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**All eyes on quality:
Review of the *National
Vocational Education
and Training Regulator
Act 2011* report**

January 2018

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Acronyms/Abbreviations

ACCC	Australian Competition and Consumer Commission
ASQA	Australian Skills Quality Authority
AQF	Australian Qualifications Framework
AVETMISS	Australian Vocational Education and Training Management Information Statistical Standard
COAG	Council of Australian Governments
ESOS Act	<i>Education Services for Overseas Students Act 2000 (Cth)</i>
GTO	Group Training Organisations
NCVER	National Centre for Vocational Education Research
NVETR Act	<i>National Vocational Education and Training Regulator Act 2011 (Cth)</i>
RTO	Registered training organisation
TAFE	Technical and Further Education
TEQSA	Tertiary Education Quality and Standards Agency
USI	Unique Student Identifier
VET	Vocational education and training
VSL	VET Student Loans

Letter of transmittal

The Hon Karen Andrews MP
Assistant Minister for Vocational Education and Skills
Parliament House
CANBERRA ACT 2600

Dear Minister

On 8 June 2017, you confirmed the Australian Government's commitment to raising the quality of the vocational education and training (VET) sector by reviewing the *National Vocational Education and Training Regulator Act 2011* (the NVETR Act).

You asked me to provide a report to you at the end of my review, and I am pleased to submit my final report. In addition to the terms of reference that formally established the review, you also asked me to investigate reforms that could improve outcomes for students.

The NVETR Act underpins the operations of the Australian Skills Quality Authority (ASQA) which regulates more than 4,000 registered training organisations (RTOs) across Australia.

During my consultations, stakeholders were greatly supportive of the role ASQA has in ensuring quality in the VET sector. They recognised the magnitude of ASQA's task, particularly in light of the issues raised by the actions of some RTOs in relation to VET FEE-HELP.

It was clear that most RTOs want to comply with their legislative requirements to deliver quality training, and I saw many instances where passionate and knowledgeable trainers and assessors were working with students to gain the skills they needed to fulfil their employment ambitions. It was also clear to me that in some instances, RTOs and their executive officers would have benefited from greater support and advice on how they could meet their regulatory obligations.

In preparing my recommendations, I have had at the forefront of my mind the hopes, expectations and experiences of young people, perhaps engaging with VET for the first time, or those who are returning to training after a period of employment and are seeking a new career path. In combination, I believe my recommendations will improve the likelihood they will have a positive experience, yet provide an opportunity for redress should it be needed.

I would like to express my thanks to the Commissioners and officers of ASQA who provided me with extensive briefing, the members of the Expert Advisory Panel who gave freely of their advice and expertise, the many stakeholders who met with me or made the effort to provide a formal submission, and the Secretariat from the Department of Education and Training who supported me throughout the review.

Yours sincerely



Professor Valerie Braithwaite

31 January 2018

Executive Summary

Apprenticeships and traineeships; full qualifications, skill sets and micro-credentials: Australia's vocational education and training (VET) sector provides a vital contribution to the skilling of the country's workforce and hence its economy.

As the Productivity Commission noted in *Shifting the Dial – Five year productivity review*:

“Not only does the system need to provide broad ranging job-related training relevant to employers, it must do so for a wide variety of students with very different needs. It is expected to be a place where young people leaving school can pursue non-academic pathways, where workers can retrain and gain new skills to keep pace with a changing economy, and where people marginalised by the traditional education system can get a second chance.”¹

However, as the Productivity Commission also noted, the VET sector has experienced significant disruptions in recent years, most notably the fallout from the VET FEE-HELP scheme,² which gave rise to seriously unscrupulous behaviour resulting in significant harm being done not only to the sector's reputation but to the wellbeing – financial and emotional – of a significant cohort of students.

In 2011, Australian governments agreed to change the regulatory structure for VET. Gone were the majority of state-based regulators, replaced with a new national regulator, the Australian Skills Quality Authority (ASQA), established under the *National Vocational Education and Training Regulator Act 2011* (the NVETR Act). Regulating over 4,000 registered training organisations (RTOs), ASQA oversees entrance to the market, continuation within the market, and ultimately the exit of RTOs that choose to withdraw their provision. This report shows that ASQA quite frequently also removes their privilege of offering nationally recognised training.

Six years on, and in the face of evolving regulatory practice and theory and a changing VET regulatory landscape, the Australian Government initiated a review of ASQA's establishing legislation, as well as the broader VET legislative and quality frameworks. Ensuring that these frameworks support a responsive, effective and efficient approach to regulation to further the quality of the national VET sector was an important motivation for the review.

While aware that the technical terms of reference would guide the focus of the review, it was clear during the review's commission that the student experience – and more importantly safeguarding desirable student outcomes – would provide the prism for viewing the current regulatory framework and recommendations for improvements. The conduct of the review has been informed by the terms of reference outlined in Appendix A in the sense that the review seeks out principles that inform the interpretation of the legislative and regulatory framework and have implications for student outcomes. It is through these principles that the terms of reference are addressed. The narrative and recommendations arising from the review are unapologetically broader than might be expected from a narrow reading of the relevant legislation. This review recognises that the operations of the regulator are indivisible from the legislative framework under which it operates, and how it interprets that framework.

¹ Productivity Commission, *Shifting the dial – Five year productivity review* (Australian Government, 2017), 92. <https://www.pc.gov.au/inquiries/completed/productivity-review/report/productivity-review.pdf>.

² VET FEE-HELP scheme was a Commonwealth student loan scheme for VET enabled under the *Higher Education Support Act 2003 (Cth)*.

Chapter 2 provides an explanation of how and why principles are important in ensuring regulatory action achieves desirable student outcomes, that is, competent graduates who have had a positive learning experience. Principles enable regulatory partnerships. Partnerships bring cooperation so that many other parties can become 'eyes' for ASQA and broadcasters of quality messages. Chapter 2 sets out the principles for a regulatory framework that can simultaneously build a positive culture of cooperation, reward excellence and embrace innovation, while also curbing unacceptable conduct through a system of controls and sanctions. Subsequent chapters review sector concerns over matters raised in the terms of reference and ASQA's capacity to respond within the current legislative and regulatory framework. Sector concerns can be addressed through recommendations that strengthen ASQA's capacity to act within the legislative and regulatory framework while promoting greater use of principles and regulatory conversations (Chapters 4 and 5). Change of this kind would assist ASQA explain its regulatory actions to the sector more clearly and partner with stakeholders in leading the sector through the compliance floor and toward the ceiling of improved training quality and student outcomes.

As described in Chapter 3, the review was informed by meetings with key players in the sector, a public submissions process and visits to a number of RTOs, details of which are outlined in Appendices C and D. It is important to reflect that during the conduct of the review, it was clear that the vast majority of RTOs, trainers and assessors were committed to delivering high quality training. There were examples of high quality curriculum materials, pedagogy, training and learning facilities, in addition to well-articulated visions of what the training was achieving and contributing to the lives of the learners. However, submissions and stakeholders also presented evidence of how students had faced disadvantage. When RTOs closed and failed to provide student records to allow learners to demonstrate to other trainers achieved skills and completed units of competency, the students had no basis for gaining recognition for their prior learning. Some of the worst abuses involved unconscionable contracts between RTOs and students that placed learners at serious disadvantage.

There was acknowledgement that ASQA has a challenging role in maintaining and improving quality in the VET sector. While it has a wide range of regulatory powers at its disposal, the size of the market it oversees is significant. It regulates a continuum of organisations ranging from the highest performers to those acting on the edges of almost criminal enterprise. ASQA has, within a relatively short period of time, evolved its regulatory practice from predominantly simply processing applications to the development of a sophisticated risk-based model, and more recently to the introduction of a five-stage student-centred audit model. Stakeholders commented favourably on this evolution. Equally the review has identified paths to further improvement.

The VET sector would benefit from improvements in the strategic collection, analysis and circulation of data as well as a stronger ability to manage entrance to the market. These issues are discussed in Chapter 5 with recommendations for greater openness and timeliness in relation to access to the National Centre for Vocational Education Research (NCVER) RTO-aggregated data, and a higher bar for gaining and maintaining registration as a VET provider.

The review has not found that, at this stage of the evolution of the regulatory framework, there are major deficits in its functions and powers that disable ASQA from appropriately regulating the current VET environment. There is a strong expectation that quick and effective regulatory action be taken against providers whose non-compliance is harming students, employers and the reputation of the sector. But the review has found that providing ASQA and other regulatory agencies have better access to data that is as close as possible to real time, there is scope for ASQA to use its current powers to sanction such RTOs while drawing on back-up support from partnership networks in the sector. Deepening the quality of regulatory conversations in ways that sharpen and refine

existing tools is the imperative rather than creating a wide range of new formal powers. As discussed in Chapters 4 and 5, the sector broadly supports ASQA working in partnership with it. There is readiness to embrace opportunities to connect the formal regulator with other experts and partners in the regulatory culture to lift standards.

Equally important and aligned with these developments is the principle that ASQA cannot mandate quality: As a regulator its role is to motivate RTOs to reflect on their performance, what they might do better and how they might go about improving their performance. Recommendations in this review favour continuous improvement over mandating quality standards that all RTOs must achieve. Ultimately, the way ASQA should regulate for quality (as opposed to sufficiency) is to look at how well RTOs go about setting their own higher standards, checking if such standards are met, motivating through praise and encouragement and support when they have achieved improvement, and advising on options when they have not.

The dominant theme that has emerged can be captured by reference to the ethos of the regulatory framework, and more tangibly, ASQA's regulatory philosophy and culture (Chapter 4). There were concerns about the compliance burden on RTOs, the inconsistency of audits and auditors, the difficulty in making sense of ASQA's regulatory approach, and a disconnect from what RTOs considered important for regulation of the sector. In short, ASQA's regulatory task is made more difficult and the sector's anxieties are increased by a lack of supportive regulatory conversations. A new path for restoring some balance in this regard has been opened through a general appreciation of ASQA's move to its new audit model that recognises the need to prioritise the student experience and outcomes. As this model is fully rolled out, there is opportunity to address some of the sector's concerns that are summarised in Appendix D. More regulatory conversation to pre-empt compliance audits, using partners to regulate on issues where RTOs admit non-compliance, the inclusion of more people who can help with compliance in post-audit conversations are essentially cooperative strategies that can give ASQA more time to focus on the hard cases (see Chapter 5). Transparency of ASQA audits is a further recommendation in Chapter 5 to widen and inform the sector on where systemic weaknesses lie and where strengths may be found. With timely data and a sector that has an improved understanding of how ASQA operates, ASQA will be better positioned to encourage compliance and sanction when compliance conversations fail.

Deepening VET professionalisation and the commitment of the teaching workforce to continuous improvement in the quality of teaching and learning are also imperative. During the conduct of the review, the Australian Government Department of Education and Training referred recommendations three and four from the Training and Assessment Working Group Report, recommendations that focused on improving the quality and professionalisation of the VET workforce.³ While this review did not find that the actions contained in the two recommendations would, by themselves, lead to significant improvements in VET quality, they did mirror two of four emerging issues that were concerns and challenges for the sector's future – training quality and teaching professionalism (RTO ethics and student protection and wellbeing being the other two emerging issues). Convincing RTOs to invest in quality teachers and providing career paths for VET teachers gave rise to three recommendations in Chapter 5. Requiring RTOs to reflect on and report their progress in lifting the quality of teachers in their RTO is a recommendation buttressed by sector engagement in finding ways to reward quality teachers. The review recommends kick-starting efforts to create a more vibrant labour market in VET teaching through creating the position of Master Assessor. Master Assessors are also master trainers who adopt a leadership role in professional development and provide a service in what is essentially external assessment for high risk VET

³ Training and Assessment Working Group report: *Improving the quality of assessment in vocational education and training* (May, 2016), <https://docs.education.gov.au/node/42161>.

industries in the sector. ASQA can interrogate an RTO's success in delivering desirable student outcomes through engaging the services of a Master Assessor.

