relation to data provision, reporting on compliance and payment of relevant fees and charges)
- assessing applications for changes of scope to providers' registration and for re-registration as a provider
- undertaking ongoing risk assessment and compliance monitoring of providers including by:
  - analysis information and assessing both sector-level and provider-level risk
  - undertaking risk-based audits of provider compliance
  - taking regulatory action in the event of non-compliance.
- accrediting courses that may be delivered by RTOs.

Figures 2 and 3 show the number of applications processed by ASQA and the number of regulatory actions undertaken by ASQA in 2018-19.

**Figure 2: Number of applications processed by ASQA in 2018-19**



**Figure 3: ASQA regulatory actions 2018-19**



More detail on how ASQA undertakes each of these functions is at [Attachment B](#).

## Chapter 4 – Overview of stakeholder feedback regarding ASQA’s regulatory approach

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### Overview

To inform the rapid review, the Department sought stakeholder feedback on three key questions:

- How can ASQA best engage with the VET sector? What strategies could be adopted by ASQA to support best practice among training providers?
- What elements of its current educative approach are the most effective? How can ASQA best help training providers to understand their obligations?
- What elements of ASQA’s current regulatory approach do you perceive to be working effectively? What specific areas would benefit from further attention?

A total of 50 submissions were provided to mpconsulting.

In addition, mpconsulting reviewed submissions made to the Braithwaite and the Joyce reviews and heard from stakeholders through forums such as IRC Chair meetings, SSO workshops and SSON meetings.

### Stakeholder feedback on ASQA

Stakeholders broadly recognised the challenge of ASQA’s role in maintaining and improving quality in the VET sector. While stakeholders acknowledged recent improvements in ASQA practice (particularly in relation to sector engagement and the timeliness of decision making), concerns were consistently raised in five main areas:

- **diverse expectations and understandings of ASQA’s role**
  - While many stakeholders acknowledged the challenges inherent in consistently regulating such a large and diverse sector, many also expressed concern that ASQA seems to ‘lack direction as to what its role is’.
  - Submissions highlighted that stakeholders have very different and wide-ranging expectations of ASQA and its role in engaging with providers to ensure they meet their regulatory obligations.
- **sector engagement and education**
  - Stakeholders acknowledged recent improvements in ASQA’s engagement with the sector, but many commented on the need to improve relationships between ASQA and providers, and for ASQA’s engagement and education to be strengthened. Some stakeholders acknowledged that poor relationships were likely, in part, a hangover from ASQA’s role addressing issues arising from the VFH scheme.
  - Submissions included a range of suggestions as to how ASQA’s role in educating stakeholders could be enhanced, from increasing the online information available to providers to introducing case managers for contacts between providers and ASQA.

- **inconsistent audit practice**
  - Stakeholders consistently raised concerns regarding ASQA’s audit practice, inconsistencies in auditors’ interpretation of the standards and a focus on minor/administrative non-compliances rather than those impacting on student outcomes.
  - Some stakeholders noted that these issues are exacerbated by the broader VET quality framework (including the Standards for RTOs).
  - Stakeholders also raised concerns regarding a lack of transparency regarding ASQA’s audit approach, the timeliness of audits and the cost of audits for small businesses.
- **convoluted and unclear audit reports**
  - Stakeholders noted that ASQA’s audit reports can be long, convoluted and difficult to read, such that they do not support providers to understand the non-compliance and identify what is at the heart of the issue.
  - Many stakeholders suggested that the sector could benefit greatly from a clearer audit report format.
- **the severity and proportionality of regulatory actions in response to non-compliance.**
  - Many stakeholders acknowledged there have been ongoing compliance issues in the sector and significant effort has been invested by ASQA in addressing poor practice.
  - However, stakeholders also highlighted the impact of a finding of non-compliance on genuine providers (including the ramifications of such a finding on, for example, a provider’s funding arrangements or likelihood of being audited into the future) and the stress and uncertainty associated with trying to remedy non-compliance within the short timeframes provided by ASQA.

More detailed feedback from stakeholders is at [Attachment C](#).

## Stakeholder feedback on the broader VET environment

While most of the below are outside the remit of ASQA (or involve joint responsibility with other stakeholders such as the Department, other regulators and industry associations), stakeholders made some suggestions for improvements to the broader VET environment, including the need to:

- better develop broader public understanding of the VET sector, how it works and the role and expectations of providers in providing quality training
- focus on improving the quality of the teaching workforce, including through supporting providers to focus effort on recruiting and upskilling trainers and assessors
- improve the interface between different reporting systems in the sector (including NCVET systems, asqanet and PRISMS)
- improve and streamline the broader VET Quality Framework, particularly the AQF, the standards and training packages. Issues raised included that:
  - it can be difficult to understand what is required of providers (particularly for smaller organisations) as it is not clear how the various legislative requirements, standards and policies fit together to ensure quality VET
  - the standards are ‘vague, open-ended and open for interpretation, which in turn means that auditors are inconsistent in their approach’
  - the standards are not focused on student outcomes but focus on ‘minute detail’

- the requirement to keep assessment records for only six months after the student has completed the qualification ‘is too short and opens up loopholes and unethical behaviour’
- training packages are too demanding, complex to understand, difficult to fully achieve, open for interpretation and do not set out common standards/expectations regarding training and assessment tools.



## Chapter 5 – Moving from input and compliance controls to a focus on self-assurance and excellence in training outcomes

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### Issues

A recurring theme found through stakeholder consultations and highlighted in previous reviews is that the current system of provider regulation has a strong focus on inputs and compliance controls, rather than on self-assurance by providers that their governance and systems are working to provide quality training outcomes.

This is evidenced in the VET Quality Framework, ASQA's audit tools and practice and the relationship between ASQA and regulated providers.

- **While there is a shared vision for VET, there is a lack of clarity about the role that standards should play in supporting the vision and how the regulator should measure quality training delivery and learner outcomes.**
  - Many stakeholders highlighted the need for regulation to focus on quality, outcomes and excellence. However, there was little consensus about how this should be measured either by providers or by ASQA.
  - For example, some suggested that student satisfaction, completion rates and employment outcomes are indicators of provider performance, with others suggesting that each of these are poor predictors of provider performance.
  - There is also limited information available publicly to support students and industry to determine the quality of a VET provider, including by reference to performance against the standards.
- **Many of the standards are highly prescriptive and inputs or process oriented.**
  - For example, clause 4.1 of the Standards for RTOs requires that information disseminated by the RTO be accurate and factual and meet 14 prescriptive requirements relating to matters such as where the NRT logo can be displayed and how training product codes must be used.
  - Where relatively minor or administrative issues (that arguably have limited or no impact on student outcomes) are recorded as non-compliance, this can dilute ASQA's capacity to distinguish risk and manage accordingly.
- **Some standards are outcomes-focused but do not form part of the standard suite of clauses audited by ASQA.**
  - For example, clause 2.2 of the Standards for RTOs requires providers to systematically monitor their training and assessment strategies and practices to ensure ongoing compliance with Standard 1 and to systematically evaluate and use outcomes of the evaluations to continuously improve the RTOs training and assessment strategies and practices.
  - While this clause is critical in requiring providers to embed systems for monitoring and continuously improving their practice, it does not form part of the standard suite of clauses audited by ASQA (see [Figure 1](#)).

- **ASQA’s audit practice includes a focus on documentation.**
  - Auditors routinely review large amounts of documentation, such as provider marketing materials, training and assessment strategies, trainer and assessor files, student files and records.
  - While discussions are held with provider staff, ASQA infrequently interviews students due to the logistical challenges associated with this task.
  - As such, it is hard to get a deep understanding of the quality of a provider’s training delivery and the student experience.
- **ASQA audit reports provide examples of non-compliant practice rather than describing the systemic issues or impact of the non-compliance.**
  - This can be perceived by providers as ASQA ‘looking for an excuse’ to find non-compliance.
  - It also encourages providers to fix the specific problem or the example identified in the audit report, rather than addressing the underlying cause or systemic issue.
- **The way that ASQA communicates with the sector tends to be input focused.**
  - For example, many of the communications on ASQA’s website are task oriented (such as the [RTO obligations checklist](#)), rather than focusing on encouraging providers to systematically monitor, evaluate and continuously improve their practice, engage with industry and use findings to ensure the relevance of training and assessment and the current industry skills of trainers and assessors, and understand student experience and outcomes to drive continuous improvement to practice.
- **ASQA does not describe (and nor do providers perceive) ASQA’s role as focused on promoting a culture of self-assurance by providers.**
  - ASQA’s website describes ASQA’s regulatory approach as ‘protecting the quality and reputation of the Australian VET sector by using a risk-based approach to regulating training providers and accredited courses’.
  - By contrast, TEQSA’s website describes TEQSA’s overarching regulatory philosophy as placing ‘a significant emphasis on promoting and facilitating a culture of effective self-assurance as an integral part of a provider’s ordinary operations’.
- **Self-assessment tools are not well developed and not well used within the sector or by ASQA to inform performance assessment.**
  - While ASQA publishes a self-assessment tool, it is not a requirement of registration and use of the tool is not legislated. The tool asks a set of generic questions against each Standard, rather than providing prompts and reflective questions to support providers to consider the intent of each Standard and how they can achieve this.
  - As such, it is not widely used by providers to help them to self-assure or by ASQA.
- **The RTO annual declaration on compliance is not meaningful and does not drive a focus on quality systems and good governance to support outcomes.**
  - The annual declaration on compliance is essentially a checklist, which many providers see as a task to be completed for the regulator (a regulatory burden) rather than as an opportunity to test systems and genuinely report areas of weakness and areas for improvement.

- The template does not encourage or support providers to meaningfully consider their practice, to demonstrate how they ensure compliance with the standards nor highlight areas for continuous improvement. As such, the annual declaration on compliance does not provide ASQA with a sound basis on which to identify risk, nor does it provide a window into provider performance.

Rather than focusing on outcomes (and self-identifying means for achieving those outcomes consistent with each provider's business model, learners and industry) many providers seek compliance checklists, examples and specific advice from ASQA about what they need to do to meet ASQA's compliance expectations. This was described in a submission from one stakeholder:

*'Instead of just providing descriptive statements in a user guide, ASQA should be required to provide a number of examples of completed assessment tools... For example, they should publish examples of good observation checklists with mapping to the criteria they are gathering evidence against across a range of scenarios in the business, hospitality, auto mechanic, retail, first aid, agriculture industries. This would give a much more reliable and clearer example for providers to follow. They should also provide examples like this for written tests. Instead of just providing descriptive statements in a user guide, ASQA should be required to provide a number of examples of completed trainer and assessor profiles and supporting evidence to demonstrate competency and currency across a range of industries so this also gives providers a clear indication of what's expected.'*

With such a large and diverse sector, this approach to regulation is not sustainable, nor is it aligned with best practice. Rather, the focus of ASQA's regulatory approach must rely on providers self-assuring and being held accountable for their own compliance, with ASQA testing the provider's systems and processes for ensuring sustained compliance, continuous improvement and quality outcomes for students.

In such an environment, the market does not depend on ASQA to provide prescriptive advice or to 'check' compliance. Rather, providers operate in a culture of self-examination and continuous improvement, considering compliance with the standards as a core part of their business (to achieve outcomes for students), not as something they do only for the regulator at audit.

This was effectively articulated in a recent AAT case<sup>13</sup>:

*'The respondent is charged with a difficult task. It must protect the reputation of the education sector and in doing that abide by and apply a set of Standards. It is not just a case of ensuring that one provider complies with the Standards across one subject. It must ensure that thousands of providers comply with the Standards across a great many subjects. This task is made more difficult because there is a need to ensure a consistency of standards across a range of different providers. The aim is to ensure that the certificate from Provider A in respect of subject X is of the same level as the certificate from Provider B in respect of subject X. That*

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<sup>13</sup> AATA, 2019, 3645.

*requires a rigorous application of the Standards by the respondent. The respondent relies on the providers to self-regulate. It cannot possibly do otherwise...'*

## Recommendations

1. Develop a shared understanding of what 'quality' and 'outcomes' look like, how these should be reflected in outcomes-focused standards and performance assessed by ASQA.
2. Develop new standards in consultation with the sector, with a view to decreasing prescriptive detail and increasing the focus on quality training delivery and outcomes for students and employers.
3. Develop resources to support providers to meet the standards including self-assessment tools to encourage continuous improvement.
4. Adjust ASQA's approach to performance monitoring in line with revised standards and a focus on provider self-assurance.
5. Publish more information regarding provider performance to support students and employers to differentiate between providers.
6. Realign ASQA's cost recovery arrangements to reflect ASQA's new approach to performance monitoring.

Many of these changes are beyond the remit of ASQA alone and involve joint responsibility with other stakeholders such as the Department, State and Territory governments, other regulators and providers.

It is proposed that the Standards for RTOs are reviewed as a first priority, noting that review of the National Code and the ELICOS Standards will necessarily involve a wider stakeholder group (including a broader group of regulators and education providers).

These recommendations set out a long-term vision and structural reforms for the regulation of the VET sector. Recognising that this will take some time, it is further recommended that, in parallel with this, changes be made to ASQA's audit practice and engagement with the sector to start shifting the focus to one of self-assurance, quality and outcomes. These short-term actions are outlined in the subsequent chapters.

## Chapter 6 – Clarifying and modernising ASQA’s role and regulatory culture

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### Issues

Much of ASQA’s focus to date has been on unifying the organisation, developing a risk-based approach to audit and removing poor performing providers from the sector.

A key challenge for ASQA has been developing and communicating a consistent understanding of its role and regulatory approach. The VFH scheme crisis meant that stakeholders (including governments) expected ASQA to be a ‘strong’ regulator. This has impacted considerably on the regulatory culture of ASQA.

Confusion regarding ASQA’s role and regulatory posture was evidenced in discussions with ASQA staff, government agencies and submissions from a number of stakeholders who variously:

- expressed concern that an increased focus on education and engagement may equate to ASQA ‘going soft’ on poor performing providers
- queried whether ASQA’s key role is in quality assurance, education or investigation
- felt that ASQA should take into account the economic impact on the sector before making a regulatory decision
- felt that ASQA should adopt a different approach to providers delivering courses to overseas students because motivations for study were more closely aligned to short-term residency rather than the needs of Australian employers
- queried ASQA’s role, relative to others, in driving the quality of the VET sector
- mistakenly understood ASQA to play a lead role in determining policy and standard setting for the VET sector.

Submissions largely reflected the words of Professor Malcolm Sparrow (a leading international expert in regulation and risk control) who stated over 20 years ago:

*Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature: be less intrusive – but be more effective; be kinder and gentler – but don’t let the bastards get away with anything; focus your efforts – but be consistent; process things quicker – and be more careful next time; deal with important issues – but do not stray outside your statutory authority; be more responsive to the regulated community – but do not get captured by industry.<sup>14</sup>*

The rapid review, and the broader VET reform agenda, provide an opportunity to reset not only stakeholders’ expectations of ASQA but also the way that ASQA regulates, in line with a shared vision for VET.

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<sup>14</sup> Professor Malcolm Sparrow 2000, *The Regulatory Craft*, Washington, p. 17.

## Recommendation

7. Build a common understanding of ASQA's role and regulatory approach, what stakeholders can and cannot expect of ASQA and areas of shared stakeholder responsibility.

Clarifying ASQA's role and regulatory approach does not mean simply making changes to the formal statement of ASQA's purpose or to its corporate reporting.

Rather it means embedding within the organisation a shared understanding of what ASQA does and does not do, what its focus should and should not be, and the matters on which it should and should not engage with stakeholders. This needs to be consistently communicated at all levels within the organisation, with VET providers and other stakeholders. Developing and embedding a common understanding of ASQA's role in VET regulation within the sector will take time.

The following table provides some examples of ways in which ASQA's role and regulatory approach could be clarified, in line with best practice regulation. This provides prompts only for further development by ASQA, including to reflect ASQA's 'own voice', and for discussion with stakeholders. Some of the descriptors included below have been drawn from other regulators (such as TEQSA) and also from best practice regulatory resources.

ASQA's role and best practice regulatory approach	Not ASQA's role and/or not consistent with best practice regulation	Implications for other stakeholders
<b>Approach to quality assurance and regulation</b>		
Promote and facilitate a culture of effective self-assurance as an integral part of a provider's operations.	ASQA does not monitor all aspects of a provider's business to ensure compliance with all regulatory requirements.	Providers ensure their systems, processes and practice support the delivery of high-quality VET and continuous improvement (informed by feedback from students and industry and in line with relevant policies and regulation).
Adopt a consistent approach to the regulation of providers delivering to Australian students and overseas students.	ASQA does not adopt differing regulatory approaches based on who the provider is training and the corresponding regulatory framework. ASQA does not take into account the economic impact of the sector in determining how to manage poor performance.	While the legislative frameworks differ (and different intelligence may inform ASQA's monitoring strategy), all providers can expect ASQA to apply a consistent approach to audit and treatment of non-compliance.
Minimise regulatory impost to only that which is necessary.	This does not mean that ASQA does not impose any regulatory burden – effective regulation provides a benefit to all stakeholders by supporting confidence in the sector. There is necessarily a cost to this but ASQA will seek to minimise this cost, consistent with Commonwealth cost recovery guidelines.	Other government agencies share responsibility for the regulatory framework applied by ASQA and for reducing unnecessary or duplicative requirements. ASQA will work with these bodies to assist in identifying unnecessary, duplicative or inappropriate regulation.

ASQA's role and best practice regulatory approach	Not ASQA's role and/or not consistent with best practice regulation	Implications for other stakeholders
Embed a variable touch approach to regulation, guided by risk.	ASQA does not look at every provider at defined intervals. The selection of providers for audit (or other monitoring activity) will be informed by risk, with some routine monitoring undertaken to provide sector-wide assurance of performance.	While ASQA only audits or otherwise examines provider performance at irregular intervals (and within defined parameters), providers are responsible for ensuring that they meet the regulatory requirements at all times and for regularly assessing and improving their performance.
Adopt a sampling approach to audits and other monitoring activity.	ASQA does not look at all aspects of a provider's business or performance – it will purposefully sample evidence to understand performance.  ASQA does not focus on looking for non-compliance, but instead on understanding performance in line with the scope of any audit/monitoring activity.	
Use regulatory intelligence to communicate compliance and enforcement priorities to the sector.	ASQA cannot give each provider tailored information about how they meet their regulatory obligations but can highlight areas of risk or common non-compliance and provide tools to the sector to support them to reflect on their practice.	
<b>Relationships</b>		
Relationships between ASQA and providers are cooperative and respectful.	While there will inevitably be disagreements and litigation, ASQA does not adopt an unnecessarily adversarial approach and will seek to resolve disputes as efficiently as possible.	Providers are responsible for cooperating with ASQA and engaging respectfully.
Relevant provider information is shared with other regulators and funding bodies.	In most cases, ASQA seeks feedback from providers before sharing information, noting some situations warrant sharing of information without prior notification to the provider.	Other regulators and funding bodies also share intelligence with ASQA.
<b>Engagement and education</b>		
Information and guidance support providers to meet their regulatory obligation. This includes: <ul style="list-style-type: none"> <li>• information about the regulatory requirements, ASQA's expectations and common areas of non-compliance</li> <li>• tools to support providers to understand their own performance and regulatory requirements.</li> </ul>	ASQA does not tell providers <u>how</u> to meet the requirements because this will necessarily be informed by each provider's business model, learner needs and employer expectations. For example, ASQA does not: <ul style="list-style-type: none"> <li>• provide sample best practice training and assessment strategies for different sectors</li> <li>• tell providers exactly how to fix any non-compliance (focusing instead ensuring that the provider</li> </ul>	Peak bodies and others play a role in helping providers to develop their own internal quality assurance systems in line with the requirements. This may also include providing tools, templates and examples, relevant to different sectors.

ASQA's role and best practice regulatory approach	<u>Not</u> ASQA's role and/or not consistent with best practice regulation	Implications for other stakeholders
Auditors clearly and consistently assist providers to understand: <ul style="list-style-type: none"> <li>• ASQA's process</li> <li>• the regulatory requirements</li> <li>• any non-compliance identified (including why the evidence establishes non-compliance and the significance of the non-compliance).</li> </ul>	understands the problem and the regulatory expectation).	
<b>Managing non-compliance</b>		
Provide reasonable opportunity for the provider to return to compliance and to sustain compliance.	ASQA may not apply the same regulatory action in response to the same non-compliance by different providers. This is because the appropriate action will depend on factors including the behaviour of the provider, the recurrence of non-compliance, etc.	Others have a responsibility for supporting sustained compliance of the sector, including to build a strong and respected sector.  When stakeholders (consumers, employers, providers or others) have concerns about a provider (and their delivery of quality training) these should be raised with the provider directly and/or shared with ASQA.
The response to any non-compliance is proportionate to the nature, severity, extent and risk of the non-compliance that needs to be addressed.	ASQA is neither a 'strong' nor a 'soft touch' regulator – ASQA adopts a proportionate response.	



## Chapter 7 – Aligning governance arrangements with ASQA’s renewed focus

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### Changes to structure and organisational focus

#### Issues

Under current arrangements, ASQA is a non-corporate Commonwealth entity led by three Commissioners. The Chief Commissioner is also the CEO of the organisation and is the accountable authority for the purposes of the [Public Governance, Performance and Accountability Act 2013](#) (PGPA Act). As a matter of practice, all three Commissioners have been assigned operational responsibilities and the roles of the two additional Commissioners are distinguished as ‘Regulatory Operations’ and ‘Risk Intelligence and Regulatory Support’. A single Commissioner makes most of the adverse decisions, with some decisions being made by all three Commissioners. Since early October 2019, ASQA has been operating with a Chief Commissioner and one Commissioner only.

While establishment of ASQA as a non-corporate Commonwealth entity remains appropriate, the governance structure that includes the appointment of a three Commissioners structure is no longer fit-for-purpose. Reasons for this include:

- There is currently a lack of clarity regarding the roles and responsibilities of the Commissioners. While the CEO (being the Chief Commissioner) is the accountable authority for the purposes of the PGPA Act and the three Commissioners are established in the legislation (and have certain functions as a Commissioner team), there is no clarity regarding the role of the two Commissioners (particularly distinct from the Chief Commissioner). As noted above, as a matter of practice, they play an operational role rather than providing strategic oversight and direction as to the management of the organisation.
- When compared to other regulators, the most common approach is for one individual to lead the organisation as an accountable authority.
  - As at September 2019, there were approximately 101 non-corporate Commonwealth entities (i.e. Commonwealth bodies established in the same way as ASQA). Of these, only three do not have an individual as the accountable authority, and instead have a board or collection of individuals acting as the accountable authority.
  - Office of Parliamentary Council (OPC) Drafting Directions provide that ‘in general non-corporate statutory bodies will have a CEO and not a governing board (but may in some cases have an advisory committee)’.<sup>15</sup>
- The structure of multiple Commissioners reinforces a practice of decision making at the highest level, which impacts internally (including through delayed decision making) and also impacts regulated entities that may be denied opportunities for internal reconsideration.
  - ASQA has a very high volume of decisions: over 5,000 per year, with approximately 17% of decisions involving regulatory action during 2018-19.

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<sup>15</sup> *Drafting Direction No. 3.6, Commonwealth bodies*, Parliamentary Counsel, December 2016, page 19.

- While the legislation enables delegations of all decisions, the majority of adverse decisions are made by a single Commissioner with a small number being made by all Commissioners.
  - The current structure encourages adverse decision making at the Commissioner level, despite delegation capacity for such decision making to be made at lower levels (consistent with the practice of other like regulators).
  - Under the NVR Act internal reconsideration can only be sought if the original decision was not made by all three Commissioners. This means some providers do not have the opportunity for internal reconsideration of decisions.
- While the organisation undertakes strategic planning, engagement with the sector and education activities, the organisation is largely structured around regulatory operations and support. There is opportunity to strengthen the focus on other critical aspects of ASQA’s business such as strategy and communication and engagement through restructuring management roles and restructuring the arms of the organisation.

## Recommendations

8. Change ASQA’s organisational structure and focus to strengthen strategic oversight and managerial capacity to:
  - support implementation of critical reforms (including in relation to engagement and education, performance assessment and proportionate response to non-compliance)
  - support change management
  - strengthen internal systems and quality controls.

Specifically, it is proposed that:

- **Upper management be restructured by removing the two Commissioners and redefining the role of the CEO.** This enables the CEO to perform a role more consistent with the head of an agency, including to lead ASQA’s short and long-term strategy, make top-level managerial decisions that determine the objectives, resources and policies of the organisation. It also enables better allocation of operational responsibilities and decision making within the organisation. Creating new SES positions accountable to the CEO will enable replacement of the existing Commissioner positions to maintain managerial capacity, provide the organisation with capacity to support the significant reform agenda while also ensuring accountability and clarity of roles and relationships.
- **The CEO not be responsible for individual regulatory decisions and that delegations enable decision making at the appropriate level** (depending on the nature of the decision). For the most significant decisions, it is proposed that decision making occur at the SES Band 1 level such that there would always be the opportunity for internal reconsideration by the SES Band 2. This aligns better with many other regulators, where the agency head is not the regulatory decision maker and decision making is delegated, with capacity to escalate based on the circumstances.
- **The management team (accountable to the CEO) and structure be adjusted** so that there is:
  - a Deputy CEO
  - a six-person management team to focus on strategic leadership and risk management

- a four Branch structure with an increased focus on:
  - quality assessment and monitoring (rather than audit and regulatory operations)
  - engagement and education (with a Branch dedicated to this function)
  - internal policy and performance monitoring (such that all internal policy is coordinated, and internal performance is monitored, with close connections to engagement and education)
  - creating greater capacity for internal reconsideration and dispute resolution (to resolve non-compliance and serious issues without the need for AAT adjudication where possible)
  - change management across the organisation.

In order to maintain the independence of ASQA it is recommended that:

- **The CEO be appointed by the Governor-General.**
- **ASQA remain an independent listed non-corporate Commonwealth entity**, with express provisions in the legislation preventing Ministerial direction in relation to individual regulatory decisions (see section 160 of the NVR Act, which provides for the Minister to give directions to ASQA if the Minister considers that the direction is necessary to protect the integrity of the VET sector, but expressly prohibits Ministerial directions regarding particular bodies, providers, accredited courses, etc.).

#### **Why not create a governance board?**

Consideration was given to establishing a governance or managing Board that would be the accountable authority for ASQA. However, this option is not preferred for reasons including:

- Boards are usually most appropriate in the context of a corporate Commonwealth entity whose activities are commercial in nature, or for organisations with a wide remit, or when collective decision making and diverse expertise (beyond what can be expected from one individual) is required to lead the organisation. By contrast, ASQA has a limited remit (as a regulator and not also a policy, funding or standards setting body) such that a governing board is not necessary to ensure accountability for performance.
- While various reviews have identified the desirability of strengthening ASQA's strategic focus and sector engagement, issues have not been identified with respect to the accountability of the organisation under the PGPA Act such that it warrants replacement of a CEO with a Board. Rather, many of the issues identified can be addressed through streamlining and clarifying accountabilities, through a strong management team (with capacity to support these enhanced functions) and with advice from a high-level and expert advisory council.
- Establishing a board between the CEO and the Minister potentially introduces further lack of clarity regarding the functions and accountabilities of each role.
- Establishing a board comes with significant expense that is not readily justified for an organisation as small as ASQA and with its limited scope. Some of the benefits of a board (external expertise and advice) can be achieved through an advisory council, without creating additional cost and confusion regarding accountabilities.