Throughout the review, stories arose of students whose experiences of their VET journey could be classed as disappointing if not demoralising. Stories were told of students incurring enormous debts for training they did not start or were unlikely to be able to successfully complete. Many were unable to secure refunds when their circumstances changed. Abuse and exploitation were seen as persistent problems. Consumer protection has not kept abreast of the increasing commodification of students and the business practices that have exploited them. Chapter 6 focuses on essential reforms to protect vulnerable students and their wellbeing, including reforms to tuition assurance schemes and the establishment of a Tertiary Ombudsman to deal with the fragmentation of consumer protection across the country.

The review accepts that the establishment of ASQA under the NVETR Act has, on balance, been a helpful start to establishing a VET regulatory framework to clean up such abuses. It has reduced overlap and duplication across the country, and the reforms to ASQA's audit model augur well for the future. It is also acknowledged that ASQA performs its essential role in a complex and challenging environment. Few regulators in Australian history have cancelled registrations for such a large number of businesses in a relatively short period of time; yet few have faced such major challenges of profound importance to Australia's future.

Further evolution of the regulator's philosophy and practice, broader partnerships with informal regulatory forces informed by the principles in the regulator's statute, and improvements in the provision and use of data are likely to pay higher dividends than merely technical changes to a legislative framework that already provides significant 'teeth'. Focusing the 'eyes' of all the sector – government bodies, funders, employers, professional associations, peak bodies and students – on quality is essential to ensure desirable student outcomes and return Australia's VET sector to its previously enviable international standing. The review suggests that the Government commit to evaluating ASQA according to its success in driving continuous improvement in the quality of education and training and protection of the rights of students, both of which are integral to desirable student outcomes.

Chapter 1: Background to VET in Australia

Recent years have seen a sudden influx of RTOs into the market. Many were unprepared to meet the standards and the compliance expectations that have made their presence felt across the tertiary education sector. The churn in the system has been high. Others entered the industry with no obvious educational intent, but with an eye to gaming the funding system. In this context, ASQA has had no choice but to be a regulator that prioritises removing providers from the system who are failing in the delivery of VET to students.

The criticism most often made of Australian regulators over past decades is that they do not use their powers to sanction seriously egregious behaviour.⁴ This criticism cannot be levelled at ASQA. ASQA is dealing with such cases while observing the legal protections to which all Australian citizens are entitled. This is not to say that ASQA's current regulatory preoccupation will or should continue into the future.

This review has collected evidence on what is happening now, but the intent has been to look to the future and consider the adequacy of the legislative and regulatory framework as Australia's VET environment, and ASQA's regulatory approach evolve.

Background to Australia's VET environment

The VET environment in Australia is large and variegated, operating through 4,538 RTOs delivering 1,463 qualifications to around 4.2 million students.⁵ Private RTOs deliver VET to approximately 58.7 per cent of students, Technical and Further Education (TAFE) institutes deliver to 17.6 per cent and community education providers deliver to nine per cent.⁶ VET is also delivered by universities, schools, enterprise providers and combinations of providers. RTOs range in size from having as few as one student enrolled to having over 100,000 students. Large providers (those with more than 1,000 students) represent approximately 18 per cent of all providers. The vast majority of students (more than 80 per cent) attend these large VET institutions. Providers with fewer than 200 students represent approximately half of all providers. However, a relatively small proportion of students (approximately 3 per cent) attend these RTOs.

Funding arrangements for VET are complex. VET can be funded by individual students, employers, the states and territories within their respective jurisdictions, and the Commonwealth through programs such as the National Workforce Development Specific Purpose Payment, the Australian Apprenticeship Incentive Program, the Skills for Education Program, the Skilling Australians Fund and VET Student Loans (VSL), or a combination of these sources. As it is a significant driver of behaviour, funding also serves important regulatory functions.

Across Australia, the regulation of VET extends far beyond the national regulator, ASQA, and the Victorian and Western Australian state level regulators. Accepting that regulation encompasses all the forces that "steer the flow of events" in some directions and not others, it also involves other government bodies, funding arrangements, markets, professional associations and peak bodies

⁴ Peter Grabosky and John Braithwaite, *Of manners gentle: enforcement strategies of Australian business regulatory agencies* (Melbourne: Oxford University Press in association with Australian Institute of Criminology, 1986).

⁵ "National Register of VET", Department of Education and Training Data, <https://www.training.gov.au>, accessed 30 November, 2017.

⁶ "Total VET students and courses 2016," National Centre for Vocational Education Research (NCVER) 2017, https://ncver.edu.au/data/collection/students-and-courses-collection/total-vet-students-and-courses_

representing industry, training and education.⁷ In reviewing the legislative framework underpinning ASQA's operations, consideration must be given to the complexity of the regulatory environment and ASQA's position within it.

“Desirable student outcomes” in VET

Rapid technological and social change means that students in the VET environment are likely to dip in and out of the VET sector and will need a seamless pathway for navigating their vocational careers across a broader tertiary education sector. Considering student needs and outcomes into the future, therefore, brings to the fore a new temporal dimension. Most recognise student outcomes as improved capability that is reflected in course completion with expected skills and competencies. We also need to recognise student outcomes as future capability, which encompasses having a healthy attitude to learning and adapting to change.

In this report, I have opted for the term “desirable student outcomes” as the yardstick against which the current regulatory framework should be reviewed. I have defined desirable student outcomes in terms of two criteria. First, a desirable student outcome refers to a student obtaining the competencies to meet the expectations of prospective or current employers. Of particular importance is sufficient learning to give capacity to transfer skills as work conditions change. Second, a desirable student outcome means that students regard their study as a positive learning experience that matches their expectations about what they are going to learn and how. This means that a student should not be exposed to misleading advertising, unfair contracts or unconscionable conduct of any kind. It means more than avoiding a negative experience, it means having a positive regard for learning that carries into the future. This can only come about if the VET environment supports and encourages the building of positive pathways to learning for students.

Student profiles and experiences

Different funding streams in VET mean that students' introduction to the sector differs markedly. Pathways into VET vary in terms of exposure to networks of people who know the system well and can give assistance and constructive advice about training that is suitable and will meet a prospective student's needs. Students who are not part of such networks may rely on advertisements, recruitment drives and government websites (such as My Skills) to choose a VET provider that offers a course of study to match their interests, lifestyle, and budget. Alternatively, an employer may have a preferred provider and direct their employee to enrol with an RTO to pursue a particular course of study. Individuals may also have a VET provider recommended to them by professional staff or peers met through support or welfare services. Students in remote areas may have few options for training, unlike the choices of their city counterparts. In sum, students who enter the VET environment range from having no choice to an abundance of choice, and from no advice and support networks to rich advice and support networks.

Other pathways into VET involve combining training with work. Only a small number of VET students (8 per cent) undertake their training through apprenticeships and traineeships. Support is available for employers and students to navigate through apprenticeship and traineeship arrangements. The Australian Apprenticeship Support Network assists employers to recruit, train and retain apprentices. Australian Apprenticeship Support Network providers supply comprehensive

⁷ Christine Parker and John Braithwaite, “Regulation,” in *The Oxford Handbook of Legal Studies*, eds. Peter Cane and Mark Tushnet (Oxford: Oxford University Press, 2013), 119-145.

information to support the apprentice and employer throughout the apprenticeship including their choice of RTOs in their region, and provide them with an opportunity to choose the RTO that best suits their needs. Group Training Organisations (GTOs) employ nearly eight per cent of apprentices directly and place them with host employers during their training. GTOs undertake the employer responsibilities for the quality and continuity of apprentices' employment and training. Some GTOs assist apprentices with their enrolment in an appropriate RTO. Employers may also provide their own training for staff to ensure that the training meets workforce needs. In this case the employer may register as an enterprise RTO.

Not only is there variability in how students are introduced to VET, there is variability in their demographic profile and where they study. For example, students undertaking VET cover a broad age span.⁸ Students who identify as Indigenous Australians are estimated as representing four per cent of student enrolments.⁹ Enrolments are highest in training locations in Queensland, New South Wales and Victoria (76.9 per cent of enrolments are for these states). Across Australia, just under a third of students (31.6 per cent) enrol from areas outside the major capital cities. Offshore delivery is provided to less than one per cent of students enrolled in VET.¹⁰ A student's experience of VET will also be entirely different if they study in a large TAFE or a small private RTO, on a campus or online, or if they study in another educational setting such as a university or secondary school. Notably, there are now over 80 dual sector providers that span the higher education and VET sectors. Interestingly however, many VET students share a common characteristic – 81.4 per cent are studying part time.¹¹

The parent training packages that attract most student enrolments are, in order of popularity, (1) business services, (2) community services, (3) tourism, travel and hospitality, (4) construction, plumbing and services integrated framework, (5) sports, fitness and recreation (6) transport and logistics (7) health, (8) financial services and (9) resources and infrastructure. Their popularity is surprisingly stable across different kinds of providers with the most variation emerging when comparing students from urban centres with those in regional or remote areas and those studying in overseas locations with Australian RTOs. For regional and remote students within Australia, the field covering agriculture and conservation attracts relatively higher enrolments, and the field of resources and infrastructure moves up the ranking. In overseas locations, relatively more enrolments are recorded in integrated communications, training and education, public sector development, the automotive industry and the metal and engineering industry.¹²

Data is collected on the satisfaction of employers and students with their training. In 2017, over 87 per cent of students were satisfied with the overall quality of training and would recommend their training provider.¹³ Nearly half of those who were not employed before training were employed following training. The proportion of graduates not employed before training, who were employed after training, was slightly higher for graduates from private training providers (51.8 per cent) compared to those studying with other types of providers.¹⁴ These student-based responses were consistent with the survey responses of employers. Eighty two per cent of

⁸ The under 25 age group has 32.5 per cent of students; the 25 to 44 age bracket has 41.6 per cent; and the over 45 age group has 23.7 per cent of students; with 2.3 per cent of students' ages not identified: See "Total VET students and courses 2016," NCVER.

⁹ This is regarded as an underestimate because of unknown status in many cases: "Total VET students and courses 2016," NCVER.

¹⁰ "Total VET students and courses 2016," NCVER.

¹¹ Ibid.

¹² "VOCSTATS", NCVER, <https://www.ncver.edu.au/data/data/vocstats/vocstats>.

¹³ NCVER, *Australian vocational education and training statistics: VET student outcomes 2017* (Adelaide: NCVER, 2017), 22.

¹⁴ Ibid.

employers were satisfied that nationally recognised training provides employees with the skills they require for the job while satisfaction with unaccredited training reached nearly 90 per cent.¹⁵

The results from these surveys are a credit to the many committed RTOs and teaching staff in the VET sector. The strong performance of the many, however, has been overshadowed by the poor performance of the few. The Australian VET sector has suffered in this way, and arguably even more dramatically than might be expected because of the disruption accompanying major policy and structural change. Some have argued that privatisation of VET and cuts to TAFE funding have affected morale in the public sector and threatened teaching professionalism in VET more broadly.¹⁶ Added to this has been reputational damage as a result of public scandals involving financial mismanagement, fraud, and student abuse.¹⁷ Against this backdrop, the national regulator has become the go-to authority for fixing the sector's woes.

The NVETR Act and the role of ASQA

ASQA was established as the national VET regulator in 2011 under the NVETR Act and its associated legislative framework. Before the establishment of ASQA, registration and audit activities for VET providers were undertaken by eight state and territory registering bodies. Some jurisdictions also delegated regulatory activities to other bodies such as the National Audit and Registration Authority. The Council of Australian Governments' (COAG) aim in seeking to establish a national regulator was to maximise efficiency and facilitate greater consistency of regulation. There was also an expectation of better responses to emerging quality issues in the sector.¹⁸

Currently, ASQA regulates all RTOs operating within states and territories that have referred their powers, and regulates RTOs delivering VET and English language courses to overseas students studying in Australia under the *Education Services for Overseas Students Act 2000* (ESOS Act). As of November 2017, ASQA was responsible for regulating 4,061 RTOs, while Victoria and Western Australia, who have not referred their powers, regulate 242 and 235 respectively.¹⁹ ASQA also regulates RTOs in Western Australia and Victoria that offer courses to domestic students in any of the remaining six states and territories.