## Access to ongoing expert advice

### Issues

While ASQA engages with stakeholders through forums such as the Provider Roundtables and the VET Reference Group, as well as gaining stakeholder feedback through mechanisms such as the annual survey of training providers and course owners, there is currently no formal or regular mechanism for ASQA to seek expert advice on its practice or to engage with key stakeholders.

Recent reviews have highlighted the need to enhance ASQA's engagement with stakeholders and also expand its circle of dialogue with stakeholders who could help drive continuous improvement (both within ASQA and within providers). For example, the Braithwaite review recommended that:

- ASQA develop and implement processes to enhance its capabilities and opportunities to proactively engage in regulatory conversations with students, teachers, providers, industry and other interested stakeholders
- in order to enhance transparency and consistency in the use of the legislative framework, ASQA should build on its regulatory conversations and practice reflections to develop and clearly articulate to the regulated community the principles applied to the interpretation of legislation and the use of powers
- the Australian Government explore ways to strengthen the regulatory framework by expanding the circle of dialogue around improving the quality of the student journey pre- and post-audit to include all stakeholders who could contribute to future improvement in a provider's performance.

While engagement and education should continue to occur in many different ways (with different approaches adopted to achieve different outcomes with different stakeholders) many regulators have expert bodies that are constituted to advise them on their functions, strategic objectives and approach to regulation. For example, the:

- Australian Competition and Consumer Commission has a Consumer Consultative Committee
- Aged Care Quality and Safety Commission has the Aged Care Quality and Safety Advisory Council
- Australian Radiation Protection and Nuclear Safety Agency has the Radiation Health and Safety Advisory Council
- TEQSA has the Higher Education Standards Panel
- Therapeutic Goods Administration (TGA) has the TGA Consultative Committee
- Gene Technology Regulator has the Gene Technology Technical Advisory Committee.

These types of expert and advisory bodies can provide a valuable source of strategic advice to regulators, enable sharing of information confidentially, and support the confidence of the sector in the regulator.

## Recommendations

9. Establish an advisory council to improve access to high-level ongoing expert advice including in relation to ASQA's strategic objectives and approach to regulation.

It is proposed the advisory council:

- be made up of members who are appointed for their experience and/or knowledge (rather than representing any particular stakeholder interests)
- provide ASQA with access to expert strategic advice, which supports ASQA to continuously improve as a regulator while maintaining independence regarding regulatory decision making (the advisory council would not comment on individual regulatory decisions)
- would determine its own procedure and would meet when necessary (within appropriate budget constraints)
- provide an avenue to continue to build and maintain the confidence and trust of those being regulated and the broader community and signals about ASQA's evolution as a regulator and commitment to learning from the expertise of others.

## Chapter 8 – Strengthening engagement and education

### Engagement with providers and peak bodies

#### Issues

Many stakeholders consulted throughout this rapid review acknowledged positive aspects to ASQA's engagement with providers, including recent improvements such as:

- recent changes to the layout and location of information on the ASQA [website](#) (which received 579,019 visits in 2018-19)
- industry briefing sessions facilitated by ASQA
- the news items and articles published in the [ASQA Update](#)
- ASQA's Info Line (which received 43,225 calls and 15,097 emails in 2018-19)
- ASQA's [discussion series](#), videos featuring roundtable discussions with ASQA auditors and VET leaders developed in partnership with sector stakeholders to provide answers to common regulatory questions.

Stakeholders also acknowledged the *Users' Guide to the Standards for RTOs* and the useful tips and case studies it contains.

#### The Users' Guide to the Standards for RTOs

The [Users' Guide](#) provides extensive guidance to assist RTOs to understand their obligations under the Standards for RTOs. The Users' Guide does not provide definitive checklists, noting that 'one size fits all' compliance checklists can be overly restrictive and limiting for Australia's diverse range of RTOs. Instead, the Users' Guide describes how the Standards are relevant to RTOs at each phase of the student journey, outlines how RTOs might meet the Standards and provides examples and case studies illustrating the types of evidence that might demonstrate what is actually happening for the student at each phase of their journey.

However, as noted in [Chapter 4](#), stakeholders have consistently expressed a desire for ASQA to strengthen its sector engagement and education, noting wide-ranging stakeholder expectations:

- Some stakeholders are seeking ASQA's support to complete applications for registration as an RTO or CRICOS provider and some seek detailed advice on how to meet the standards.
  - These functions are beyond the role of a typical regulator and should necessarily be influenced by the type of business, the needs of its learners and industry, and the sector in which it is operating.
  - There must be reasonable expectations of stakeholders (and boundaries) in terms of those matters on which it is appropriate for ASQA to communicate with different stakeholders.
- Some stakeholders have expressed concern that an increased focus on engagement and education could equate to being lenient towards non-compliant providers.

- Effective sector engagement should not be seen as an alternative to compliance action but a critical foundation of such action. As noted by the OECD:

*‘Achieving good regulatory outcomes is almost always a cooperative effort: by the regulator and other regulators, the regulated, and often the broader community. Governance arrangements for regulators can be important to foster such cooperative efforts and build the legitimacy of any necessary, strong enforcement action’.*<sup>16</sup>

- Some stakeholders suggested ASQA case managers be assigned to each provider to manage all interactions between ASQA and the provider.
  - While this is one of the mechanisms used by NZQA and TEQSA to engage with regulated entities, this is not viable for an organisation such as ASQA with almost 3,800 providers to regulate.

Acknowledging these diverse stakeholder expectations and recent improvements, ASQA staff have recognised that more can be done to work collaboratively with the sector to improve understanding of, and performance against, regulatory requirements.

Effective sector engagement must go beyond fact sheets and briefing sessions. It must permeate the culture of the organisation and be reflected in each of its processes – be it development of new approaches to regulation, governance or communication around the outcomes of monitoring activity.

Strong stakeholder engagement and communication will also be critical for implementing reform and embedding changes in ASQA’s culture and approach to the regulation of providers.

## Recommendations

- 10.** Strengthen ASQA’s strategic stakeholder engagement and education, including to:
- build provider capacity for self-assurance
  - co-design new regulatory tools with the sector (for example, to support self-assessment)
  - identify common areas of non-compliance and develop consistent guidance for external stakeholders and for ASQA.

ASQA’s work in improving engagement with providers to date, including through improvements to the useability of ASQA’s website and the publication of online guidance materials, is commended and should be continued.

It is crucial that ASQA continues to work with providers to communicate how ASQA is implementing changes recommended throughout this report and continuously build provider capacity. Engagement and education are also critical to ensure that providers understand the expectations of

<sup>16</sup> OECD 2013, *Principles for the governance of regulators*, Paris.

government (and the intent of standards and regulations) and the approach and expectations of ASQA on an ongoing basis and when non-compliance is identified.

Engagement with providers and other sector stakeholders will be further improved through the implementation of other recommendations throughout this report, including:

- the establishment of an advisory council and changes to the structure of ASQA to support enhanced engagement (discussed in [Chapter 7](#))
  - This will help to embed a culture of sector engagement in each element of ASQA’s practice.
- improved training, tools and templates to support ASQA staff to engage effectively with providers at each touchpoint to provide clarity and consistency regarding ASQA’s expectations (discussed in [Chapter 13](#)). This will support ASQA staff to effectively engage with providers in a manner that fosters collaboration and improvement. For example, through:
  - communications throughout the audit process, including the way auditors seek information from providers and ask questions to determine compliance
  - audit reports, including to more clearly articulate non-compliance
  - letters to providers regarding non-compliance and the potential consequences, including to better articulate the purpose of the letter (and reduce the severity of the language currently used).

The recommendations identified above will support ASQA to build the confidence of the sector that compliance activities are undertaken in a transparent and consistent manner.

## Engagement with policy makers, funders and other regulators

### Issues

Other stakeholders, including policy makers, State and Territory Governments, other regulators and industry bodies have direct interest in ASQA’s work and engage with ASQA through various mechanisms. ASQA leads, or participates in, a number of forums for discussing issues with policy makers, funders and other regulators.

For example, ASQA engages with:

- **State and Territory Governments**
  - The *Vocational Education and Training Communication Protocol* sets out agreed communication protocols between ASQA and each State and Territory Government. The protocols commit the parties to consult and share relevant information to support efficient and effective national regulation of RTOs and the effective and efficient delivery of VET within the States and Territories. Regular engagement occurs at both the operational and senior management levels.
  - While ASQA occasionally engages with senior State and Territory Government officials through SSON, this engagement has not to date focused on feedback around system issues and opportunities for reform.



- ASQA also plays a role in supporting States and Territories to ensure State and Territory funded providers meet their compliance obligations by notifying States and Territories of provider non-compliance against the standards (refer [Chapter 11](#)).
- **The Western Australian and Victorian VET regulators**
  - ASQA’s Commissioners meet quarterly with TACWA and VRQA to discuss strategic matters and observed trends and risks in the sector.
  - Operational discussions occur on a regular basis regarding approaches to regulation, areas of inconsistency and opportunities for improvements. For example:
    - VRQA implemented a new approach to assess applications for course accreditation, enabling providers to submit a VET course concept proposal to determine the need for the course prior to submitting a full application. This enables the regulator to determine whether the course is duplicative or will fill an identified gap in the market, preventing the provider from investing in an extensive application process where the concept does not meet VET course eligibility requirements. This approach was subsequently adopted by ASQA, as part of the five-stage approach to course accreditation, with positive response from the sector.
  - Information is also shared between ASQA, TACWA and VRQA in relation to non-compliant providers.
- **Other Commonwealth regulators** including the Department, TEQSA and the Department of Home Affairs to align their regulatory approaches, share information and manage compliance concerns, particularly in relation to CRICOS providers and overseas students.
- **IRCs and SSOs**
  - [IRCs](#) work with [SSOs](#) to develop training packages and ensure that industry skill requirements are reflected. There are 66 IRCs supported by six SSOs.
  - ASQA engages with IRCs and SSOs on an ad hoc basis, generally when an SSO requests advice in relation to a specific issue regarding the development of a training package. ASQA also notifies SSOs of applications for registration and renewal of registration received and finalised.

While ASQA engages extensively with other government agencies, ASQA’s strategic engagement with SSON, IRCs and SSOs is limited.

As noted by the OECD:

*‘The substantive policy objectives of compliance-oriented regulation must be totally integrated and consistent with the way the rules are enforced in practice. This means that policy makers will need practical information about target populations and feedback on feasible regulatory strategies from those who implement the law. Those who implement the law, on the other hand, will need to understand well the objectives of the regulation in order to be focused on achieving that objective, not just enforcing isolated rules.’<sup>17</sup>*

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<sup>17</sup> OECD, 2000, [Reducing the risk of policy failure: Challenges for regulatory compliance](#).

## Recommendations

- 11.** Strengthen strategic engagement with SSON, IRCs and SSOs to establish a feedback loop regarding broader VET reform, training packages, their intent and their implementation by providers.

ASQA's stakeholder engagement could be strengthened by working with SSON, IRCs and SSOs in a more strategic way to understand industry training needs, the intent of certain training packages and to seek industry feedback to understand whether certain providers are providing training that meets industry needs.

This recommendation is also dependent on the SSON, SSOs and IRCs working with ASQA to implement more formalised processes for engagement.

## Chapter 9 – Using intelligence to effectively monitor strategic risk and provider performance

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### Strategic risk

Currently ASQA uses a risk-based model of regulation, collecting and analysing data and intelligence to determine where providers may be failing to deliver quality training and education to inform consideration of risk. Consistent with the [Regulator Performance Framework](#) and as outlined in ASQA's [Regulatory Risk Framework](#), ASQA manages risk on two distinct levels:

- operational risk (i.e. provider risk)
- strategic risk (i.e. systemic risk).

Systemic risks are those likely to affect a significant proportion of providers across the VET sector or specific industry sectors and represent a significant risk to the quality and outcomes of VET if left untreated.<sup>18</sup>

#### ASQA's risk-based approach to regulation

ASQA's risk monitoring and intelligence functions have been (and continue to be) informed by a range of national and international approaches to intelligence management and regulatory practice, including consultation with other regulatory agencies (such as the Australian Taxation Office, the Department of Human Services, the Civil Aviation Safety Authority, the Therapeutic Goods Administration, the Australian Communications and Media Authority, the Department of Agriculture, VRQA, TACWA and TEQSA). Other key contributors to ASQA's approach include: [Professor Malcolm Sparrow's](#) risk-based approach to regulation, the United Kingdom's [National intelligence model](#), the Australian Government's [Guide to Regulation](#), Ayres & Braithwaite's [Responsive Regulation](#), participation in the [ANZSOG Regulators Network](#) and other published regulatory literature.

To identify potential systemic risks in the VET sector, ASQA undertakes regular environmental scanning, including consideration of:

- Australian Government priorities and other policy development and review processes underway
- data and intelligence from a wide range of sources.

Feedback from a broad range of external stakeholders (including State and Territory Governments, peak bodies, providers, employers, industry unions and student representatives) is used to determine the key issues and risks to the sector. An internal reference group reviews the findings from the environmental scan and stakeholder consultation to determine priorities.

ASQA publishes a [Regulatory Strategy](#) each year, outlining the systemic risks likely to affect a significant proportion of providers and that may compromise the quality and outcomes of VET if they are not treated. ASQA publishes the Regulatory Strategy to advise the sector (including

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<sup>18</sup> Australian Skills Quality Authority 2019, [Regulatory Strategy 2019-20](#), p. 3.

students, providers and other regulators) of the areas where ASQA considers there are the most significant risks, and ASQA's intended approach to regulation in these areas over the next two years.

The Regulatory Strategy feeds into ASQA's strategic planning, as reflected in ASQA's [Corporate Plan](#) each year and ASQA's [strategic review](#) program.

ASQA regularly undertakes strategic reviews into key areas of risk. For example, over recent years ASQA has explored: [the quality of international VET and English language education](#), [unduly short training](#), and [training for early childhood education and care](#). Strategic reviews are published on ASQA's website and present findings and recommendations to address and reduce the identified sector level risk.

ASQA is continuing to develop and expand this comprehensive approach to intelligence management and risk identification to enable strategic responses to systemic risks.

### Using strategic responses to systemic risk to 'nudge' provider performance

ASQA utilises strategic reviews to identify risks to the VET sector and communicate their findings with the broader sector.

It is proposed that ASQA further strengthen how strategic reviews inform their regulatory approach, including to:

- communicate with providers about key risks (or areas of non-compliance) such that providers can review their own practice and self-assure
- provide tools or other supports to assist providers to review their own practice
- communicate with students so that they are clear about what they can expect from their VET provider in regard to the issue of concern (also raising the profile of ASQA such that students know to contact ASQA with any concerns regarding the quality of their VET provider)
- communicate concerns with other regulators, funders and policy makers such that a coordinated strategic response can be taken
- target monitoring of specific risks where providers are still non-compliant after being supported to address the issue of concern.

This type of activity works to educate providers and 'nudge' provider behaviour towards self-assurance without unnecessary regulatory intervention.

## Provider risk

### Issues

ASQA uses information from a variety of sources (including ASQA's data warehouse of information held on providers and their history, sector intelligence, government reports and priorities and complaints) to inform its understanding of risk. ASQA maintains a database of intelligence for each provider, which informs how ASQA assesses complaints and applications, and schedules and scopes compliance audits. In relation to each provider, the database contains:

- the provider's [compliance history](#) category
- other measures of performance against established predictive risk indicators
- information reported by internal or external stakeholders (for example, through complaints, government agencies, etc.).

#### **Provider compliance history categories**

ASQA assigns a compliance history category to each provider based on the provider's:

- audit history (from the preceding three years)
- complaint history (from the preceding two years)
- compliance with data provision requirements (from the preceding two years)
- payment of fees and charges to ASQA (from the preceding two years)
- submissions of annual declarations on compliance.

The compliance history categories are:

- *Demonstrated consistently compliant* – The provider has an ongoing history of meeting its regulatory obligations.
- *Presumed compliant* – The provider appears to be meeting its regulatory obligations, but has not been recently tested (for example, through an audit).
- *Generally compliant* – The provider occasionally fails to meet its regulatory obligations but has been able to rectify when required.
- *Demonstrated rarely compliant* – The provider has a repeated history of failing to meet its regulatory obligations.
- *Restrictions* – The provider has a current condition, sanction, suspension or part rejection imposed on its registration.
- *Untested* – Providers who have been registered for less than one year and have not been audited or received a complaint.

Providers that have previously been found non-compliant but, at a subsequent audit, are found compliant can improve their compliance history category, acknowledging improvement in behaviour and practice.

The provider database is dynamic (and is updated as new information is obtained) and feeds into broader risk matrices, which enables ASQA to:

- identify providers that present greatest risk to the VET sector, the international education sector, students and the community
- make judgements regarding responses to risks.

The range of courses offered, changing enrolment numbers, subject completions, a history of non-compliance and complaints are triggers that could lead ASQA to look more closely at the operations of a particular provider and may lead to an audit.

This means that providers with a history of non-compliance are more likely to be audited by ASQA than providers that have not previously been audited.

ASQA's risk-based approach to auditing providers means that there is limited routine or random auditing of providers.

## Recommendations

12. Expand ASQA's post-market monitoring to include risk-based and routine monitoring to support public confidence in the regulation of the sector.

Routine monitoring is part of an effective compliance and enforcement program. It enables post-market monitoring of the industry as a whole and supports industry compliance and public confidence that the regulation of the VET sector effectively achieves the objects of the legislation. The purpose of any regulation is to protect the public interest and, when adopted as part of a regulator's broader compliance strategy, routine monitoring enables the regulator to understand performance across the sector.

This approach would also enable ASQA to test whether its system of risk identification is effective (i.e. by comparing levels of non-compliance between providers randomly selected and those selected based on risk).

## Access to data

The use of data and intelligence is central to informing ASQA's identification of risk and judgements relating to certain providers.

RTOs are required to report their [Total VET Activity \(AVETMISS\)](#) data annually directly to NCVER or through a State training authority or board of school studies. This includes data on all VET student enrolment and achievement activity and all VET award issuance activity it conducted in the calendar year.

This is only reported at the end of February the following year and is usually delivered to ASQA in July. This means, in some cases, that up to 18 months may have elapsed since the activity occurred before it is reported to ASQA. This data lag limits ASQA's ability to understand provider activity and risk in real time.

This issue was identified in the Braithwaite review, which recommended the Government 'increase the frequency of data provision to the NCVER to quarterly for all RTOs'.

As identified by ASQA staff, access to real time RTO data would significantly improve the value of data used to inform risk-based monitoring. Some staff described lack of accurate and timely data as the 'single biggest impediment to achieving more proportionate and effective regulatory risk management'.

The SSON's VET Data Strategy Working Group is currently working to progress options for streamlining VET data collection.

## Chapter 10 – Aligning audit practice to focus on self-assurance

### Expanding the range of monitoring activities available to ASQA

#### Issues

With almost 3,800 providers to monitor, ASQA cannot confirm the compliance of all qualifications of all providers in relation to all clauses under the standards.

Rather, ASQA uses a sampling methodology to test provider performance against regulatory requirements. ASQA tests the performance of providers predominantly through its risk-based audit approach. Auditors usually conduct an audit against a standard set of clauses, unless there is rationale for expanding or contracting the scope of the audit based on identified risks. In 2018-19, 69% of ASQA's audits included a site visit, while only 31% were desk-based.

While both desk-based and site audits are appropriate in different circumstances, audits (particularly site audits) can be resource intensive for both ASQA and the provider.

Moving forward, ASQA needs to use a wider range of monitoring activities to monitor and assess provider performance. Different types of risk require different monitoring activities to efficiently identify the nature and extent of any issues and/or non-compliance.

#### Recommendations

13. Review the provider self-assessment tool and the annual declaration on compliance, such that they better support providers to identify and address non-compliance and drive continuous improvement.
14. Adopt a range of monitoring activities that can be selected based on risk and the purpose for monitoring, to better align regulatory effort to risk.

Examples of the range of monitoring activities that could be used by ASQA include:

- **Reviewing provider self-assessments and declarations on compliance**
  - As highlighted in [Chapter 5](#), changes to provider self-assessments and declarations on compliance could be made to seek information about provider performance in critical areas. These documents could also be used as a nudge tool to influence provider behaviour and give providers an opportunity to provide examples of good practice.
  - Better use of these tools may support VET providers to identify and rectify issues without undue regulatory intervention by ASQA.
  - It is important that these tools are not used to determine non-compliance but inform ASQA's performance monitoring and to support continuous improvement in the sector.
  - If provider self-assurance is a foundation of the regulatory system, ASQA could undertake routine reviews of a sample of provider self-assessments and/or declarations on compliance to identify potential risks or areas of concern that might require further exploration.

- **Interviewing students**
  - ASQA auditors irregularly interview students as part of audits.
  - While there will not always be a need to interview students, interviews can form an important part of monitoring activity.
  - For example, when the NSW Government recently identified concerns regarding some providers not delivering any training within a funding scheme (despite having enrolled students and issued qualifications), the NSW Government called a sample of students to corroborate this concern. This quickly established that no students contacted had received training and informed the NSW Government’s next steps.
  
- **Surveying students**
  - Currently, a standardised student survey is administered by ASQA in advance of audits.
  - This survey could be adapted to account for specific concerns or risks associated with the provider concerned. For example, a set of 20 risk-based and outcomes-focused questions could be co-designed with stakeholders from which ASQA could select five questions to ask students, focused on exploring any issues of potential concern that have been identified.
  - This would offer a cost-effective and student focused way to gain insights into a provider’s performance in some key areas.
  
- **Targeted requests for documents**
  - ASQA usually requests a limited range of documents be provided in advance of site visits to inform the audit. Critical documents such as student files and trainer and assessor files are generally requested on site. This can be stressful for provider personnel and may result in delays in the information being provided to ASQA.
  - Requesting and reviewing a broader set of documents in advance of a site audit could advantage auditors such that they can more easily identify risk, target the clauses to be audited and inform lines of enquiry on site. This would provide more time on site for auditors to undertake interviews to clarify or confirm findings of document reviews and make observations and would also likely reduce stress for provider personnel during the site visit.
  - ASQA could also request and review specific documents to inform a desk-based audit or to explore an identified risk and determine whether further investigation is required.
  
- **Interviewing provider personnel**
  - While provider personnel are usually interviewed during audits, interviews with trainers and assessors are less frequent.
  - ASQA auditors could undertake interviews with provider staff outside of site audits to inform their understanding of the organisation, quickly address any concerns and determine whether further investigation is required.
  - Auditors could focus more attention on holding deeper conversations with provider staff to build an understanding of the provider’s systems and processes for ensuring compliance, rather than relying heavily on documentation.
  
- **Undertaking audits**
  - In any system there will continue to be the need for audits – both on site and desk-based.
  - Desk-based audits can result in lower cost and imposition on the provider.



- Site audits can in some cases provide a deeper understanding of the provider’s performance, particularly where concerns relate to the provider’s environment or resources/equipment. Site audits also enable face-to-face discussions with provider personnel, trainers, assessors and/or students, which can be critical to some conversations.

- **Exercising monitoring warrants**

- In addition to cooperative collection of evidence, ASQA authorised officers may also enter a premises under a monitoring warrant, which can be used to monitor compliance with provisions of the NVR Act and to monitor whether information given to ASQA is correct.

In each case, it is important for ASQA to consider the most efficient and effective means for understanding a provider’s performance, risks and resolve any issues or concerns. In each case, the outcome of the initial monitoring activity might influence next steps taken (including additional monitoring or regulatory response).

While some of the above monitoring activities are already in use and some can be expanded upon and implemented by ASQA, some of these activities should be co-designed with the sector (for example, to revise the self-assessment tools and declarations on compliance).

Changes to ASQA’s monitoring activities to better align regulatory effort to risk will also have implications for cost recovery. In addition to recovering the cost associated with this broader range of activity, any changes to the model should also promote provider self-assurance including by incentivising open disclosure, and continuous improvement.

## Chapter 11 – Appropriate and proportionate regulatory action where non-compliance is identified

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Encouraging providers to critically examine their practice when non-compliance is identified and implement sustained solutions

### Issues

Currently, when an audit report that identifies non-compliance is given to a provider, it is accompanied by a letter titled *Notice of audit non-compliance and intention to make a decision*. The letter outlines that:

- the audit identified non-compliance
- the audit report is attached
- as a result of the identified non-compliance, ASQA intends to make a decision, which may include, for example, a decision to:
  - reject the provider’s application to renew registration
  - reject a change of scope of registration
  - vary the provider’s scope of registration
  - suspend all or a certain part of the provider’s scope of registration
  - cancel the provider’s registration
- the provider has an opportunity to submit a written response to the notice, which may include additional evidence, to demonstrate the provider has addressed the issues outlined in the audit report.

Providers have 20 working days to respond to the notice of intent. As part of the provider’s written response, ASQA usually requires the provider to address the identified non-compliance so that future students will not be negatively impacted (for example by correcting documentation and/or processes going forward). In some cases, ASQA requires providers to undertake remedial action to address the impact of non-compliance on current and past students (for a specified period prior to the audit date). For example, if a qualification has been issued without adequate assessment, ASQA may require evidence that students have been contacted and invited to re-attend training and/or assessment.

Based on the response, ASQA may determine that the non-compliance has been addressed (and, if relevant, that adequate remediation has occurred) or that the non-compliance has not been addressed. At this time, ASQA may make the decision that was outlined in the notice of intent, adjust the decision or determine that regulatory action is no longer required (based on the provider’s response).

ASQA uses the audit findings and other information (including the level of risk ASQA associates with the clause that the provider was non-compliant with, the impact of the non-compliance on students and the broader sector, the provider’s compliance history and the conduct of the provider at audit) to inform its compliance assessment and determine the appropriate regulatory response.

There are six main issues with the current approach:

- **The notice of intent outlines the proposed regulatory action, which may change based on the provider's response.**
  - The proposed regulatory action to the provider's non-compliance is determined before the provider's response has been considered. While the regulatory response may change based on the provider's response, this sets up an adversarial relationship between ASQA and the provider (which is likely to focus on the intended regulatory response) rather than on addressing the underlying non-compliance.
- **The notice of intent sent to the provider following audit can read severely.**
  - While the provider is afforded an opportunity to respond to the notice of intent (and ASQA will review the intended regulatory response based on this response), the notice reads harshly, with significant focus on the action ASQA will take in the event that the non-compliance is not addressed.
- **The 20-working day response period can incentivise providers to implement 'quick fixes' to non-compliances rather than methodically reviewing the provider's systems and processes.**
  - As the consequences of not addressing the non-compliance within the 20 working days can be significant, providers are motivated to quickly address the specific examples identified by ASQA in the audit report. However, in many cases, a period longer than 20 working days is needed to address the underlying issues and implement sustainable solutions.
  - For example, if the non-compliance relates to inadequate engagement with industry or the skills of trainers, this will take time to effectively address.
  - The current approach does not incentivise providers to comprehensively evaluate their practice and develop a sustainable plan for remediation.
- **The functions of audit and compliance assessment are not well differentiated.**
  - The person responsible for undertaking the audit also makes a recommendation to the delegate regarding the regulatory response (which is described in the notice of intent to the provider). The auditor is also usually responsible for reviewing the provider's response to the notice of intent and making a further recommendation to the delegate regarding the appropriate regulatory response.
  - In other like regulatory schemes, the function and role of undertaking audits is distinguished from the function of compliance assessments and determining a regulatory response. For example, these roles are separated in TEQSA, TACWA and VRQA.
- **The concept of remediation for past students is not well understood or readily implemented.**
  - Providers may be required to identify and undertake remedial action to address the impact of non-compliance on current and past students (for a specified period prior to the audit date). For example, where there has been a significant issue regarding assessment, the provider might be required to contact students to request they undertake further training and/or assessment.
  - However, students are unlikely to volunteer to undertake further training and/or assessment and if students do not respond, the provider's power to take remedial action is limited.