ASQA's primary functions include:

- Registering an organisation as an RTO (maximum period of registration is seven years)²⁰
- Renewing the registration of an RTO
- Changing the scope of registration of an RTO to offer all or part of VET courses
- Accrediting courses that may be offered and/or provided by RTOs
- Carrying out compliance audits of RTOs

¹⁵ NCVER, *Australian vocational education and training statistics: employers' use and views of the VET system 2017* (Adelaide: NCVER, 2017).

¹⁶ Education and Employment References Committee, *Getting our money's worth: the operation, regulation and funding of private vocational education and training (VET) providers in Australia* (Parliament of Australia, 2015), 2.

¹⁷ Ibid.

¹⁸ Concerns about the quality of VET for international students led to the Baird Review in 2010: Bruce Baird, *Stronger, simpler, smarter ESOS: supporting international students: Review of the Education Services for Overseas Students (ESOS) Act 2000* (Australian Government, February 2010).

¹⁹ "National Register of VET", <https://www.training.gov.au>.

²⁰ ASQA uses differential periods of registration in specific cases both at the point of initial registration and at the renewal of registration. A shorter registration period than seven years will usually accompany other conditions on registration and will have followed ASQA deciding that the RTO has substandard performance or the risk of substandard performance.

- Promoting, and encouraging the continuous improvement of an RTO's capacity to provide a VET course or part of a VET course.

As part of these functions, ASQA monitors RTO compliance against the requirements of the NVETR Act and its associated VET Quality Framework. The VET Quality Framework includes:

- the Standards for Registered Training Organisations (RTOs) 2015
Eight standards address quality 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 the VET regulator. Each standard has a number of clauses, producing 59 compliance outcomes (see Appendix G) that an RTO must address in its engagement with ASQA.
- the Australian Qualifications Framework (AQF)
The AQF is the national policy for regulated qualifications in Australia and incorporates quality assured qualifications from each education sector into a single comprehensive national framework. The framework supports the development and maintenance of pathways which provide access to qualifications and assist people to move easily and readily between different education and training sectors and between those sectors and the labour market.
- Quality Standards
There is provision in the NVETR Act for the Minister to, by legislative instrument, make standards relating to quality in the VET sector, to be known as Quality Standards. This provision has not as yet been utilised.
- Fit and Proper Person Requirements
The FPP requirements 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 FPP requirements include consideration of whether the person has been:
 - convicted of an offence
 - an executive officer of an RTO when that RTO had its registration cancelled or suspended by ASQA
 - bankrupt
 - disqualified from managing corporations
 - has ever provided ASQA with false or misleading information.
- Financial Viability Risk Assessment Requirements
The Financial Viability Risk Assessment requirements are aimed at ensuring that organisations can demonstrate their financial viability to deliver quality training to VET students. The requirements oblige RTOs to submit an assessment of financial viability risk by a qualified independent financial auditor (nominated by ASQA), as part of the application for registration, or at any other time as requested by ASQA, based on the level of risk of the RTO.
- Data Provision Requirements
The Data Provision Requirements ensure RTOs provide ASQA and the NCVER with a range of accurate and complete 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.

ASQA also performs other activities in regulating the sector. While ASQA has no role in the development, endorsement or maintenance of the 65 Training Packages (this is the function of the Australian Industry and Skills Committee), ASQA ensures through its regulatory function that RTOs' training and assessment meets Training Package requirements.²¹ ASQA also issues general directions on what RTOs must do to comply with the VET Quality Framework from time to time. For example, RTOs are required to have records of all assessment procedures with individual students which can be produced at audit upon request.²² Furthermore, ASQA provides a rich online library of information to assist RTOs with their compliance responsibilities, including Frequently Asked Questions, Fact Sheets, information on General Directions and the ASQA update newsletter. In addition, in 2016-17 ASQA conducted 27 provider briefings across Australia (24 face-to-face) on compliance related issues and the new audit approach as well as three webinars. The ASQA Info Line also offers an email and telephone service for those seeking information.

ASQA's regulatory approach

When ASQA was established, it had to navigate the complexities involved in regulating an environment where not all states had referred their powers and with a legislative regime pieced together from the different regulatory practices developed in individual states and territories over time. In consultations, the review heard from a range of stakeholders that ASQA took around two years to settle its role and consolidate different practices and cultures it had 'inherited' from state and territory regulators. There is also a widely held view that ASQA is evolving as a regulator and moving in a positive direction, in spite of having limited resources to do the job the sector wants ASQA to do.

Over time ASQA has shifted its regulatory focus from an applications focus to a risk-based model of regulation. This approach places less emphasis on processing applications and more on the collection and analysis of data and intelligence to determine where RTOs may be failing to deliver the quality of training and education that the community expects of them. The risk-based model systematically assembles information gained from a variety of sources including ASQA's data warehouse of information held on providers and their history, media scanning, sector intelligence, government reports and priorities, and complaints.

ASQA considers risk at two levels, systemic risk and provider risk. Provider risk is associated with particular RTOs who exhibit characteristics that arouse suspicion around how the RTO is operating. The range of courses offered, staffing levels, 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. Provider risk is high in cases where ASQA has doubts that the provider is a well-run RTO. Systemic risk pertains to problems occurring among groups of providers. This kind of risk might be associated with training in particular fields such as aged care or childcare, or with some aspect of the training and education program, such as course length, online delivery, qualifications of teaching staff, and integrity of assessment procedures. A systemic risk affects many providers and can proliferate to the whole sector, particularly when market competition is keenly felt. For example, cheaper, shorter, online courses that offer quality training are efficient and welcome, but if these courses do not impart learning and ensure competencies they may create a market where high quality providers are undercut by low quality providers. Small profit margins mean the incentive to cut corners in training then becomes high across the sector. If this risk is not

²¹ "National Register of VET", <https://www.training.gov.au>.

²² "General direction—Retention requirements for completed student assessment items," ASQA, <https://www.asqa.gov.au/news-publications/publications/general-direction-retention-requirements-completed-student-assessment>, accessed January 2018.

addressed in a timely fashion, there can be a contagion of cheap, short, online, low quality courses that make money for providers but undermine the integrity and the reputation of the sector.

ASQA's prime focus when assessing risk is where an RTO certifies that a person has competencies that are not reflected by the person's skills, knowledge and attitudes. This is a reasonable first criterion for assessing risk. ASQA, like all modern regulators, has fallen foul of those who specialise in navigating their way around risk criteria to exploit financially lucrative "loopholes". Taking money and offering neither training nor certification of achievement is such an example. Invariably there is consensus that the behaviour is unethical and shock that anyone would do it. Sadly, the legality of gaming the system to the detriment of those trying to do the right thing is often upheld. Successful gaming gains momentum as herding behaviour and contagion, until the "loophole" is closed.²³

The VET sector has faced significant systemic risks over time. Where once students appeared to be the main victims, the VET FEE-HELP scandal rose to new heights with costs to taxpayers mounting to an estimated \$1.2 billion in loans issued inappropriately by VET FEE-HELP providers in 2014 and 2015 that would not be recovered.²⁴ Under the VET FEE-HELP program, eligible students were able to access loans from the Australian Government, which removed upfront cost barriers to entering VET. Insufficient safeguards in the program and inadequate monitoring of the market attracted providers who had little interest in education but who saw the opportunities to exploit government funds. The gaming of the system that occurred under VET FEE-HELP was due in large part to poor system design, but evidence from other regulatory areas, in particular financial services and tax, points to the fact that gaming is part and parcel of technocratic regulatory systems. There is always a loophole, a 'go around' move, a weakness or ambiguity that can be exploited, unbeknown to the regulator, which then must scramble to bring matters under control.

Recent government reforms have supported ASQA with the management of the fallout from VET FEE-HELP. On 1 January 2017 the government enacted legislation to establish the VSL program to replace the troubled VET FEE-HELP scheme. VSL is characterised by higher entry requirements, stricter compliance requirements and a more comprehensive quality assurance regime than VET FEE-HELP. While ASQA does not administer requirements under VSL, it does monitor compliance with VSL as a condition of registration under the NVETR Act. In a further strengthening of student protections under VSL, the VSL Ombudsman was established in July 2017 to handle complaints about VET FEE-HELP and VSL debts.²⁵ It is separate from ASQA and the Australian Government Department of Education and Training with its own legal powers to investigate and deal with complaints. The Ombudsman provides consumer protection in the form of assistance to students who have a complaint about their debt and may recommend redress for the student. If there is a systemic issue relating to the provider's practices, the Ombudsman can make recommendations to other Commonwealth agencies.

The damage that flows from systemic risk can dwarf damage from provider risk. Systemic risk affects not only individual students but also other RTOs trying to do the right thing, employers and the wider community. At times, systemic risk can understandably crowd out provider risk in the regulation cycle. ASQA has embarked on a number of strategic reviews to increase its focus on systemic poor practice and provides an annual environmental scan of the VET sector to analyse existing and emerging issues. The 2016-17 E-scan involved consultations with 28 external

²³ John Braithwaite, *Markets in Vice, Markets in Virtue* (Oxford and New York: Oxford University Press, 2005).

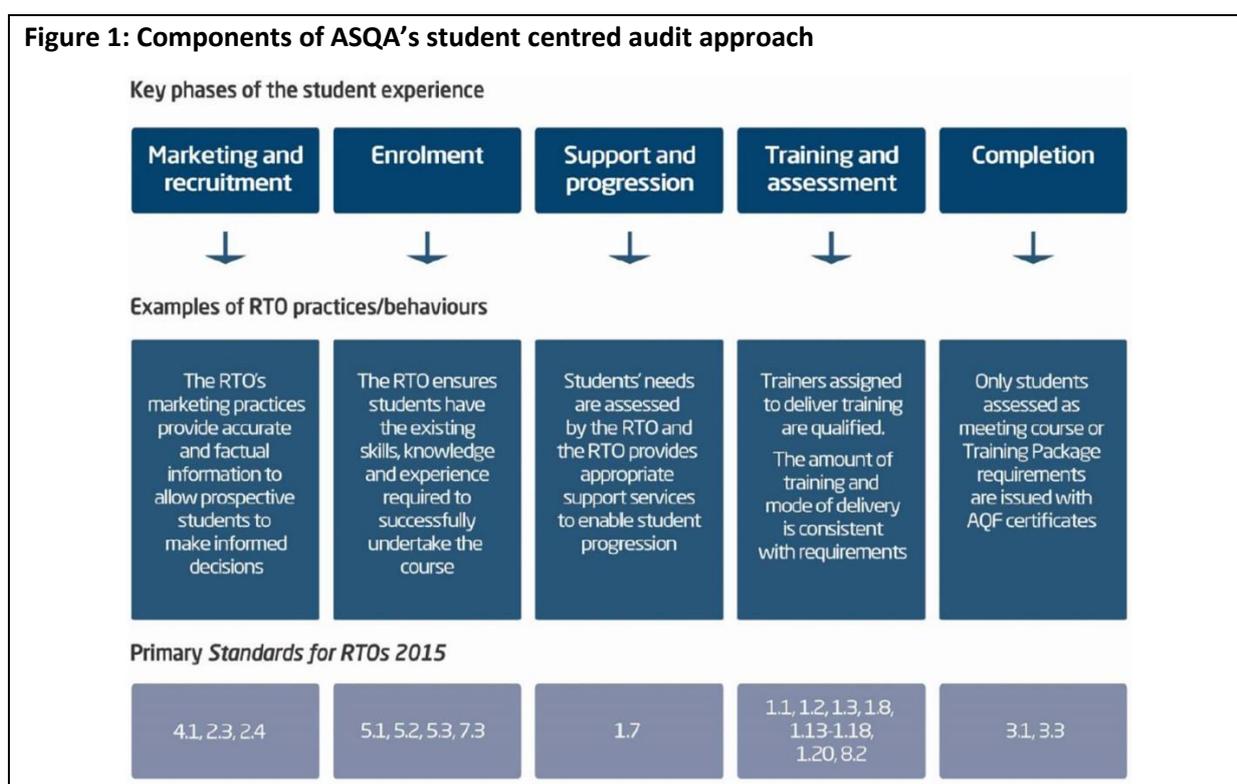
²⁴ Australian National Audit Office (ANAO), *Administration of the VET FEE-HELP Scheme* (Australian Government, 2016).