- The provider might contact students who have completed the qualification in the six months prior to the audit, regardless of whether the issue might have impacted students beyond this period. This disadvantages some students relative to others and does not assure employers that all graduates are competent.
- **There is not currently a strong focus on early resolution of disputed non-compliance, with many matters being adjudicated by the AAT.**
  - There is an opportunity to strengthen ASQA’s practice around internal reconsideration and dispute resolution, including to reduce the number of matters on which external review is sought.
  - In 2018-19 there were 244 applications made to the AAT seeking review of a decision made by ASQA (a smaller number of applications were also made to the Federal Court). This is not necessarily an indication that ASQA ‘got it wrong’, but rather reflects the significance of the matters at stake for many providers.
  - Providing realistic periods for genuine providers to sustainably address non-compliance, requiring all providers to seek internal reconsideration before AAT review (as achieved through recent amendments to the NVR Act) and seeking to resolve disputes as early as possible, provides a more cooperative, quicker and more cost-effective resolution of issues for both the provider and ASQA.

## Recommendations

15. More clearly distinguish the functions of monitoring provider performance and determining the most appropriate regulatory response where non-compliance is identified to improve consistency of audit outcomes and proportionality of regulatory response.
16. Give providers opportunity to remedy any identified non-compliance within 20 working days, or in accordance with an undertaking to remedy (providing a longer period within which to address the non-compliance on a more systemic and sustained basis).
17. Enhance opportunity to undertake early dispute resolution.

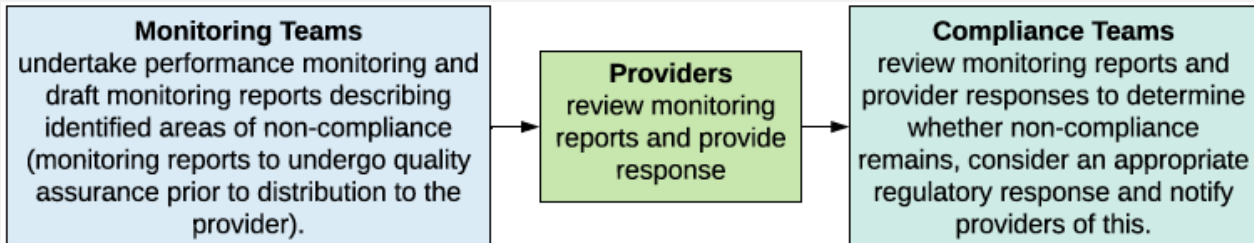
Separating the functions of monitoring (audit) and compliance assessment:

- may improve the timeliness of audit reports being provided to the provider, as the initial audit report will not be accompanied by a compliance assessment
- provides an additional moderation/quality assurance step for audit reports before a regulatory response is determined
- ensures that audit reports provide sufficient documentation of audit findings to enable another person to consider the adequacy of the provider’s response in relation to the documented non-compliance.

Giving providers the option of entering an undertaking to remedy allows providers to address the identified non-compliance before administrative sanctions are proposed or enforcement powers are exercised. It also encourages providers to consider their response to non-compliance in a more

systemic and sustained way by providing a longer period for remediation (consistent with the strengthened focus on self-assurance and systemic controls).

As a matter of practice, it is proposed that ASQA separate the functions of performance monitoring and compliance assessment as below:



- Monitoring Teams would undertake performance monitoring of providers to assess their performance against the standards (including the Standards for RTOs, National Code and/or ELICOS Standards as applicable).
  - Where non-compliance is identified, this is documented in a monitoring report, which undergoes quality assurance prior to being given to the provider with a letter advising that the provider has 20 working days to remedy the non-compliance and provide evidence of having done so or 10 working days within which to provide ASQA with an undertaking to remedy
  - The undertaking to remedy would be in a form approved by ASQA, describe and acknowledge the non-compliance, set out actions the provider proposes to take to address the non-compliance, set out the period within which such action is to be taken (up to six months) and include a statement acknowledging that ASQA may decide to impose one or more sanctions if the provider does not comply with the undertaking.
- Compliance Teams would review the monitoring reports and provider responses to determine whether non-compliance remains, consider an appropriate regulatory response to remaining non-compliances and notify providers.
- If ASQA is:
  - satisfied that the non-compliance has been addressed within the first 20 working days, no further action would be taken
  - satisfied that the undertaking to remedy is reasonable, ASQA would accept the undertaking and require evidence that the issues have been addressed at the end of the specified period. If the issues have been addressed, no further action would be taken
  - not satisfied that the non-compliance has been addressed, no undertaking has been provided, the undertaking is inadequate or the actions identified in the undertaking have not been undertaken in the required period (i.e. the issues not addressed), ASQA may issue a notice of intent to impose a sanction or exercise enforcement powers.
- ASQA would also retain capacity to go directly to a notice of intent or to impose sanctions or exercise enforcement powers in certain cases (for example, where there is significant and immediate risk to public funding, students or others as a result of the identified non-compliance), and to investigate and respond to concerns beyond the scope of the standards (for example, fraud).

## Chapter 12 – Meaningful reporting on provider performance

### Reporting to providers on outcomes of monitoring activity

#### Issues

In early 2019, ASQA adopted a new audit report template intended to improve consistency, ensure critical information was consistently communicated to providers and reflect the student-centred approach.

While these templates have increased consistency to some extent, the following issues also exist:

- **descriptions of non-compliance are often general in nature such that it is not always clear to the provider how ASQA formed its view**

For example:

- ‘The organisation has not demonstrated how the amount of training has been determined as sufficient with regard to the mode of delivery.’
- ‘The organisation has not demonstrated that its proposed delivery of training and conduct of assessment will meet all requirements of the relevant training package.’
- ‘The organisation has developed but not implemented a method of determining the support needs of individual students necessary for them to meet the requirements of the training product.’

- These statements are broad and do not necessarily support provider staff to understand where the provider has fallen short. Such statements could be strengthened by a description of how ASQA auditors formed this view. For example: *‘While the RTO’s training and assessment strategies include reference to support services, enrolment forms do not seek information from students about necessary supports. Further discussions with the manager confirmed that the RTO does not deliver student-focused supports.’*

- **audit reports can read negatively, with a focus on the provider’s failings**
  - This is because audit findings are reported by exception (i.e. only describe areas of non-compliance), where the non-compliance is not presented as part of a wider narrative about the provider’s performance.
- **audit reports often do not explain how significant and/or widespread the non-compliance is nor how the non-compliance relates to outcomes**
  - Audit reports contain examples to demonstrate how the non-compliance has presented at audit. This use of examples (without supporting context describing the non-compliance) can tend to suggest that the issue is less significant or systemic than it may be.

- **audit reports often start by describing minor or administrative non-compliance against clause 4.1**
  - This is due to the structure of the audit reports in following the student-centred journey and can give the impression that the audit has focused on prescriptive requirements rather than on quality or outcomes.
- **audit reports can be long and confusing in structure and it can be difficult for the provider to distinguish the critical information**
  - Audit reports include significant templated text including descriptions of each of the clauses and, as a result, can be lengthy.
  - Where the provider has been given opportunity to respond to the audit report, ASQA’s analysis of the provider’s additional evidence is incorporated into the body of the audit report, which can further confuse and lengthen the report.
- **audit reports do not always distinguish between significant non-compliance and less significant areas for improvement.**
  - There is not a consistent approach to documenting minor or administrative non-compliances (for example, against clause 4.1) where it might readily be remedied and does not need to impact the broader compliance assessment of the provider.
  - Clauses are classified based on risk, such that a minor non-compliance against a more critical clause (such as clause 1.8) can result in ‘critical non-compliance’ and a more severe regulatory response that is not necessarily consistent with the significance of the non-compliance.

As outlined in [Chapter 4](#), these issues were also highlighted by a number of stakeholders who expressed concern about:

- standardised wording used in audit reports
- ambiguous descriptions of non-compliance and limited detail relating to the evidence reviewed where a provider is found non-compliant and how this evidence demonstrated non-compliance
- minimal use of examples
- the lack of information regarding where a provider has been found compliant and why (to support continued compliance and improvement).

## Recommendations

18. Revise the report that is given to providers following audit to more comprehensively describe any non-compliance as identified issues against the student-centred journey; reduce the amount of non-essential text; and distinguish between minor non-compliances or areas for improvement and more significant non-compliances.

It is expected that these changes to the audit report would have the effect of making the audit report significantly clearer and easier for providers to read and understand the significance and extent of any identified non-compliances.

Consistent with recommendations in previous chapters, this realigns the audit report with ASQA's proposed regulatory approach and culture.

Changes to the audit report must be accompanied by additional training for ASQA auditors to strengthen documentation of evidence, reasoning and findings to better describe non-compliance (refer [Chapter 13](#)).

## Reporting to other regulators/funding bodies

### Issues

Currently, when ASQA identifies non-compliance and notifies the provider of the intent to take regulatory action (i.e. through a notice of intent), ASQA concurrently notifies relevant government agencies and regulators, including:

- the Department
- the [Tuition Protection Service](#) (for CRICOS providers)
- State and Territory Governments (if the national register indicates that the provider is able to deliver in a certain State or Territory)
- the [Australian Securities and Investment Commission](#) (if the provider is a listed entity)
- other government agencies (as relevant).

Stakeholders are explicitly requested not to take further action in response to the notice, as the notice only represents an intention to impose a sanction. ASQA also advises that stakeholders will be notified when ASQA has decided whether or not to impose the sanction after receiving the provider's response to the notice of intent.

There are two key issues in relation to this process:

- **the information provided to government agencies does not identify the extent of the non-compliance**, noting that this may be discussed between agencies on a case by case basis
- **the information is provided to government agencies before the provider has had an opportunity to respond.**
  - While this may be appropriate in exceptional circumstances (for example, where there is significant and immediate risk to public funding, students or others as a result of the issues identified by the auditor), in most cases, the provider should be given the opportunity to address the issues (and correct any gaps or inaccuracies in the audit report) before ASQA determines the regulatory response and stakeholders are notified of the non-compliance.
  - Communicating ASQA's intention to take action before a decision had been made, in what is a highly competitive industry, can disadvantage a provider before it has had an opportunity to address the issues identified by ASQA. This reinforces the need for considered sharing of information relating to ASQA decisions.



## Recommendations

19. Notify government agencies of provider non-compliance after the provider has had the opportunity to respond to the audit report (except where there is significant and immediate risk to public funding, students or others as a result of the identified non-compliance).

While ASQA needs to maintain the capacity to notify government agencies of significant non-compliance where this is warranted, providers should routinely be provided opportunity to respond to the audit report describing the non-compliance prior to this occurring.

Once the provider's response has been considered and ASQA has determined non-compliance still exists (and agreed to an undertaking to remedy or determined the appropriate regulatory response), other government agencies and regulators should be notified. This would also reduce the number of alerts being sent to such agencies and the impact on funders and other regulators in determining their response.

## Public reporting

### Issues

ASQA currently publishes information about certain regulatory decisions on both ASQA's website and the training.gov.au [website](#).

Publication of certain information on training.gov.au is required by law, including whether a provider's registration has been cancelled, the scope of registration has been suspended (and the reason for suspension), any conditions imposed on the accreditation of a course or if an accredited course has been cancelled (and reasons for the cancellation). This information is published upon expiry of the period for seeking reconsideration or AAT review, or the finalisation of any AAT review process.

ASQA also publishes information on its own [website](#) about certain regulatory decisions, including decisions to:

- impose a sanction (i.e. decisions to cancel, suspend or amend the scope of registration of a provider)
- impose a condition on a provider's registration
- reject an application to renew a provider's registration.

Section 209 of the NVR Act enables ASQA to publish certain information if the information would reasonably inform a person's choice to enrol as a VET student with an RTO, would encourage improvement in the quality of VET services or encourage compliance with the VET Quality Framework.

Section 170A of the ESOS Act enables ASQA to publish information relating to the results of enforcement and monitoring action. The legislation specifies that, where a provider has applied for review of a decision, this (and the results of the review) must also be published.

This information is published as decisions are made and is updated to reflect any change in status (for example, where AAT review is sought). However, the information published is minimal and does not include reasons for the decision, stating only:

- provider number, legal name, trading name
- managerial agent
- decision type
- date of decision and date of effect of decision
- status of decision and status of review.

As part of the reform of ASQA, the Government made a [commitment](#) to ensure ASQA's regulatory decisions are transparent. To support the transparency and availability of information about ASQA's regulatory activities, amendments were recently made to the NVR Act to enable the Minister to make rules about the publication of audit reports. The amendments also provide for the audit report to be in a form approved by the Minister and to be in accordance with 'audit report rules' (if any are made). It is proposed that the reports will not contain personal information unless that information is needed to identify the applicant for registration or the relevant provider (for example, where the organisation is a sole trader).

While there are calls for audit reports to be published and the Act (as amended) will enable rules to be made that specify requirements for the publication of an audit report, the audit reports that are currently prepared by ASQA are not suitable for publication. This is because audit reports:

- contain confidential business and personal information about the provider and individual staff and students
- are based on exception reporting (i.e. the reports only detail findings of non-compliance and do not report on compliant outcomes) such that publishing them would risk misrepresenting the state of the sector to the public
- do not succinctly summarise the reasons for the decision that is intended to be made
- may include gaps in information or information that providers have not yet had an opportunity to address (as part of the natural justice process)
- are point in time and do not reflect the provider's remediation of the non-compliance identified. The published audit report may therefore not represent the true compliance status of the provider.

## Recommendations

- 20.** In the short term, build on the information ASQA publishes in respect of regulatory decisions to include the main reasons for the decision, so as to improve transparency of decision-making.
- 21.** In the long-term, publish a summary of ASQA's findings regarding the provider's performance against the standards.

Given the issues identified previously (and the changes recommended to ASQA's regulatory practices and processes throughout this report), it is recommended that ASQA would not publish an audit outcome in the form of a 'report'.

Rather, in the short term, it is proposed that ASQA would build on the current information published in relation to regulatory decisions to enhance transparency by summarising the reasons for ASQA's regulatory response. For example, the:

- name of the provider
- type of audit
- scope of the audit (i.e. the clauses of the standards that were audited)
- compliance outcome
- decision reached (including, for example, any conditions imposed, the period of provider registration, etc.)
- main reasons for that decision.

In the longer-term, provider performance could be more comprehensively described at the standard level (rather than at the clause level), including information about the scope and nature of the assessment undertaken, the high level outcome and, where non-compliance is identified, the nature of the non-compliance and the action taken by the provider and by ASQA.

Following the provider's response to the audit report, ASQA could prepare a publicly facing summary. The summary would reflect both compliant and non-compliant outcomes and contain sufficient information to assist a student or prospective student to make decisions about a provider, without disclosing any personal (or otherwise confidential) information.

## Chapter 13 – Supporting ASQA staff to deliver the outcomes

### Ensuring appropriately skilled auditors

#### Issues

ASQA currently ensures auditor competence through a number of mechanisms:

- by recruiting appropriately skilled individuals with relevant experience (in many cases, experience in the VET sector)
- by requiring auditors to have certain minimum qualifications (TAE40116 Certificate IV in Training and Assessment and BSB51615 Diploma of Quality Auditing) and to have completed specific units of competency<sup>19</sup> in line with Schedule 1 of the [Standards for VET Regulators 2015](#)
- through implementation of ASQA's Learning and Development Strategy, which addresses matters such as understanding corporate responsibilities, appropriate workplace behaviours and developing leadership capability
- through some induction and on-the-job training, including internal professional development discussions and mentoring.

The above mechanisms are not sufficient to ensure competency and consistency of audit practice:

- over dependence on prior experience in one particular sector or one area of VET practice can result in different auditors adopting different approaches or focusing on specific areas of knowledge/interest
- audit is only one tool in a regulator's toolbox and each regulator applies that tool differently depending on the context. Regulators need to ensure that when auditors are assessing performance (via audit or otherwise) they have a consistent approach to the collection of information (evidence), the application and testing of that information, documentation of evidence and the communication of outcomes (reasoning and findings)
- while training in audit practice can be useful, adherence to a minimum set of qualifications limits the capacity of ASQA to recruit staff who may have other experience, qualifications or skills highly suited to their role. It also reinforces a narrow understanding of the role of a regulator, being focused specifically on audit.
  - By contrast, TEQSA case managers have no formal qualification requirements but are recruited from a range of backgrounds and have a range of different qualifications.
  - Likewise, staff working for other regulatory bodies (for aged care, therapeutic goods, gene technology, worker health and safety) do not all have experience in the particular sector being regulated and nor must they hold narrowly defined minimum audit qualifications. Rather regulatory staff are recruited based on their personal attributes and their knowledge, skills and experience more generally. They are comprehensively trained in matters of direct relevance to their role, including, in the case of auditors, the regulator's approach to assessing performance, in line with best regulatory practice.

<sup>19</sup> Specific units of competency include: BSBAUD402 Participate in a quality audit, BSBAUD501 Initiate a quality audit, BSBAUD503 Lead a quality audit, BSBAUD504 Report on a quality audit, TAEASS502 Design and develop assessment tools, TAEDES501 Design and develop learning strategies, TAEASS503 Lead assessment validation processes.

ASQA regulates almost 3,800 providers that provide training across 57 training packages and over 1,400 qualifications against three sets of standards. Each training package is substantial – for example, the Business Services Training Package (which accounts for the largest share of all enrolments) is 4,738 pages long.

Against this backdrop, it is not possible or reasonable to expect that ASQA auditors will have an intimate knowledge of different provider business models, sector-specific approaches to training and assessment, industry needs or the detail of training packages. Moreover, it is not necessary for the regulator to have the same level of specific subject matter expertise as those it is regulating.

Rather, it is imperative for auditors to have a thorough understanding of good regulatory practice and ASQA's expectations regarding how providers demonstrate compliance. ASQA staff require guidance on how to consistently navigate the environment, how to review quality systems (rather than focusing on discrete or prescriptive requirements), how to appropriately sample evidence and how to consistently interpret key elements of the standards.

Rather than relying largely on minimum qualifications and on-the-job mentoring, ASQA must ensure that:

- all auditors share certain qualities such as integrity, critical thinking, sound judgement and strong communication skills
- all auditors are consistently trained in relation to the regulatory framework, the VET sector, assessment methodology, interpretation of the standards, documentation of evidence and report writing
- there are regular opportunities for continuing professional development, which could address:
  - individual learning needs (self-identified and based on manager feedback)
  - organisation-wide learning needs – for example, regular training could also be provided on key issues such as interpretation of clauses, changes to training packages, emerging issues and common areas of misunderstanding or inconsistency in audit approach (as identified through moderation or quality assurance)
- all auditors, regardless of whether they are APS staff or panel auditors are trained consistently, with their competency also tested and moderated.

Likewise, compliance teams and decision makers within ASQA also require a core set of qualities, consistent induction training and ongoing professional development.

## Recommendations

- 22.** Strengthen induction training for ASQA auditors and decision-makers, including to support consistent regulatory practice, decision-making and documentation.
- 23.** Implement a formal program for continuing professional development for ASQA auditors and decision-makers.

When developing a strengthened induction and professional development program, ASQA may also wish to consider the qualities, skills and qualifications required for different roles, including for auditors. This is particularly important in the context of the auditors' function being defined more

broadly to include assessment of provider performance using a range of monitoring activities (discussed in [Chapter 10](#)).

It is noted that amendments would be required to the *Standards for VET Regulators 2015* to remove the minimum qualifications for both auditors and course accreditation assessors. This would have implications for VRQA and TACWA and require consideration by policy makers nationally.

## Ensuring consistency of practice

### Issues

One of the key concerns of stakeholders relates to consistency of practice across auditors and decisions makers within ASQA.

The issue of consistency is one that plagues many regulators. Consistency is hard to achieve across a large workforce, located across eight different cities, with different experiences and risk tolerances. However, consistency is also critical to driving improved performance across the sector and confidence in the regulator.

Consistency does not mean that all auditors must complete all tasks in exactly the same way. There necessarily needs to be flexibility to follow lines of inquiry and to take conversations in different directions.

While a strong system of induction training and ongoing professional development supports consistent practice, there must also be systems for identifying and addressing inconsistency as it arises.

### Recommendations

- 24.** Implement a program of internal quality assurance, including regular:
- opportunities for moderation of audit outcomes and decision-making
  - internal review of audit reports and compliance outcomes.

It is proposed that ASQA establish a team responsible for overseeing quality assurance relating to audit practice, audit reports and decision-making.

The team would:

- develop and oversee processes for quality assurance of audit reports (prior to the report being given to the provider) such that there are consistent expectations of all quality assurers (whether centrally located or embedded in audit teams)
- collate feedback from auditors regarding areas of confusion or inconsistency in practice and use this feedback to inform further training or other guidance
- regularly review a sample of auditor notes, audit reports and decisions to identify any areas of inconsistency and use this feedback to inform further training or other guidance

- co-ordinate regular moderation sessions to support auditors and decision-makers in their practice.

Throughout the implementation of these proposed reforms, ASQA should continue to build a culture of learning and development, including to support staff morale and retention.

## Panel auditors

ASQA maintains a panel of external auditors to provide additional capacity to undertake audits as required. VRQA and TACWA also use external contractors to undertake audits.

Some stakeholders expressed concern that panel auditors may have a conflict of interest or that there may be inconsistent audit practice between panel auditors and ASQA auditors.

The panel was established in 2016 under a Deed of Standing Offer through a competitive tender process. The Deed includes extensive provisions to safeguard against a potential conflict of interest between panel auditors and providers, for example, where a panel auditor is not permitted to:

- have a pecuniary interest in an RTO, CRICOS provider or owner of a VET accredited course
- hold a role related to the governance of an RTO or CRICOS provider
- be employed or contracted by an RTO, CRICOS provider or owner of a VET accredited course.

Panel auditors are managed nationally by a central team within ASQA and assigned audits on a case by case basis. Prior to the commencement of each audit, each panel auditor must confirm that, to the best of their knowledge after making diligent enquiry, no conflict exists or is likely to arise. Strict requirements exist around the disclosure of conflicts and action taken to resolve or manage conflicts. Panel auditors are also prevented from undertaking audits of providers to which they have provided consultancy services within two years of receiving a Work Order.

While conflicts of interest can be addressed, for both panel auditors and internal ASQA staff, the key issue is ensuring that all auditors consistently assess provider performance in line with ASQA's expectations.

## Attachment A – Enabling legislation

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### NVR Act

ASQA's regulation of the VET sector in Australia is supported by a framework of legislation, standards and guidelines. This includes the following establishing legislation:

- [National Vocational Education and Training Regulator Act 2011](#) (NVR Act)
- [National Vocational Education and Training Regulator \(Consequential Amendments\) Act 2011](#)
- [National Vocational Education and Training Regulator \(Transitional Provisions\) Act 2011](#).

This framework also includes the VET Quality Framework, the Standards for Accredited Courses, and legislation relating to the provision of courses to overseas students.

The following instruments have been made under the NVR Act:

- [Standards for VET Regulators 2015](#) that enhance consistency in the VET regulators (including ASQA, VRQA and TACWA) implementation and interpretation of the national VET standards, and promote the accountability and transparency of the operations of the VET regulators
- [Standards for Registered Training Organisations \(RTOs\) 2015](#) that describe nationally consistent requirements for RTOs to support high quality training and assessment across Australia's VET sector
- [Standards for VET Accredited Courses 2012](#) that formally identify the standards that apply to course design that must be met for accreditation by ASQA
- [ASQA Authorised Officer Requirements 2012](#) that determine the experience, training and qualification requirements for persons to be appointed as authorised officers
- [Data Provision Requirements 2012](#) ensure RTOs provide ASQA with a range of accurate and complete data about their business and operations
- [Financial Viability Risk Assessment Requirements 2011](#) ensure that organisations can demonstrate their financial viability to deliver high-quality training to VET students
- [Fit and Proper Person Requirements 2011](#) ensure that key RTO personnel have the characteristics and principles necessary to ensure the delivery of high-quality services and outcomes for VET graduates.

### ESOS Act

The [Education Services for Overseas Students Act 2000 \(ESOS Act\)](#) sets out the legal framework for the quality assurance of education and training institutions offering courses to overseas students (students studying in Australia on student visas). In addition to the ESOS Act, the framework consists of the:

- [Education Services for Overseas Students Regulations](#) that sets out detailed requirements for providers
- [Education Services for Overseas Students \(Registration Charges\) Act 1997](#)
- [National Code of Practice for Providers of Education and Training to Overseas Students 2017](#) that sets out standards for the conduct of registered providers
- [ELICOS Standards 2018](#).



Where providers deliver VET or ELICOS to overseas students, ASQA must ensure they comply with the requirements of the ESOS legislative framework.

## Attachment B – ASQA’s approach to regulation

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### Requirements for providers

#### The VET Quality Framework

To deliver VET courses, organisations must apply to become an RTO. All RTOs must meet a range of mandatory requirements designed to ensure that training and assessment is delivered to the high standards expected by students, Australian industry and employers.

In summary, RTOs must comply with all components of the [VET Quality Framework](#). This includes complying with the:

- [Standards for RTOs 2015](#) (the Standards for RTOs)
  - The purpose of the Standards for RTOs is to: describe the requirements an organisation must meet in order to be an RTO in Australia, ensure that training delivered by RTOs meets industry requirements (as set out in training packages and accredited courses) and has integrity for employment and further study, and ensure RTOs operate ethically and consider the needs of both students and industry.
- [Australian Qualifications Framework](#) (AQF)
  - The AQF is the national policy for regulated qualifications in the Australian education and training system. The AQF sets requirements and expectations around the development and accreditation of qualifications and supports student pathways in higher education, VET and schools.
- [Fit and Proper Person Requirements 2011](#) (FPP Requirements)
  - These requirements are designed to ensure that key RTO personnel have the characteristics and principles necessary to ensure the delivery of high-quality services and outcomes for VET graduates. The requirements set out standards of behaviour by individuals who are in a position to influence an RTO's management.
- [Financial Viability Risk Assessment Requirements 2011](#) (FVRA Requirements)
  - These requirements are aimed at ensuring that RTOs can demonstrate their financial viability to deliver quality training to VET students. RTOs are required to submit an assessment of financial viability risk by an independent qualified auditor as part of their application for registration, or at any other time as requested by ASQA based on risk.
- [Data Provision Requirements 2012](#)
  - These requirements compel RTOs to provide ASQA and the National Centre for Vocation Education Research (NCVER) with a range of data about their business and operations. The information RTOs must provide includes Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) data, such as students, their courses, units of activity and qualifications completed, data on any quality indicators and annual reports.