²⁵ *Education and Other Legislation Amendment Act (No. 1) 2017 (Cth)*.

stakeholders and the analysis of internal regulatory data.²⁶ Many of the issues identified in the E-scan were raised as points of concern in the consultations and submissions of this review, showing a remarkable level of shared concern in the VET community.

ASQA's student centred audit approach

ASQA has introduced a new compliance audit model for providers that has met with much praise in the sector. The new audit model now follows a student's journey with the RTO. ASQA recognises five stages: (1) marketing and recruitment; (2) enrolment; (3) support and progression; (4) training and assessment; and (5) completion. The explanations are simple and straightforward and align with the RTO's day to day activities (see Figure 1).



Source: ASQA's new audit model

This encourages every responsible RTO and its staff to be continually asking five questions and seeking evidence of answers:

- Am I providing accurate and complete information so the student can make informed choices?
- Is the student equipped with the skills necessary to successfully do this course?
- Am I providing the support services needed by this student to progress through the course?
- Are my teachers qualified to provide training and does the training meet the requirements?

²⁶ Key systemic risks identified were (1) amount of training; (2) capability of trainers and assessors; (3) online delivery and assessment; and (4) legacy issues from VET FEE-HELP and the introduction of VSL. Training products of concern involved early childhood education and care (Certificate III and Diploma), training and assessment (Certificate IV) and business (Diploma). Standards of concern involved (1) assessment practices; (2) training and assessment strategies and practices; and (3) accurate information to students about services and qualifications.

- Is my assessment of a high enough standard to ensure that those who I say meet course requirements really do?

These five questions are easy to remember for everyone involved in VET. They speak to common sense and teacher professionalism rather than generating fear of not being up to the task of remembering 59 compliance clauses. ASQA has helpfully linked the student journey to 22 of the 59 clauses in the Users' guide to the Standards for Registered Training Organisations 2015.

ASQA's transition to becoming more focused on the practices and behaviours of providers and their systems for assuring and improving quality has seen increased use of student and employer input through surveys and interviews. ASQA would, however, like to take this further. Currently, RTOs are required to conduct learner engagement and employer satisfaction surveys to assist them monitor their own performance.²⁷ Annually RTOs submit a summary of response rates, what the RTO learnt about its performance, and how it would use the feedback for improvement. This document, the Quality Indicator Annual Summary Report, indicates whether an RTO has capacity and willingness to review its performance and continuously improve. The Quality Indicator Annual Summary Report serves two functions. It provides the RTO with a reminder and opportunity to review its own performance and plan for improvement. ASQA would like to use the content of the material collected for the report to benchmark the RTO against other RTOs and previous years' performance. From a regulatory perspective, both functions are important. From a quality indicator perspective, ASQA is critical of the fact that the data is not collected in an easily comparable, standardised form, is not provided to ASQA in detail, and is not suitable for publishing. ASQA outlines in its submission that updating the type of data and the way it is collected is needed so that it can be incorporated as part of their risk-based approach to targeting regulatory activity.²⁸

Given that the prime objective is improving student outcomes, this review advises caution. It is most undesirable for reporting to crowd out teaching and training. More importantly, it is most undesirable for reporting to homogenise the sector and discourage innovation. With over 4,000 RTOs for ASQA to monitor, self-review and improvement is the most important goal to strengthen desirable student outcomes. The regulator can best serve the quality agenda through motivating continuous improvement not measuring standards of performance. For example, ASQA having knowledge that an RTO is at the 25th percentile on completions in business studies (75 per cent of similar providers are better) is not going to continuously improve quality as well as the RTO that self-evaluates and comes to the view that its completions are not good enough, implements a plan to consult with like providers, identifies the root cause of the problem, and fixes it. In short, ASQA knowing that there is a problem does not fix the problem, even if ASQA issues sanctions. That said, the prospect of sanctions may nudge an RTO into self-review and improvement. This review recommends other ways of meeting the needs of ASQA and government for quality data that can nudge the whole sector into lifting standards and developing a culture of excellence in VET.

What does ASQA do?

A substantial amount of ASQA's work is driven by registration, renewals, withdrawals and change of scope applications. The remainder is concerned with risk analysis, monitoring and compliance, investigation and enforcement, and educational activities.

²⁷ The surveys used were developed for the Australian Quality Training Framework (AQTF), a precursor to the VET Quality Framework.

²⁸ Australian Skills Quality Authority (ASQA), "Submission 030," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

Table 1: Applications summary 2016-17

	Number of applications	%
Initial	490	8.2
Renewal	514	8.6
Change of scope	4773	80.2
Withdrawal	178	3.0
Total	5955	100.0

Source: Data supplied by ASQA

ASQA has tried to streamline its application processes to deal with the churn that has characterised VET since privatisation. The volume of change of scope applications in Table 1 (4,773 applications) is particularly daunting and has prompted ASQA to make recommendations for restricting the capacity of RTOs to change scope within the first 12 months of operation. ASQA argues that it is reasonable to expect new RTOs to spend an initial period proving themselves as responsible and capable providers through implementing the business and education and training plan upon which their registration was granted. With provision for exceptional circumstances, the legislative framework should support such policies.

ASQA has developed a sophisticated process for analysing risk that assembles information from a variety of sources. ASQA does not rely on risk ratings as such, but rather a risk matrix. ASQA relies on a holistic assessment of a provider, which can be responsive to whether the focus at the time is on a systemic risk to the sector (eg VET FEE-HELP) or a provider risk. The Risk Assessment Framework is accessible to those who are interested in understanding the elements that ASQA takes into consideration when developing its compliance audit priorities.

Table 2: ASQA Audits 2016-17

	Initial audit (%)	After rectification (%)
Fully compliant	25.8	53.4
At least one non-compliance	74.2	46.6
Total	100.0	100.0

Source: Data supplied by ASQA

Note: 1632 audits were completed in 2016-17

ASQA's risk matrix directs compliance audits. ASQA claims a high success rate for decision-making based on their risk data base with at least one non-compliance found in 74 per cent of cases. As noted earlier, the current context of sector rorts and abuses explains why most of ASQA's activities are taking place at what is called the "pointy end" of enforcement. As ASQA claims, these may well be the worst cases. Consequently, the finding that only about half of RTOs are compliant after their efforts at rectification may appear shocking to an onlooker who was unaware of recent history. A major concern of this review is to ask whether ASQA has the tools it needs to improve compliance rates post-audit and rectification.

It is clear that ASQA's task in the current VET environment is challenging. Many consultations and submissions raised concerns about complaints against providers. Again this must be understood within the current context of scandals and RTO closures. Complaints received by ASQA ran at over 2,000 for 2016-17. Data for 2017 suggest that around half did not meet the threshold for action, and the majority of complaints were not able to be resolved within a month. This suggests there are many people whose grievances have not been resolved. This review notes that these may be issues that are not within ASQA's capacity to manage, even if the sector does become more settled into a culture of excellence in the future. Increasingly, as the tertiary education sector grows and becomes

more interconnected, complaints are likely to emerge at the higher education/VET interface and will fall through the cracks of both the Tertiary Education Quality and Standards Agency's (TEQSA's) and ASQA's ambits of responsibility. Sector-wide cooperation may provide a more sustainable solution.

Regulatory Tools

ASQA has at its disposal a wide range of regulatory powers including administrative, civil and criminal sanctions that it can use against providers delivering inadequate training. ASQA undertakes desk audits as well as site visits. ASQA reported that, *"site visits occur for a majority of our audit activities – they provide a better opportunity to check the RTO has adequate facilities/resources, collect and discuss evidence with an RTO or applicant and allow for on-site student interviews"*. A small amount of ASQA's work is conducted via desk audit. A desk audit may be more appropriate, for example, if the provider is 100 per cent online delivery or if a complaint about a specific matter is being investigated.

At audit, ASQA's response depends on the compliance issues found. ASQA auditors have some discretion to deal with minor issues on site. Understandably such issues are recorded in the report, but there is also opportunity to acknowledge the cooperation and responsiveness of the RTO to correct the matter immediately. These are likely to be written up as an opportunity for improvement in the audit report, rather than involve further regulatory action. For more significant non-compliance, the auditor reports to their manager at ASQA who reviews the audit and, if they agree, issues a written direction to rectify the breach. Written directions are standard letters, though customised to the particular action that needs to take place. It is common for the letter to state further action will be taken if the breach is not rectified within specified time frames.

ASQA has increased its use of written directions for minor breaches. The most recent annual report explains that, *"A provider may be issued with a written direction requiring it to address the non-compliances within a specified period, and retain evidence that this has occurred. ASQA will then examine the RTO's compliance with the written direction at a future audit and/or during other regulatory activity"*.²⁹ ASQA describes this as a refinement of its responses to non-compliance.

Table 3: Application of regulatory tools to address provider breaches, 2012-13 to 2016-17

	2013-14	2014-15	2014-15	2015-16	2016-17
Regulatory Sanctions					
Cancellations	34	25	27	69	125
Suspensions	31	49	54	15	56
Written directions	11	11	15	24	98
Investigation and enforcement					
Infringement notices	NA	NA		6	32*
Civil penalties				1	
Criminal prosecutions			1		1

Source: Data supplied by ASQA

*Of these, 24 infringement notices related to one provider.

ASQA has a useful range of administrative sanctions at its disposal should the breaches be judged serious. ASQA can impose administrative sanctions that differ in severity, ranging from giving a

²⁹ Australian Skills Quality Authority, *Australian Skills Quality Authority Annual Report 2016-17* (Commonwealth of Australia, 2017), 24.

written direction through to suspending or cancelling a provider’s registration. As Table 3 shows, some of these administrative sanctions are used more often than others. High cancellations in the past year reflect the conclusion of regulatory activity from previous years and should not be read as an indicator of average annual activity. In the 2017-18 year to date, ASQA has issued 11 infringement notices and has finalised one criminal prosecution.

For certain conduct, ASQA is also able to seek a civil penalty order or criminal sanctions from the courts. This covers conduct such as issuing invalid qualifications, failing to assess students, or making misleading claims in advertising material. An RTO can suggest an enforceable undertaking in these circumstances whereby they agree to correct the problem within a specified time frame without penalty, unless they breach the undertaking. Under the infringement notice scheme, ASQA can also directly issue fines to providers that breach certain civil penalty provisions.

ASQA has recently substantially increased the number of regulatory decisions it makes (see Table 4). ASQA attributes the increase in decisions in 2016-17 to its risk-based approach and taking action based on broader regulatory obligations. As ASQA is undertaking a greater proportion of risk based audit activities through the use of intelligence and risk profiling, they more effectively target providers that are not meeting the required standards. These audit activities are more likely to lead to an adverse decision. Similarly, the introduction of the revised audit model has allowed ASQA to focus on evidence of RTO practices and behaviour at audit to supplement documentary evidence. This has improved the identification of greater levels of sustained or significant non-compliance. ASQA has also taken a more forceful stance on providers failing to meet other regulatory obligations, including fee payment and data submission.³⁰ This pattern has been linked with RTOs that are effectively “shell” companies, not actually delivering any training or education. ASQA has also recommended changes so that non-delivering RTOs will lose their registration.