#### The ESOS Framework

In Australia, training providers must be approved for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) before they can teach overseas students

(people on a student visa issued by the Australian Government). Organisations seeking to deliver VET courses to overseas students must register as an RTO and as a CRICOS provider. Organisations seeking to deliver English Language Intensive Courses for Overseas Students (ELICOS) only need to register as a CRICOS provider.

CRICOS providers must meet the requirements of the [Education Services for Overseas Framework](#), which includes the:

- [Education Services for Overseas Students Act 2000](#) (ESOS Act)
- [Education Services for Overseas Students Regulations 2019](#)
- [Education Services for Overseas Students \(Registration Charges\) Act 1997](#)
- [National Code of Practice for Providers of Education and Training to Overseas Students 2018](#) (the National Code)
- [National Standards for Foundation Programs](#)
- [ELICOS Standards 2018](#).

## The standards

ASQA regulates organisations under the following standards:

- The [Standards for RTOs](#) are enabled by the NVR Act and were endorsed by the COAG Skills Council in 2014.
  - The Standards for RTOs apply to education providers approved by ASQA to deliver VET courses.
  - There are eight Standards, comprising a total of 58 clauses that RTOs must comply with.
  - The Standards address training and assessment practices, measures to give assurance of quality, certification documentation and access to student records, public information about an RTO and its services, student-focused information services, rights and obligations, complaints and appeals processes, RTO governance and administration, and RTO cooperation and compliance with ASQA.
- The [National Code](#) is enabled by the ESOS Act and was introduced in 2018.
  - The National Code applies to CRICOS providers delivering to overseas students.
  - The National Code sets out 11 standards that cover marketing and information practices, recruitment of students, enrolment and written agreements, education agents, younger students, student support services, student transfers, student visa requirements, deferring, suspending or cancelling student enrolments, complaints and appeals and additional registration requirements.
- The [ELICOS Standards](#) are enabled by the ESOS Act and were introduced in 2018.
  - The ELICOS Standards apply to CRICOS providers delivering English-language courses to overseas students.
  - The ELICOS Standards set out 8 standards that cover scheduled course contact hours, the needs of younger students, teaching ELICOS, student assessment, educational resources, specialist staff, premises and business management.

ASQA also accredits courses that are nationally recognised and meet an established industry, enterprise, educational, legislative or community need and may be delivered by RTOs.

ASQA does this by assessing courses against the [Standards for VET Accredited Courses 2012](#) and the [AQF](#). Each VET accredited course receives a national code and appears on the national register, [training.gov.au](http://training.gov.au).

## Registering as an RTO

### Application for registration

Organisations apply for registration as an RTO via ASQA's online portal for managing registration, applications and fee payments, [asqanet](#). The application requires the applicant to:

- **understand the national VET system** including having a detailed understanding of the VET Quality Framework, training packages, the AQF and the Standards for RTOs
- **provide basic details** (including the applicant's name and contact details, details of persons associated with the RTO, the type of RTO, delivery sites, etc.) and supporting evidence relating to the legal entity and trading name
- **complete a self-assessment**
  - The [self-assessment](#) supports applicants to confirm their readiness to deliver quality training and assessment and manage the recruitment, enrolment and support of students, as required by the Standards for RTOs.
  - The self-assessment requires the applicant to provide an overview of their organisation, assess the organisation's compliance against the five stages of the student journey and provide evidence to support their responses.
- **make fit and proper person declarations**
  - All persons who own 15% or more of the entity seeking registration (either directly or through another entity) and certain executive officers must complete a [fit and proper person declaration](#) which are used by ASQA to determine if all parties satisfy the FPP Requirements.
- **demonstrate financial viability**
  - Organisations must prove they are financially viable by submitting their financial information using ASQA's [financial viability risk assessment \(FVRA\) tool](#) which is used to assess whether the organisation meets the FVRA Requirements and to evaluate the likelihood of business continuity and capacity to achieve quality outcomes.
  - Organisations must work with an independent qualified auditor to complete the FVRA tool.

Organisations seeking registration on CRICOS must undertake a similar application process and meet obligations under the ESOS Act and supporting legislation.

### Assessment of application for registration

Applications for initial registration are assessed by ASQA's Initial Assessment and Referral Team. The Team determines if the application is complete, meets the FPP Requirements and FVRA Requirements, and whether it can be approved without further investigation, referred to Regulatory Operations for further investigation or rejected (i.e. if incomplete or if it does not meet the FPP Requirements or the FVRA Requirements).

Most applications for initial registration are referred to Regulatory Operations for audit, which is usually desk-based and includes:

- pre-audit research and a request for additional information from the applicant
- an analysis of the evidence provided with the application and the additional information requested by the auditor
- validation of the evidence analysed through either a site visit or via email/phone.

In 2018-19, ASQA processed 429 applications for initial registration, with 35.7% approved, 53.1% rejected and 11.2% withdrawn.<sup>20</sup>

## Annual obligations for RTOs

As a condition of registration, each RTO is obliged to:

- **comply with relevant legislation** including Commonwealth, State and Territory legislation and regulatory requirements, maintaining their scope of registration and maintaining their Statutory Education Licence (where using copyrighted material for teaching purposes)
- **comply with data provision requirements** including:
  - reporting annually the RTO's Total VET Activity AVETMISS data for the previous year to NCVET by the end of February (even if no training was provided). Unless an exemption applies, the RTO must report:
    - all VET student enrolment activity
    - all award issuance activity, including each student's Unique Student Identifier (USI)
    - activity that attracts government funding and activity that does not attract government funding
    - activity that is conducted in Australia or overseas
    - if the RTO has not conducted any student enrolment, training delivery or award issuance activity, this is reported as a 'nil' return
  - submitting annual quality indicator data by the end of June each year
    - RTOs are required to provide an annual summary report of their performance against learner engagement and employer satisfaction quality indicators
- **submit an annual declaration on compliance**
  - in February each year, ASQA invites RTOs to complete an annual declaration on compliance, which must be submitted through asqanet by the end of March. ASQA uses

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<sup>20</sup> Australian Skills Quality Authority 2019, [Australia Skills Quality Authority Annual Report 2018-19](#), Melbourne, p. 16.

this information to identify systemic risks to the quality of VET delivery and to ensure it holds correct information about each RTO's operations.

- **pay all fees and charges associated with their registration** including paying their annual registration charge to ASQA by the end of July each year.

Failure to meet any of the above obligations is considered non-compliance with statutory registration requirements and may constitute a breach of the NVR Act. Failure to meet these core regulatory obligations can also impact a provider's profile and [compliance history](#) used to inform ASQA's risk-based approach to audits and the severity of ASQA's regulatory response to non-compliance.

## Changes and re-registration

RTOs may seek changes to their scope of registration by adding new training products (i.e. qualifications, units of competency or accredited courses). CRICOS providers must also submit a change application to increase their student capacity or to add a location.

RTOs are generally registered for a period of seven years and must apply to renew their registration at least 90 days prior to the expiry date of their registration.

These applications are assessed by ASQA's Initial Assessment and Referral Team, which determines if the application is complete and whether it can be approved without further investigation, referred to Regulatory Operations for further investigation or, in certain circumstances, rejected due to incompleteness.

Applications are assessed based on: the RTO's compliance history; operational risk factors applicable to the RTO; time since the RTO was last audited; time since the RTO was initially registered; the number of recent notifications of material change; and the significance and risk associated the change of scope (if applicable). Assessors use a Response Option Assessment Tool (ROAT), which provides guidance on the appropriate regulatory response, taking into account a range of factors specific to the provider and the application being considered, to support their recommended action.

In 2018-19, ASQA processed:

- 879 applications for re-registration, with 90.3% approved, 6.5% rejected and 3.2% withdrawn
- 3,273 change of scope of registration applications, with 89.4% approved, 4.6% rejected and 6.0% withdrawn.<sup>21</sup>

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<sup>21</sup> Australian Skills Quality Authority 2019, [Australia Skills Quality Authority Annual Report 2018-19](#), Melbourne, p. 16.

## Ongoing risk assessment and compliance monitoring

### Risk profiling

ASQA uses a risk-based model of regulation, collecting and analysing data and intelligence to determine where providers may be failing to deliver quality training and education to inform consideration of risk at both the provider level and at a systemic level. ASQA's [Regulatory Risk Framework](#) outlines how ASQA identifies and responds to risk in the VET sector.

ASQA maintains a database of information for each provider, which informs how ASQA schedules and scopes compliance audits.

The database is dynamic (and is updated as new information is obtained) and feeds into a broader risk matrix, which enables ASQA to:

- identify providers that present greatest risk to the VET sector, the international education sector, students and the community
- make judgements regarding responses to risks.

The range of courses offered, changing enrolment numbers, low completions, a history of non-compliance and complaints are triggers that could lead ASQA to look more closely at the operations of a particular provider and may lead to an audit.

### Audits

#### Pre-audit research and planning

Auditors are assigned audits based on team and individual capacity.

In preparing for an audit, the auditor may analyse:

- pre-audit information requested from the provider, including delivery data
- student survey data
  - the survey is administered by ASQA's Perth Regulatory Operations team (based on the list of students provided by the provider)
- information held in ASQA's systems (asqanet, Eddie, PRISMS, etc.) including:
  - basic details of the provider and its history
  - the provider's compliance history (including from the annual declaration on compliance and findings from previous audits)
  - information from current and past complaints relating to the provider
  - use of brokers or third-party arrangements
  - any relevant intelligence (such as media reports and information from other regulators and agencies)
  - enrolment and profile data
  - the provider's funding sources
- the provider's internet marketing and social media (in relation to marketing and enrolment).

The auditor uses this information to draft an audit plan that specifies the proposed depth of the audit (including how long the audit is scheduled to take), and which qualifications and phases of the student journey (and associated clauses of the standards) will be the focus of the audit.

ASQA's Auditor Handbook specifies the 'Standard' or 'Primary' clauses that will form part of most audits (see [Figure 1](#)) and auditors can expand or adjust the scope of the audit based on their pre-audit research.

Auditors usually notify the provider of the upcoming audit and can request additional pre-audit evidence such as training and assessment strategies, marketing materials, copies of third-party agreements, details of trainer/assessor qualifications, etc.

## **Audit**

Audits are most commonly undertaken by a single auditor who spends one day on site at the provider's premises (though this varies based on the size of the provider and scope of the audit).

Auditors conduct an opening meeting with provider personnel at the commencement of the audit to respond to any questions provider personnel might have about the audit scope and process.

Auditors spend a significant amount of time reviewing documents such as student files (including enrolment information, attendance records and assessment records) on site. Auditors will clarify processes and findings with provider personnel, may conduct some interviews with trainers and/or assessors and, more rarely, interview students or third parties.

Auditors conduct an exit meeting with provider personnel, identifying key issues and findings and responding to any questions from provider personnel.

Desk-based audits are less common and involve reviewing desktop evidence and clarifying any queries with provider personnel by phone or email.

In 2018-19, ASQA undertook 1,685 audits of providers. This includes audits in relation to initial registration, compliance monitoring audits and additional audit activities undertaken to assess evidence provided as part of reviews (as ASQA's legislation provides opportunity for review of certain decisions). During 2018-19, 628 of 3,888 providers (16%) were subject to a compliance audit, with 6% resulting in critical/serious findings of non-compliance.<sup>22</sup>

## **Audit reports**

When an audit is undertaken and non-compliance identified, an audit report is drafted. Auditors report their findings by exception, i.e. audit reports only describe the areas where the provider was found to be non-compliant.

Auditors use ASQA's Audit Report Template to draft audit reports, which broadly includes:

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<sup>22</sup> Australian Skills Quality Authority 2019, [Australia Skills Quality Authority Annual Report 2018-19](#), Melbourne, p. 18.



- organisation and audit details
- background on the provider
- an overview of the training products sampled and personnel interviewed
- an overview of the report
- action required by the provider to rectify the non-compliance
- areas of non-compliance.

Areas of non-compliance are structured in line with the student-centred journey and described in relation to the relevant clause. The audit report describes each non-compliance by listing the evidence reviewed and providing examples of the provider's non-compliant practice.

The audit report is reviewed by the delegate before being given to the provider.

## Actions in the event of non-compliance

### Relevant considerations

ASQA use an internal risk-based tool to guide regulatory action in response to non-compliance. The tool weighs up:

- **static risk** – the risk of the non-compliance (based on the particular clause)
- **likelihood** – based on the provider's compliance history, behaviour and likelihood of future non-compliance
- **impact** – based on the impact of non-compliance on students and industry.

The risk-based tool recommends a hierarchy of regulatory responses based on the purpose of the audit (for example, audit can be for the purposes of initial registration, change of scope, renewal of registration or compliance monitoring).

### Adverse decisions

ASQA's Service Standards outline that providers will be provided with an interim audit report within 30 calendar days of the site visit, although in 2018-19, this timeframe was only met for:

- 16.7% of audits for initial applications
- 56.4% of audits for renewal applications
- 41.1% of change of scope applications
- 36.2% of compliance monitoring audits and post initial registration audits.<sup>23</sup>

In the event of non-compliance, the provider will receive a letter notifying their non-compliance and ASQA's intention to make a decision and a copy of the audit report. The letter describes ASQA's intent to make an adverse decision resulting in regulatory action, includes a statement of reasons and invites the provider to respond with additional evidence to demonstrate that the issues found at audit have been addressed. Providers are given 20 working days to provide a response.

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<sup>23</sup> Australian Skills Quality Authority 2019, [Australia Skills Quality Authority Annual Report 2018-19](#), Melbourne, p. 98.

Following the auditor's consideration of any additional evidence provided by the provider, the audit report is revised to include a new 'finding following additional evidence' for each non-compliance. If any non-compliance remains, the auditor will again use an internal risk-based tool to determine the appropriate regulatory action. The delegate reviews the audit report and records their decision using the audit outcome decision record.

Certain adverse decisions, including cancellation, suspension, refusal of re-registration, amendment of scope and imposition of conditions are published on ASQA's [website](#).

## Regulatory actions

Under the NVR Act, ASQA can take a wide range of regulatory actions such as:

- issuing **written directions** to rectify breaches of conditions (section 35A)
- issuing an **administrative sanction** (section 36), specifically:
  - give a written direction to an RTO requiring the organisation to notify its VET students, in writing, of a matter set out in the direction
  - shorten the period of an RTO's registration
  - amend an RTO's scope of registration
  - suspend all or part of an RTO's scope of registration under section 38
  - cancel an RTO's registration under section 39
- take **enforcement action** (Part 6), which includes:
  - seeking a written undertaking, i.e. enforceable undertaking (section 146)
  - issuing an infringement notice (section 148 and 149)
  - seeking an injunction (section 150)
- pursuing **criminal or civil proceedings** (in respect of civil penalty and/or offence provisions).

In 2018-19 ASQA:

- provided written directions to 346 providers
- cancelled the registration of 263 providers
  - reasons for cancellation included: non-compliance at audit (67%), failure to submit annual declaration on compliance/Total VET Activity data (18%), failure to pay registration/audit charges (12%), provider going into liquidation/ceasing to operate (3%)
- issued an infringement notice to 196 providers
- suspended the registration of 76 providers
- amended the scope of registration of 41 providers
- issued civil penalties against four providers.<sup>24</sup>

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<sup>24</sup> Australian Skills Quality Authority 2019, [Australia Skills Quality Authority Annual Report 2018-19](#), Melbourne, p. 19.

## Attachment C – Stakeholder feedback regarding ASQA’s regulatory approach

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### Expectations of ASQA and its role

A number of stakeholders expressed concern that ASQA seems to ‘lack direction as to what its role is’. Submissions variously highlighted:

- that stakeholders have very different and wide-ranging expectations of ASQA and its role in engaging with and educating providers on how to meet their regulatory obligations
- the very different regard in which different stakeholders hold ASQA
- the diversity of the sector and the different needs and experiences of providers
- the challenges inherent in consistently regulating, engaging and communicating with a large and diverse sector
- the extent of concerns regarding the wider VET Quality Framework, many of which directly impact how ASQA performs its functions.

While all stakeholders support an improved dialogue between ASQA, providers and other stakeholders, there are different views about how this should be done, who should pay for this, where ASQA needs to focus its sector engagement and how industry bodies should relate to ASQA. For example, stakeholders have different views on:

- the best way for ASQA to communicate with or educate the sector, and the matters on which it should and should not communicate
- the need for regulation of the VET sector, and whether the role of ASQA should be limited or broadened (with some suggesting that ASQA should also regulate education agents)
- whether ASQA should work with non-compliant providers to help them address their practice, or whether this goes beyond the role of the regulator
- whether CRICOS providers are treated differently to domestic-focused providers (for example, that non-compliance is treated less harshly due to the economic significance of these providers)
- whether ASQA should play a more educative role, noting that this should not be at the expense of continuing to respond to non-compliance by poorer performing providers.

### Sector engagement and education

Most stakeholders commented on the need to improve relationships between ASQA and providers, and for ASQA’s engagement and education to be strengthened. Some stakeholders acknowledged that poor relationships were likely, in part, a hangover from ASQA’s role correcting issues with the VFH scheme.

One stakeholder highlighted (and supported) the recommendation of the Joyce Review for:

*‘The Commonwealth to consider whether ASQA should be specifically resourced to provide broad education and guidance to the VET sector, and to engage more*

*proactively and positively with providers to build trust and understanding between the regulator and the regulated*.<sup>25</sup>

Many stakeholders acknowledged recent improvements in ASQA's engagement with providers. For example, some stakeholders acknowledged the value of:

- the information available on the ASQA [website](#), including the Users' Guide, fact sheets and FAQs
- briefing sessions held by ASQA, 'We have found these informative and professional' whereas others described these sessions as 'largely irrelevant', noting an annual webcast might achieve the same outcome
- ASQA's complaints management system, noting it is fair, transparent and 'highlights problems to providers that may be underperforming without the need for ASQA to conduct a full site audit'. Although one stakeholder stated that ASQA has failed to adequately investigate complaints and remove 'low integrity' providers from the sector
- ASQA's use of desk-based audits and phone/email conversations with providers as an economical use of ASQA's time and resources where a full site audit is not warranted
- surveys (while others suggested that these were not reliable)
- ASQA's [Info line](#) (while others noted that the information provided by Info line staff regarding specific non-compliances can be limited)
- news items and articles in the [ASQA Update](#).

Various suggestions were made for further improving ASQA's engagement with stakeholders, including through:

- **additional resources** with stakeholder suggestions including:
  - examples of what is and is not acceptable practice
  - best practice case studies (including in relation to accommodating the specific needs of providers delivering to vulnerable/disadvantaged students)
  - clarification of key terms used in the Standards, such as 'amount of training', 'vocational competencies', etc.
  - lists of the types of evidence examined for each clause of the Standards
  - examples of good observation checklists with mapping to the criteria ASQA is gathering evidence against across a range of scenarios in different industries
  - examples or templates for providers to follow, including trainer and assessor profiles
  - online quizzes on specific topics
- **'positive publishing'** including publishing the names of providers that consistently achieve a high level of compliance (rather than the current practice of publishing information only where an adverse decision has been made)
  - this can help to adjust the regulatory posture between ASQA and providers and increase confidence for students in selecting a quality provider to deliver their training and assessment

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<sup>25</sup> Joyce, S 2019, [Strengthening Skills: Expert Review of Australia's Vocational Education and Training System](#), report prepared for Department of the Prime Minister and Cabinet, p. 121.

- **online discussion and media**, for example:
  - facilitating a blog or online discussion where a community of providers could discuss their experiences and share expertise
  - better using social media to address ‘fictitious case studies’ and to promote positive stories
  - conducting webinars and publishing YouTube videos relating to specific areas of common non-compliance
  - improving the training.gov.au [website](#) to improve useability and enable interfacing with institutional management systems
- **face to face meetings with provider staff**, for example:
  - introducing focus groups whereby senior provider staff (for example, compliance managers, training managers and CEOs) are invited to discuss commonly perceived issues relating to ASQA and its practices
  - improving consultation and discussion with provider staff during the audit process
  - introducing educative services chargeable to the provider, whereby ASQA conducts an audit aimed at improving the provider practice without findings of non-compliance resulting in regulatory action
  - expanding industry briefing sessions. While many stakeholders noted the value of briefing sessions, others expressed concern that information sessions were not genuinely consultative, that there was inadequate time for questions or that sessions were ‘hijacked’ by a small number of providers with particular issues. Others would like to see these sessions offered in more regional locations
- **introducing case managers** for contacts between providers and ASQA
  - some stakeholders noted the use of case managers by other regulators including the [NZQA](#) and the [TEQSA](#).
- **working with membership-based organisations** such as [Independent Tertiary Education Council Australia](#) (ITECA), [Enterprise Registered Training Organisation Association](#) (ERTO) and [TAFE Directors Australia](#) (TDA), which provide professional development for their members. Stakeholders suggested that these organisations could contribute to or review publications issued by ASQA or could facilitate events (such as workshops and conferences) to share best practice in the sector
- **compiling a reference database** clearly distinguishing between current and archived materials (with some stakeholders expressing frustration regarding constant changes to government agencies such that information is not always readily accessible).

## Audit practice

The most significant and consistently identified issues raised in relation to audit practice included:

- **inconsistent audit practice.** While some stakeholders described positive experiences relating to ASQA audits, many expressed concerns about:
  - auditors’ different interpretations of the standards and the evidence requirements to be found compliant

- a focus on ‘administrivia’ and inputs rather than on learner outcomes and competence. Stakeholders provided various confidential case studies, describing circumstances where they had been found non-compliant based on information missing from one document or inconsistencies in documentation likely to have little or no impact on student outcomes
  - minor gaps in assessment tools being recorded as critical non-compliance
  - some auditors’ inadequate understanding of training packages, for example, requiring evidence to be presented that is not required by the training package
  - over-interpretation of the standards, for example, where the Standards for RTOs require RTOs to offer RPL but where auditors have rigid requirements regarding the types of RPL strategies they will accept
- **an inadequate focus on student outcomes**
    - some stakeholders noted that the student-centred approach does not adequately enable consideration of student experience and outcomes
    - other stakeholders discussed ASQA’s focus on the minutiae of training documentation rather than ‘actual outcomes (for example, completions, quality of training, etc.)’
  - **lack of transparency regarding the audit approach**
    - one stakeholder suggested that ASQA should design and publish an audit checklist with step-by-step instructions that auditors should be required to follow ‘religiously’
    - others suggested that ASQA’s approach was ‘inflexible, reflected an unwillingness to accommodate the particular needs of our sector’ and ‘punishes innovation’
  - **auditor qualifications, skills and approach.** Various stakeholders suggested that some ASQA auditors:
    - lacked audit skills, were inexperienced and/or did not have adequate training (with some focused on the need for VET specific training and others focused on the need for stronger audit training). While one stakeholder suggested that all audits include the participation of a non-ASQA industry expert, others suggested that external VET experts created conflicts of interest
    - did not have adequate industry experience (with others suggesting that their industry experience created a conflict of interest)
    - adopted an unnecessarily adversarial approach
  - **timeliness of audits** including concern that:
    - there is insufficient time allocated to undertake a comprehensive audit. Some stakeholders noted that by attempting to audit multiple clauses under the Standards within a short period (i.e. one day), pressure is put on the provider to produce volumes of evidence in a limited timeframe. Others felt that audits are too long and resultant in ‘exorbitant’ costs to providers
    - auditors can rush through audits without ensuring that compliance or non-compliance is sufficiently and consistently evidenced
    - decisions regarding non-compliance and ASQA’s response are usually slow
  - **the cost of audits** and the disproportionate impact of this on small businesses.

Some of the suggested changes included:

- strengthening training of auditors to ensure consistency of practice
- utilising only ASQA employed staff rather than contractors to undertake audits
- publishing audit checklists and guidelines (providing transparency and accountability regarding the requirements to be found compliant)
- ensuring that a percentage of all providers are audited regardless of risk, as a way of ensuring 'quality across the entire industry and ensuring that no poor performers slip through the gaps'
- increasing the number of desk-based audits undertaken (rather than on site) with one stakeholder noting the excellent response times for desk-based audits relating to expansion of scope applications
- introducing targeted audits where the scope is limited to particular areas of risk
- including observations of training delivery and assessment and interviews with students to provide insight into the quality of training
- continuing exit meeting discussions (with one stakeholder valuing the discussions at the end of the site audit)
- increasing the moderation and validation of audit reports (including with other regulators in the sector)
- strengthening [ASQA's Service Standards](#), particularly in relation to timeframes for providing audit reports and notifying providers of decisions following audits.

## Audit reports

A number of stakeholders expressed concerns about the audit reports produced by ASQA, noting in particular:

- standardised wording used in audit reports, associated with recently adopted ASQA audit report templates
- the lack of information regarding where a provider has been found compliant and why (to support continued compliance and improvement)
- ambiguous descriptions of non-compliance and limited detail relating to the evidence reviewed where a provider is found non-compliant and how this evidence demonstrated non-compliance
- minimal use of examples, which can be frustrating for providers needing to rely on the audit report as a guide to compliance
- a lack of clarity regarding remediation of non-compliance, particularly where providers are required to remedy the impact of non-compliance on past students
- the need for additional quality assurance or accountability for the content of audit reports, with some stakeholders noting errors in audit reports such as inappropriate cutting and pasting.

Stakeholders noted that the sector could benefit greatly from a clearer audit report format.

## Non-compliance

Many stakeholders acknowledged the issues in the sector and the significant effort that has been required to address poor practice. Some expressed concerns that ASQA did not have adequate powers in the event of non-compliance. Others highlighted the significant impact on students when a provider fails.

Stakeholders variously raised concerns about:

- the far-reaching ramifications of a finding of non-compliance (for example, on a provider's funding arrangements or likelihood to be audited into the future)
- the stress and uncertainty associated with time delays when non-compliance is identified and ASQA is considering the appropriate regulatory response
- a perception that ASQA's volume of Administrative Appeals Tribunal (AAT) matters reflects poorly on its performance as a regulator
- ASQA's regulatory response to non-compliance outweighing 'the crimes'
- providers being unable to remedy non-compliance within the set timeframes provided by ASQA for providers to respond to and address the non-compliances found at audit
- ASQA's low tolerance for human error.

Various suggestions were made for how ASQA's powers (or the regulation more broadly) could be strengthened. For example, by requiring a minimum cash equity holding to be retained by providers, by requiring providers to make deposit to an industry fund, by introducing a company directors ID or by introducing a mechanism for anonymous reporting from provider staff to ASQA where they identify non-compliance and other concerns (noting that anyone may raise a complaint with ASQA, including provider staff).



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To inform this review, mpconsulting reviewed a significant number of internal ASQA guidance materials, audit reports and decisions, and sought submissions from stakeholders – these are not individually identified in the bibliography.

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