Table 4: ASQA regulatory decisions from 1 July 2015 to 30 June 2017

Regulatory decision	1 Jul 2015 – 30 Jun 2016	1 Jul 2016 – 30 Jun 2017
Decisions to cancel registration	69	125
Decisions to suspend (all/part) registration	15	56
Written notices of intention to cancel/suspend	103	516
Other administrative sanctions	34	119
Rejection for initial registration, renewal of registration and change of scope	154	169
Total	375	985

Source: Data supplied by ASQA and see the Australian Skills Quality Authority Annual Report 2016-17

The sanctions that ASQA can impose on RTOs are legally complex in terms of when and how they can be used. In the course of the review RTOs showed little awareness of what sanctions were available and how they could and would be used by ASQA. While written directions to a non-compliant RTO clearly indicate the next actions ASQA could take, cancellation of registration seems to be the dominant sanction in the minds of RTOs. The effectiveness of deterrence depends heavily on people understanding the consequences of their actions. While ASQA has requested extensions of its powers in various ways, concerns have also been raised about the wisdom of these changes. Before changing the legislation, attention needs to be paid to how RTOs understand and react to the sanctions currently available to ASQA. Deterrence has to be administered in accord with the

³⁰ Ibid, 25.

legislative framework but its effectiveness in changing behaviour depends on how ASQA's regulatory actions are interpreted and understood.

Conclusion

This chapter has explored the VET environment in Australia and acknowledges the challenge of regulating such a large and diverse sector that is still recovering from the VET FEE-HELP scandal. It credits the steps ASQA is taking to put students at the centre of regulation and target its regulatory tools at areas of greatest risk. Moving into the future, the ongoing improvement of student outcomes must continue to drive the evolution of ASQA and the VET sector.

The next chapters focus on the adequacy of the legislative framework to support the further development of ASQA's student-focused approach to regulation, beginning with the regulatory theory underpinning this review. This will drive questions about whether clarity surrounds the principles ASQA uses to guide sanctioning, auditing for compliance and improving quality. Chapter 2 provides explanation of how and why regulatory principles are important to ensure regulatory action achieves desirable student outcomes, in short, competent graduates who have had a positive learning experience. Chapter 4 presents evidence of the impact of current regulatory practice and of next steps in building a firm but fair regulatory culture. Chapter 5 presents evidence of sector aspirations on quality of training, teachers and an RTO's ethical climate and recommendations on how the regulatory framework might be used to further these goals. Chapter 6 presents evidence on inadequate consumer protection and how this might be rectified.

The case for recommendations that will strengthen regulatory coherence is argued through Chapters 4 to 6. Regulatory coherence is needed to meet the functions of protection of students and the VET industry while simultaneously lifting quality of service across the sector.

Chapter 2: Aims and purposes of this review

This review examines the NVETR Act and its associated legislative framework to find out if ASQA has the authority and capacity to regulate efficiently and effectively given the current state of the VET environment and how it is likely to evolve in the future.

The operational processes and systems of ASQA are not the subject of this review. A previous review by PricewaterhouseCoopers (PwC) examined ASQA's operations and processes.³¹ In the course of the PwC review, however, regulatory matters were raised that have a bearing on the present review. Issues from the PwC review that have been considered in this report are:

- A lack of guidance and clarity about the interpretation and application of the VET Quality Framework, particularly the Standards for Registered Training Organisations (RTOs) 2015 (the Standards).
- The pros and cons of a risk-based approach to regulation that is reliant on quality data and data analytics.
- Alignment of related legislation such as the *Tertiary Education Quality and Standards Agency (TEQSA) Act 2011* and the *Education Services for Overseas Students (ESOS) Act 2000*.

The terms of reference for this review, presented in Appendix A, were addressed with an eye to how issues impacted student outcomes; at the suggestion of the Hon Karen Andrews MP, Assistant Minister for Vocational Education and Skills.

The question that therefore guided consultations and analysis of submissions was: Should there be changes in the legislation to improve ASQA's capacity to regulate for desirable student outcomes, in essence, producing competent graduates who have had a positive learning experience?³²

In order to answer this question in a manner that was useful to the Assistant Minister, ASQA, and the sector, two factors beyond the legislation had to be taken into account:

- The scope of the regulatory activity in the sector.
- The cultural underpinnings of this activity.

Scope of regulatory activity

Regulation encompasses all the forces that "steer the flow of events"³³ in some directions and not others. The regulation of the VET environment involves not just the formal regulators at the national level, and at the Victorian and Western Australian state level, but also other government bodies, funding arrangements, markets, professional associations and peak bodies representing industry, training and education. The regulation of VET extends far beyond the national regulator, ASQA. In reviewing the legislation and the instruments underpinning ASQA's operations, consideration must be given to the complexity of the regulatory environment and ASQA's position within it.

VET is not fundamentally different from other fields in this regard, such as finance, health, energy and telecommunications. All have many sources of regulatory influence apart from the formally

³¹ PricewaterhouseCoopers, *ASQA Process Review*, 2013

³² Desirable student outcomes were discussed in Chapter 1.

³³ Parker and Braithwaite, "Regulation," 119-145.

designated regulators. In asking how well legislation supports a formal regulator, answers cannot be found through placing a regulator in a silo separated from other regulatory forces.

Critical to the usefulness of this review is to therefore work out how ASQA can collaborate with other positive influences in the VET sector to improve student outcomes, all the while exercising control over the less student-outcome friendly forces. The question that naturally follows is: Does the current legislation facilitate the pursuit of a regulatory framework that allows student-outcome friendly forces to reinforce each other and work together such that their overall positive impact is more than the sum of their parts? The evidence to answer this question from submissions and consultations is presented in Chapter 5. This chapter explains how a regulatory framework can simultaneously build a positive culture of cooperation, reward excellence and embrace innovation, while also curbing unacceptable conduct through a system of controls and sanctions.

This chapter is organised in two parts. First, dual regulatory models of supports and sanctions are discussed together with an explanation on how they have evolved in regulatory practice.³⁴ An argument is presented for how they can complement a risk-based audit approach as is currently used by ASQA. Second, this chapter discusses the suitability of a regulatory framework that uses dual regulatory models of supports and sanctions in VET. The VET environment is changing at an unprecedented rate within its traditional boundaries and at its margins, and in its relationship with the higher education sector. There are many forces steering the flow of events, not always in the same direction. Dual regulatory models of supports and sanctions can add a dynamic quality to increase ASQA's capacity to deal with change on such a broad scale.

Regulation and culture

Because regulatory environments are complex and because various regulatory forces need to cooperate to achieve a desired outcome, formal regulators have to worry about their culture and whether they are trusted enough to lead a sector toward a better future; in the case of ASQA, for lifting the bar on desirable student outcomes.

It is often assumed that formal regulators derive their legitimacy from the power that is bestowed upon it under law, and that is the end of the story. As important as legal authority is, it is but a half-truth. Obeying the law requires true deference, which (as opposed to feigned deference), requires more than the moral obligation to be law abiding. Those being regulated have to believe that the regulator has integrity in so far as it delivers benefits and is fair to individuals and the collective. One way of describing these qualities is to say the regulator is *perceived* to have integrity; in other words, it does not only have integrity in the sense that it acts according to its legislated charter. Integrity in the context of ASQA means that stakeholders perceive ASQA as taking fair and reasonable actions to protect the sector's reputation with students, employers and the community. This is a bigger question than what is being asked under the scope of this review. Nevertheless, it shapes the questions being asked of ASQA's legislative framework in this way:

Does the current legislation allow ASQA to work with the sector to improve student outcomes without compromising its integrity in the eyes of those it is regulating and the community more broadly?

How will the recommended changes in this report improve desirable student outcomes, facilitate cooperation across the sector and strengthen ASQA's perceived integrity?

³⁴ John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating aged care: Ritualism and the new pyramid* (Cheltenham: Edward Elgar, 2007).

A central theme of this report is that lifting quality in student outcomes means having a regulator that invests in building a positive VET culture. ASQA's new audit model of the student journey (recruitment, enrolment, support, learning and completion)³⁵ serves as an excellent base for dialogue that builds a culture of cooperation and compliance with RTOs in the VET sector. ASQA has taken major steps toward redefining its regulatory role through its new audit model, which was widely admired by those consulted in the course of the review. The discussion that follows proceeds from seeing the student journey as the cultural heartland for producing desirable student outcomes and regulating in such a way as to improve desirable student outcomes.

While dialogue between the regulator and the sector is necessary for building a positive culture, it is not alone sufficient. Less student-outcome friendly forces can "crowd out" dialogue geared toward cooperation around better student outcomes. For instance, RTOs that have promoted a business model that increases profits and share value at the expense of students, employers, government and taxpayers constitute a negative regulatory force that has done harm and undermined confidence. To contain the harm, regulators, like ASQA, use the law to exert control. The law must be fit-for-purpose.

The regulatory objective is to promote and participate in a positive and innovative education and training culture, recognise quality performance by RTOs, and sanction RTOs that persist in harm-producing actions despite being given advice and support to remedy these actions.

Part 1: Dual regulatory models of supports and sanctions

Regulatory practice has swung like a pendulum between regulation, deregulation, self-regulation and back again. When governments adopted deregulation and self-regulation agendas, non-government bodies have often stepped in to fill the regulatory void.³⁶

Self-regulation frequently has been more of an idea than a reality. At the most fundamental level, we all need feedback so that we maintain productive relations with others. The question is how is that feedback provided: Through the market, through informal networks, through professional networks, or through a formal regulator? Since the global financial crisis, there seems to be convergence on a plural view; all are important. Each can solve some problems, but not others.³⁷ Importantly, problem solving is better when formal and informal regulation support each other.

Having multiple mechanisms of feedback makes sense from a social-psychological perspective. Regulatory effectiveness can be improved when a formal regulator is in sync with other influential actors and can offer benefits, act as a referee for fairness, or stand up for those who are committed to doing the right thing.³⁸ In order to know how to do this, formal regulators need to have open and constructive relations with professional networks, consumers, and all of those operating through other feedback mechanisms. That is not to say that these actors and regulators will always together speak with one voice. Apart from benefits from openly expressing different perspectives, regulators need to guard against compromising their integrity when they allow their voice to become

³⁵ Australian Skills Quality Authority, *ASQA's new audit model* (Australian Government), 6.

³⁶ David Levi-Faur, "The Global Diffusion of Regulatory Capitalism," *Annals of the American Academy of Political and Social Science* 598, no. 1 (2005): 12-32.

³⁷ John Braithwaite, *Regulatory Capitalism: How it Works, Ideas for Making it Work Better* (Cheltenham: Edward Elgar, 2008).

³⁸ Valerie Braithwaite, "Closing the gap between regulation and the community," in *Regulatory Theory: Foundations and Applications*, ed. Peter Drahos (Acton: ANU Press, 2017).

subservient to more powerful interests (a concept known as regulatory capture). At the same time, regulators will be more effective if they are not isolated as feared oppressors.

Regulatory effectiveness is improved by engaging with others so that regulators can have their message reinforced through other feedback mechanisms and they can ensure their message is well pitched. This is how a regulator obtains a social license to operate in a regulatory community.³⁹ A regulatory community refers to all those actors who exert influence in a sector, both positive and negative.⁴⁰ A social license legitimates the legal authority that a regulator has within that community.

From this perspective, regulatory frameworks should enable regulators to have positive influence through collaboration with others. Regulators find allies among their stakeholders and work with them to steer the flow of events in directions that reduce societal harms and increase societal benefits. For example, a regulator may rely on professional associations to ensure information about best practice is shared. This could occur in a situation where the regulator detects systemic weaknesses in data management systems, educates and persuades others in the sector to take the problem seriously, and engineers a solution. Peak bodies and professional associations may promote measures for improvement through their members. The regulator, consultants, peak bodies and professional associations form nodes of influence, working together for improvements in response to concerns raised by the regulator.

In this way, the regulator leads the regulatory community in making sure that pathways to compliance with regulatory standards are within reach of those being regulated and make sense from the perspective of running a business. Through regulatory conversations of persuasion and education, the regulator makes sure that regulatory standards are not add-on burdens, but are an integral part of day to day business that helps build reputation and sustainability.⁴¹

ASQA operates under current legislation within what is essentially a cooperative regulatory community with many influential voices. The Australian Council for Private Education and Training, the peak body for private RTOs, offers quality endorsement reviews for its members in the sector.⁴² TAFE Directors Australia has recently profiled TAFE industry partnerships to provide guidance to the sector on how to better meet current workforce needs.⁴³ As these organisations pursue quality agendas of different kinds, it is inevitable that tensions and displays of resistance will emerge across the sector, including with the regulator. This is an essential part of robust regulatory conversations that lead to improvements through the contest of ideas. Maybe impasses should have been resolved more quickly in the past, but what is important to note is that they have been resolved successfully. The resolution of VET FEE-HELP depended upon cooperation across government, and ultimately partnerships with public and private providers that accepted responsibility for the many students who were stranded after RTO closures. ASQA's transition to the new student-journey audit model is another example of improvement that has come about through regulatory conversations within the

³⁹ Neil Gunningham, "Social license and environmental protection: Why businesses go beyond compliance," *Law and Social Inquiry* 29, no. 2 (Spring 2004): 307-341.

⁴⁰ Errol Meidinger, "Regulatory culture: a theoretical outline," *Law and Policy* 9, no. 4 (1987): 355-386.

⁴¹ Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992).

⁴² "The Australian Council for Private Education and Training Member Reviews: Monday, July 17 2017," Australian Council for Private Education and Training, accessed July 17, 2017, <https://www.acpet.edu.au/article/11615/acpet-member-reviews/>.

⁴³ TAFE Directors Australia, *Annual Report: For the period January 2016 to June 2017* (Reid: TAFE Directors Australia).

regulatory community. Consultations and submissions in this review further supported the conclusion that regulatory partnerships are possible under current legislation.

We are all sensitive to intrusions on our freedom, and that is what formal regulators do, or at least threaten to do.⁴⁴ For this reason, formal regulators appeal to our better nature; what the regulator is asking of us is what we should do anyway. A regulator will improve our prospects for success, help us be socially responsible, and so on. Sometimes, however, we may disagree. Disagreement is not uncommon when regulatory environments are complex and changing, as most are.

Well-connected regulators keep abreast of disagreement that is based on sound argument and make adjustments to find a way forward. This is another reason why working collaboratively within the regulatory community is so valuable. Through regulatory conversations, the meaning of standards evolves and the regulator is seriously disadvantaged if it cannot lead the regulatory conversations on how standards should be interpreted. This is not to disrespect the separation of powers and the courts having final responsibility for interpreting the law if things go seriously off-track. In a cooperative regulatory community where goals are shared, however, imbuing standards with a shared meaning through regulatory conversation is both practicable and desirable.⁴⁵

The central process of regulatory conversation is often narrow involving only core representatives of the regulatory community. It needs to be followed by consensus building that is broad based, and then a continuing and widely broadcasted communication strategy to explain the meaning and purpose of standards to encourage compliance.⁴⁶ It is the single most important argument for why the process of registration of RTOs should have a component early on that is face-to-face and on site with time set aside to ensure that an RTO and a regulator have a clear understanding of what each expects of the other and how the objectives of the RTO and the regulator will be progressed. Relational regulation of this kind, which sets up a compact between the RTO and ASQA from the beginning, is necessary to give ASQA a reasonable chance of steering over 4,000 RTOs in the direction of desirable student outcomes. The extent to which ASQA and the Australian Council for Private Education and Training can cooperate in this venture for smaller private RTOs through an extension of Australian Council for Private Education and Training's quality endorsement reviews is a question for the future. This option could be done as a matter of good practice, which is not barred under current legislation.

Despite best efforts to establish positive working relationships, RTOs can fail to comply or cooperate with a regulator, sometimes being persistently non-compliant. Regulators have to deal with misunderstandings of what is involved in complying with standards, indifference to complying and outright dismissiveness of regulation and the regulator. These problematic responses to regulation may occur in isolation or together. It is not uncommon for "won't do" and "can't do" to co-exist.⁴⁷

Because regulation is threatening and potentially intrusive, it is not uncommon for a regulator to use prevention measures to lead the sector toward compliance (for example, education campaigns). Regulators refine their communication strategies to make clear compliance expectations and non-compliance consequences, and then they regulate in a manner that allows everyone the space to show they are responsible enough to manage their business and be compliant with the rules and

⁴⁴ Valerie Braithwaite, *Defiance in Taxation and Governance: Resisting and Dismissing Authority in a Democracy* (Cheltenham, UK and Northampton, USA: Edward Elgar, 2009).

⁴⁵ Julia Black, "Regulatory Conversations," *Journal of Law and Society* 29, no. 1 (2002): 163-196.

⁴⁶ J Braithwaite, Makkai and V Braithwaite, *Regulating aged care*.

⁴⁷ Valerie Braithwaite, John Braithwaite, Diane Gibson, and Toni Makkai, "Regulatory styles, motivational postures and nursing home compliance," *Law and Policy* 16, no. 4 (October 1994): 363-394; Valerie Braithwaite, "Games of engagement: Postures within the regulatory community," *Law and Policy* 17, no. 3 (July 1995): 225-255.

regulations. Ideally, partners in the regulatory community will support the regulator by carrying the regulatory message and encourage and assist with compliance. Partners become invaluable allies in assisting those who lack experience and capacity and just need a helping hand to get compliance back on track, as opposed to those who fail to comply with defiance. Partners in the regulatory community also alert the regulator to persistent problems of non-compliance. Those who are defiant usually become the concern of the formal regulator. Visits to RTOs and consultations with stakeholders showed that ASQA was engaging with its regulatory community in the manner described.

The defiant are a mixed group in most regulatory contexts.⁴⁸ A distinction can be drawn between those who are resistant but can be persuaded to comply, and those who are less amenable to change through conversation – the dismissively defiant. Those who are resistantly defiant are offended by the regulator’s assessment of them as non-compliant.

A non-compliant assessment by a regulator is frequently questioned as unfair or unreasonable. ASQA offers procedural fairness to those it judges as having breached a condition of registration through issuance of a formal written rectification notice.⁴⁹ Procedural fairness in the context of rectification notices lies in giving the non-compliant party the opportunity to express opposition to the alleged breach and produce evidence to the contrary. Giving people the right of reply is an important principle of procedural justice.

A second, and empirically more important principle of procedural justice is for non-compliant parties to feel that they have been treated in a respectful manner.⁵⁰ Some regulators, even those that wish to turn non-compliance into compliance and elicit cooperation, fall into the trap of stigmatising and expecting the worst of those who have breached regulations. This is an obstacle to improvement. A regulator that threatens at the rectification stage with more intrusive regulatory interventions is likely to worsen their relationship with the non-complier. The risk for the regulator is entrenched resistance that can turn into persistent challenges to the regulatory system.⁵¹ Instead, what must be communicated is a determination of the firm but helpful regulator to stick with the problem until it is fixed.

Persistent challenges to the regulatory system are the most difficult for a regulator to handle: They are likely to result in extreme adversarialism where the regulated party becomes dismissive of the system. Dismissive defiance is an attitude that communicates to a regulator that it is seen as irrelevant or not worthy of respect. Through the eyes of the dismissively defiant, the regulator lacks a social licence. At this level of defiance, the non-complier has no buy-in to the ethical underpinnings of the regulations. The focus is on beating the system. Whereas most want to avoid trouble with the regulator, those who are dismissively defiant do not back away from conflict and enjoy the game of trying to win against the regulator.

Dismissive defiance is costly to regulate because invariably matters have to be resolved in court, and sometimes repeatedly. In the interests of regulatory effectiveness and efficiency, it is therefore important to reduce levels of dismissive defiance as much as possible. The regulatory implication is to nurture relationships to avoid the game playing that accompanies dismissiveness. There will always be a small group who resent regulation whatever its form. They choose to be dismissively defiant and they are difficult to control through regulation. But there is also a contagion effect

⁴⁸ Braithwaite, “Closing the gap”.

⁴⁹ *National Vocational Education and Training (NVET) Act 2011* (Cth) ss 35A and 37.

⁵⁰ Tom R. Tyler, “The psychology of legitimacy: a relational perspective on voluntary deference to authorities,” *Personality and Social Psychology Review* 1, no. 4 (1997): 323-345.

⁵¹ Braithwaite, “Closing the gap”.

whereby those who are disgruntled with no avenue for genuine engagement with the regulator to resolve their problems will drift into dismissive defiance. This can be avoided through a regulator finding the right balance of respect and consideration on the one hand and authoritative and firmness on the other.

With more than 4,000 RTOs to regulate, ASQA cannot afford to create more dismissive defiance than is necessary and will therefore want to address resistant defiance (associated with feeling disrespected) as quickly as possible. With this in mind, particular attention in this review has been given to the suite of measures available to ASQA to change the behaviour of non-complying RTOs and restore cooperation and, importantly, what ASQA sees as practically useable for such purposes. Does ASQA feel it has the option of informal conversations to nudge an RTO to fix up a problem once identified? Does it have the option of asking a peak body such as the Australian Council for Private Education and Training or TAFE Directors Australia to make sure that all RTOs are complying with protocols of a particular kind? Can ASQA move RTOs toward compliance through conversations by phone or in person without having to formally send out a rectification notice?

In order to use these kinds of measures, ASQA needs the confidence of partners in the sector to back its regulatory judgments. This is an essential part of ensuring ASQA has the social license to set the standards that are appropriate for and expected by the sector. Most will follow a well-respected regulator and most can be encouraged to promote compliance and best practice among their peers if the regulator leads with a vision of how quality can continue to be improved in the sector.

Achieving these objectives is not inconsistent with a risk-based regulatory approach,⁵² but it can be difficult. Understanding and using risk to target regulatory activity is unequivocally an important breakthrough in regulatory practice. It is a mistake, however, to think that having reliable intelligence and a good risk matrix is the main job of a regulator. It simply marks the start of a journey by the regulator to elicit compliance. Risk matrices and risk models bring their own risks for regulating cooperatively as discussed below.⁵³

Regulating with the help of a risk matrix

Having red flags on a risk matrix is not code for non-compliance, but it undoubtedly sensitises an RTO to its less than desirable status in the eyes of the regulator. Most RTOs would rather not be identified as a compliance risk, particularly when ASQA reports that up to 80 per cent of those they audit because of risk are found to have compliance breaches.⁵⁴ Risk-based regulatory approaches, therefore, immediately create social distance or wariness between a regulator and those being regulated.

Risk matrices are well understood as a tool of regulators. A clever tactician will know how to outsmart the risk matrix and stay below the radar so that his or her enterprises are not flagged in risk analyses. This capacity can also be bought in the market, as tax advisers have so ably shown.⁵⁵ From other areas of regulation, what is certain is that manoeuvring around risk is a well-developed craft and can often leave regulators with scandals outside their risk matrix and beyond their

⁵² For ASQA's Regulatory Risk Framework, see Australian Skills Quality Authority, *Regulatory Risk Framework* (Australian Government, 2016).

⁵³ Georges Dionne, "Risk Management: History, Definition, and Critique," *Risk Management and Insurance Review* 16, no. 2 (2013): 147-166; Michael Power, *Organized Uncertainty: Designing a World of Risk Management* (Oxford: Oxford University Press, 2007).

⁵⁴ Australian Skills Quality Authority, *Training for early childhood education and care in Australia* (Australian Government, 2015), 57.

⁵⁵ Braithwaite, *Markets in Vice*.

imagination.⁵⁶ Risk management works from both sides in all regulatory spheres. Regulators try to identify markers of risk among those they regulate. Those being regulated try to sidestep markers of risk. In doing so, real innovation may be lost because it is too risky and will attract unwanted intrusion from the regulator. In cases where this is happening, it becomes a hidden compliance cost born by the sector. In some other cases, sidestepping the risk matrix may take the regulated party further away from both compliance and desirable student outcomes, and beyond the reach of the regulator.

The answer to this common problem of regulating through risk involves devolving responsibility for managing the risk to the regulated party and then checking the adequacy and the learnings from the systems they have in place. TEQSA has adopted this regulatory model. ASQA has been going down this path, and demonstrates use of the approach in its self-assessment tool for the student journey.⁵⁷

The virtue of this approach is both psychological and practical. For those who fear being targeted in the risk matrix, anticipated misfortune can fester, regardless of whether they are, compared to others, a good or poor provider. Michael Power, in his second thoughts on his 1997 book, *The Audit Society: Rituals of Verification*, describes the drawback of a regulatory system infiltrated by the “defensive” audit.⁵⁸ Greater social distance between the regulator and RTO means less trust and more fear. Neither psychological state is conducive to being innovative and ambitious to improve student outcomes. Less trust and more fear tend to put RTOs in a helpless state rather than an empowering state.⁵⁹ RTOs are likely to seek refuge in formulaic compliance and in products that can be bought to satisfy the regulator, regardless of their suitability to the RTO’s circumstances. Or alternatively, they may brazenly defy the authority of the regulator.

Risk-based regulators who interrogate the risk management insights and strategies of those they are regulating have options for handling these potential problems. It is in this regard that the regulatory principles of necessity and proportionality come into play to restore cooperative relations between the regulator and an RTO. The necessity principle takes into account the willingness and capacity of an RTO to fix the problems that have been identified. Proportionality reflects the severity of the regulatory response, the expectation being that less serious breaches will be met with a light regulatory touch. As legislated principles in a risk-based regulatory framework, ASQA could use them potentially in the following ways.

Protocols for acting on necessity and proportionality involve the adoption of fact finding and problem solving posture rather than an accusatory posture; talking to students and employers first to assess outcomes, and then providing an RTO with opportunity to explain how and why they achieve their outcomes (both positive and negative). Part of such conversation would address any risk flags that ASQA has, with full recognition that the RTO might be managing these risks exceptionally well. In a period of high innovation, this would be the outcome that ASQA would be looking for: High risk managed in surprisingly interesting and effective ways that ASQA could praise on the national stage and share with others. If on the other hand risks are not being managed well, ASQA might investigate further and detect breaches of standards. The legislation gives ASQA options

⁵⁶ Michael Power, “The Audit Society – Second Thoughts” *International Journal of Auditing*, 4 (2000): 111-119; J Braithwaite, Makkai and V Braithwaite, *Regulating aged care*.

⁵⁷ “Self-Assessment Tool,” Australian Skills Quality Authority, accessed January 8, 2018, <https://www.asqa.gov.au/standards/self-assessment-tool>.

⁵⁸ Michael Power, *The Audit Society: Rituals of Verification* (Oxford: Oxford University Press, 1997); Michael Power, “The Audit Society – Second Thoughts,” *International Journal of Auditing* 4, no. 1 (March 2000): 111-119, 117.

⁵⁹ Valerie Braithwaite, “The hope process and social inclusion,” *Annals of the American Academy of Political and Social Science* 592, no. 1 (2004): 128-151.

for a differential response depending on the seriousness of a breach and the willingness of the RTO to rectify the situation.

If breaches were of little significance and an RTO was generally a good provider of quality education, the legislation does not prevent the regulator from issuing an informal warning and take no further action. For good regulatory practice, the RTO might even be asked to fix a problem on the spot, a response the regulator should record and count. This saves resources and gives the RTO opportunity to show good faith. The breach would be mentioned in the audit report, but so would the immediate correction be noted, crediting the RTO with being compliant at the time of the report. This would be one small but important step in re-establishing a relationship of mutual trust and respect between the RTO and the regulator.⁶⁰

If a serious breach were encountered, and the risk to students was on-going and of concern to the regulator, ASQA might turn attention to an option for rectification that imposed more constraints on the RTO.

If the RTO was willing to make amends, an offer of an enforceable undertaking might be made to ASQA. If ASQA agreed to the arrangement, it would not be sacrificing its regulatory power. Breaching an enforceable undertaking can trigger court action, and becomes a serious concern for the RTO and a strong sanctioning tool for ASQA. But if the RTO is genuine in addressing its problems, the regulatory intervention should rarely be punishing. Again, the principles of necessity and proportionality are being applied in the context of a risk-based regulatory framework.

The current legislation provides other options for ASQA in the form of civil penalties, which are monetary sums imposed on an RTO by a court for contravention of a wrongdoing.⁶¹ In recent years, the deterrent value of such measures has been widely questioned (internationally as well as domestically) because the probability of use and size of fines is insufficient to deter, and courts often do not devote resources to the collection of the high proportion of unpaid fines.⁶² That said, imposing a financial disincentive is a signal to the RTO, other RTOs, peak bodies, and the public, of a breach that the regulator takes seriously.

In place of seeking civil penalties for contravention of some civil penalty provisions, ASQA can issue an infringement notice seeking payment of a sum one-tenth smaller of the maximum penalty prescribed in the relevant civil penalty provision.⁶³ Infringement notices allow RTOs a chance to avoid being subject to court action over alleged breaches by paying the sum specified in the notice.⁶⁴ Infringement notices afford a lesser deterrent than civil penalties and should therefore be issued in situations where minor regulatory contraventions occur such as failing to comply with reporting obligations, respond to a notice or provide information.⁶⁵

⁶⁰ This informal warning is different to a formal written direction under the *NVETR Act* s 35A.

⁶¹ *NVETR Act* Part 6, Division 1.

⁶² Vicky Comino, "James Hardie And The Problems Of The Australian Civil Penalties Regime," *UNSW Law Journal* 37, no. 1 (2014): 195-230; Vicky Comino, "Effective Regulation by the Australian Securities and Investments Commission: The Civil Penalty Problem," *Melbourne University Law Review* 33, no. 3 (2009): 802-832; John C. Coffee, "'No soul to damn: no body to kick': An unscandalized inquiry into the problem of corporate punishment," *Michigan Law Review* 79, no. 3 (1981): 386-459; Natalie Schell-Busey, Sally S. Simpson, Melissa Rorie and Mariel Alper, "What Works? A Systematic Review of Corporate Crime Deterrence," *Criminology and Public Policy* 15, no. 2 (2016): 387-416.

⁶³ *NVETR Act* s 149.

⁶⁴ *National Vocational Education and Training Regulator Regulations 2011* (Cth) s 13.

⁶⁵ Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (Australian Government, 2011), 57.

At the time of writing this report, the *National Vocational Education and Training Regulator Regulations 2011* (the Regulations) do not give ASQA the power to issue infringement notices to RTOs that breach conditions of registration such as the Standards or the Data Provision Requirements 2012. However, work on amending the Regulations is being undertaken to allow for more infringement notices to be issued by ASQA.

Offence provisions in the NVETR Act are available to ASQA. They have been used, but rarely.⁶⁶ The Australian Law Reform Commission has endorsed the Attorney-General's view that, "*Only contraventions of the law involving serious moral culpability should be pursued by criminal prosecution. Offences involving harm to a person or a serious danger to public safety or knowing or reckless dishonesty by a person are examples.*"⁶⁷ Without a wide precedent, but in view of serious recent breaches, ASQA should look to the Director of Public Prosecutions on what constitutes grave misconduct.

Administrative sanctions are more commonly used by ASQA and are probably the most intrusive on the sustainability of RTOs. For this reason, they are possibly the most feared and fiercely contested. Administrative sanctions range from giving a written direction through to suspending or cancelling an RTO's registration. Such measures affect the kinds of training that an RTO can offer and therefore directly affects income streams.

Having established that ASQA has a suite of regulatory actions it can take that vary in their intrusiveness on the operations of an RTO, and that ASQA has discretion to apply these actions in line with principles of necessity and proportionality, how can the sector be given the confidence to know that regulatory action will be reasonable and fair, and that if they are trying to do the right thing, compliance and registration audits will be helpful not harmful?

This question raises the broader overarching principle of regulatory responsiveness; a principle that is mentioned in the legislation and that ASQA has committed to,⁶⁸ but which may not be understood as well as it should within the sector. Being selected for audit should be minimally intrusive on an RTO. Ideally, if things are generally satisfactory (the RTO may have minor breaches), the cost to the RTO of being audited should be less than the benefits gained by the improvement the audit brings to its products. In short, there should be benefits through being given a "health check" by the regulator. The opportunity for reflection and conversation should instigate ideas and enthusiasm for the next wave of continuous improvement to be undertaken by the RTO. Costs should only increase under conditions where the breaches are more serious and the RTO is unwilling to fix them.

An important consideration when thinking about responsiveness is that regulatory intrusiveness is not necessarily proportionate to risk. Reference was made above to how a highly innovative, risk-taking, RTO could be managing its risks proficiently. Even when risk is high and has not been managed well, however, responsive regulation warns against a knee-jerk reaction of bringing the full force of the law into play as punishment. Sometimes, correction of the problem is more in the public

⁶⁶ In 2017, ASQA successfully criminally prosecuted an individual under section 128 of the NVETR Act who had signed seven documents that purported to be VET statements of attainment. In 2014, while not under the NVETR Act, ASQA criminally prosecuted a training manager under section 137.2(1) of the Criminal Code who had used fraudulent documents in an attempt to demonstrate an RTO's compliance with the Standards.

⁶⁷ Australian Law Reform Commission, "For Your Information: Australian Privacy Law and Practice," *ALRC Report 108* (Australian Government, May 2008), 2399-2400.

⁶⁸ ASQA, *Regulatory Risk Framework*, 5-12.

interest than punishment. Ulrich Beck used the term “externally monitored self-coordination” to describe transfers of risk management systems from the regulator to those being regulated.⁶⁹

Two examples from the regulatory literature make the case well.⁷⁰ In the case of the near meltdown of the nuclear reactor at Three Mile Island in 1979, one of the causes of the accident was having operators who had become rule-following automatons. When disaster struck, the rulebook was not helpful; operators needed to be strategic thinkers who could think systemically about what needed to be done to prevent acceleration of the disaster.⁷¹ Nuclear regulation changed its paradigm after the catastrophe, from government inspectors checking compliance with rules, to a regulatory system in which risk management systems were scrutinised and reintegrative shaming was used within the nuclear professional community of companies that failed to improve their systems.

A second example was the introduction of a safety management system in the wake of Lord Cullen’s Report on the 1988 Piper Alpha disaster in which a North Sea off-shore oil rig overturned with the loss of 165 lives. The review recommended that rig operators develop a “safety case” to be submitted to the national regulator for analysis and approval. Instead of government inspectors directly enforcing rules, a system was introduced to check whether the operator was self-enforcing its safety management system and continuously improving it.⁷²

None of this should be interpreted to mean that closures and prosecutions should not occur when serious harm occurs. Such measures should be held in reserve if efforts to fix the problem and introduce a workable and effective risk management system fails. When discussing high risk, however, it is worth noting that there are many regulatory situations in which fixing the problem is the more important priority, and this is not necessarily consistent with punishing the offender and stopping operations.

The defining feature of regulatory responsiveness, therefore, is that context is taken into account. A range of sanctions is needed to respond contextually to non-compliance and ASQA has a considerable range. But the right sanctions for the context are not defined by a rulebook. The right sanctions might be the one that applies just enough deterrence to get the RTO to improve its performance standards and commit to maintaining those improvements or it might be the one that protects students from imminent harm by suspending operations. This is what necessity and proportionality mean through the eyes of the RTO and it is only when RTOs equate the use of these principles with fair and reasonable treatment that the regulator will be able to elicit genuine cooperation.

A common criticism of this position is that it forsakes consistency.⁷³ A second is that regulators do not have the sophistication to operate in this way. The counter argument lies in seeing regulation from the perspective of those being regulated. Seeing a sanction through the eyes of an RTO and understanding its impact is critical if the goal is to improve student outcomes. Consistency traditionally is assumed to mean doing the same thing to a non-complier in response to a particular breach. But the same action by the regulator can impact on RTOs in very different ways. Consistency lacks sensitivity to the impact of the regulator on the non-complier and can result in unreasonable and unfair consequences for RTOs. That impact affects not only future compliance but future performance more broadly. When a non-complier feels their treatment is unfair and unreasonable, defiance and persistent non-compliance is not an uncommon response. And commitment to quality

⁶⁹ Ulrich Beck, *Risk Society: Towards a New Modernity* (Beverly Hills: Sage, 1992).

⁷⁰ Braithwaite, *Markets in Vice*, 86.

⁷¹ Joseph V Rees, *Hostages of each other: The transformation of nuclear safety* (Chicago: University of Chicago Press, 1994).

⁷² Lord Cullen (Chair), *Piper Alpha Inquiry* (London: HMSO, 1990).

⁷³ Karen Yeung, *Securing Compliance: A Principled Approach* (Oxford: Hart Publishing, 2004).

outcomes can be abandoned too. This can be difficult to manage when resources for regulation are limited and the population to be regulated is large.

Matching a breach with a penalty is particularly problematic in a diverse sector such as VET where larger well-resourced RTOs may find it much easier than small RTOs to absorb the costs of fines or advertise to counter an adverse audit or challenge deterrence measures in court. Matching breach to penalty in these circumstances can result in an unfair process and an unfair outcome. The consequence can be that smaller operations can harbour resentment that leads to fractious future engagement with the regulator.

There are occasions when a breach may attract a standard penalty. For example, refusal to supply basic data that is part of the conditions of being registered could potentially attract an on-the-spot fine. The rationale would be that it is a basic obligation. In the VET domain, for instance, the obligation to report data underpins the integrity of the whole audit approach.

As a general principle, however, seeking consistency through matching penalty with type of offence is unlikely to elicit the kind of cooperation that is required if the goal is to lift student outcomes. Accountability in the form of giving reasons for regulatory interventions, explaining the consequences of not abiding by the Standards in the five step framework of the student journey,⁷⁴ and working with the RTO on a pathway to improvement is far more likely to build credibility of the regulator and an understanding of regulation in the sector than a simple matching of breach with penalty.

Being responsive when non-compliance persists

It is not unusual for regulators to spend a disproportionate amount of time on a small number of persistent non-compliers. Often this group engages in game playing to string out their altercation with the regulator until the regulator gives up or the non-complier finds another forum where they can win the battle. These are often lengthy, difficult and highly adversarial encounters. For a regulator, victory is not assured, but the reputation of the regulator is built through showing persistence in these situations and working in a way that has the support of the sector.

More than anything else, the regulator needs a strategy that communicates to the non-complier insistence on closure, given that the regulator has already demonstrated that its requests are in accord with the law and with the accepted standards of industry and training experts. It makes little sense to deal with refusal to comply with a regulator's decision by expressing harsh disapproval one moment and giving a slap on the wrist the next. When this occurs, game playing is reinforced. From the viewpoint of the non-complier, staying on the non-compliance track is a gamble worth taking because next time the sanction may not be too serious or the breach may even be overturned. If possible, surviving for longer without compliance is less troublesome and possibly more profitable.

This means that the sector needs to see in their regulator a principled strategy of applying sanctions of increasing severity proportional to the seriousness of non-compliance. It also means that with persistent serious non-compliance, consequences need to be more serious incapacitating the longer the non-compliance continues. The non-complier faces increasing pressure and costs until compliance is the most cost-effective response. Enforcement regulatory pyramids are one way of

⁷⁴ Australian Skills Quality Authority, *Users' guide to the Standards for Registered Training Organisations 2015* (Version 2.0) (Australian Government, 2017), 7.

capturing a graduating set of sanctions, from light touch to closure, as a way to place pressure on RTOs to defer to the authority of the regulator and commit to the Standards.⁷⁵

A hypothetical example of an enforcement pyramid for VET

Assume the problem is that an RTO is running courses that are too short to deliver quality training. If no gains are made with education and persuasion, and pressure from other leaders in the sector fail to make inroads into the problem, an external assessment of students could be undertaken to establish whether students were receiving the training expected by industry and other VET providers.

Should a problem be found, evidence of risk to students would be discussed. A broader community of students, parents, industry and teachers from the sector might be involved in this discussion. If the RTO decided to invest in complying as a result of this meeting, things need not progress to the next level of regulatory intrusiveness.

If changes were not made in the agreed time, further action would be required. A penalty might be imposed along with restrictions on the operation of the RTO. This might involve freezing graduation certificates, or restricting further enrolments until the problem was rectified.

If the problem persisted, the next level of intervention would be triggered: Being banned from applying for relevant state government training contracts and cancellation of certain courses.

The final regulatory intervention would be cancellation of registration.

At the heart of this model is consensus in the practice community that students in the RTO in question deserve better treatment as directed by the regulator.

Having enforcement pyramids means that it becomes well known in the sector that if non-compliance persists, the regulator will ratchet up the intrusiveness of its actions. This path comes to be understood as the standard operating procedure within the sector. The increasingly intrusive steps available to the regulator can even be discussed with the sector to ensure they are accepted as reasonable and fair.

Ratcheting up the intrusiveness of the regulator might involve heavier sanctions or deeper investigations or both. As pressure on the RTO to comply increases with each sanction, the costs of non-compliance grows to the point where they might exceed benefits. Once the RTO sees that the regulator will persist in pursuing compliance to improve student outcomes, the RTO judges it to be in its best interest to comply if it wants to stay in business.

Enforcement pyramids have a degree of predictability for both the regulated and the regulator. The RTO knows the regulator is not going to give up because compliance is important for student outcomes. The regulator can be confident that it has given the RTO every opportunity to take necessary steps to comply and improve student outcomes of its own accord. Accountability can be assured through, inserting at any stage, meetings to air grievance in the presence of third party

⁷⁵ Ayres and Braithwaite, *Responsive Regulation*; John Braithwaite, *Restorative Justice and Responsive Regulation* (New York: Oxford University Press, 2002).

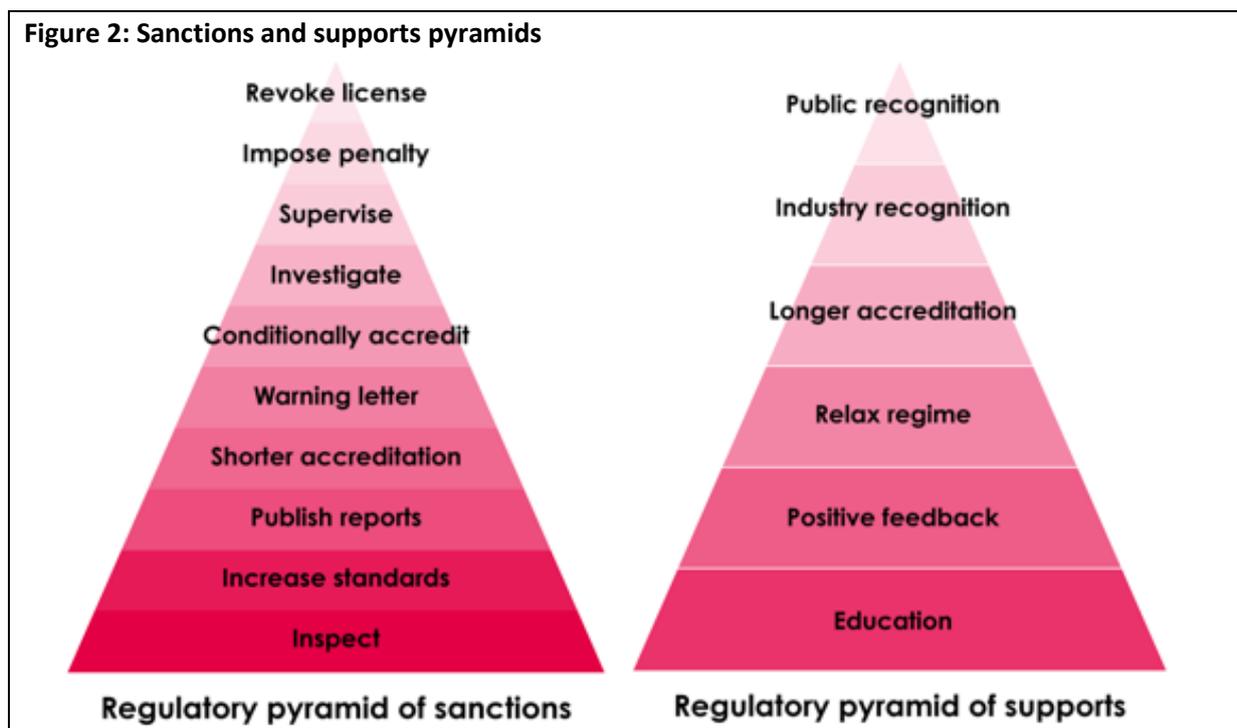
sector experts from education, assessment, industry and specialist mediators or facilitators to ensure that all voices are heard.

Regulatory enforcement pyramids are best constructed in relation to particular kinds of breaches and in conversation with the sector. The secret of success is having steps of regulatory intervention that are reasonable and proportional, but increase in perceived severity. Perceptions of this kind have to be tested for particular non-compliance problems in the sector.

In other words, increasing intrusiveness of the regulatory interventions needs to have credibility in the eyes of both compliers and non-compliers. If all the various sanctions are worth “enduring” because they are nagging sanctions rather than sanctions that impact business, there is little incentive to resolve problems quickly and cooperatively. If the sanctions are heavy-handed and unfair, compliers and non-compliers will join forces to oppose and delegitimise the regulator. Getting sanctions right so they exert just enough deterrence is an exercise that requires conversation in the sector. That said, when students are being harmed, regulatory responsiveness requires immediate action to restore safety.

Dual regulatory pyramids of supports and sanctions

Pairing pyramids of supports with sanctions is critical for any regulator concerned about quality. Figure 2 draws on Judith Healy’s work in the field of health care safety and quality to illustrate the dual regulatory models in practice.⁷⁶



An enforcement pyramid that delivers sanctions is represented on the left hand side of Figure 2. The regulator starts through inspection, setting an expectation of higher standards, publishing the inspection report, and then, if improvements have not been made, shortening the period for

⁷⁶ Judith Healy, *Improving Health Care Safety and Quality: Reluctant Regulators* (Farnham, Surrey and Burlington, VT: Ashgate, 2011).

accreditation. Four sanctioning interventions are available for use before the regulator sends a warning letter. What is so interesting about this model is the number of steps that can be taken before the regulator becomes threatening. By then, regulatory concerns have been made public and, providing they are legitimate, the regulator gains support from others in the regulatory community. From this point on, regulatory interventions become more disruptive.

Next to the pyramid of sanctions is a pyramid of supports. A pyramid of supports opens or encourages pathways for improvement and excellence. Compliance is complex these days in most regulatory areas. Sanctioning to deter is well and good, but if the path forward is unclear or seems impossible, nothing will change. Supports pyramids offer benefits through regulation. In Figure 2 they take three forms: showcasing better ways of improving services and sharing best practice knowledge, praising and recognising providers who have done things well, and relaxing the regulatory burden on those who have consistently performed well.

The dual regulatory model of supports and sanctions can be implemented under current legislation. It has not been implemented presumably because a more technocratic risk-based audit model was expected to be more efficient and effective. Possibly it was seen to use up fewer resources and require less skill among regulators. Undoubtedly there was also concern about capture by the sector. Regulatory capture occurs when the regulator, instead of acting in the public interest, intentionally or unintentionally acts in ways that sacrifice regulatory standards in the interests of special groups, be they part of industry or government.

Institutional designs that limit capture are important. Yet capture of some kinds, at the level of ideas and understanding for instance, are a fact of life. A regulator can be set up so that it can claim independent status, yet it cannot possibly see the world independently. Powerful actors influence how we think and regulators are not immune from such influence. For this reason, the only way to answer the criticism of capture is not through isolating a regulator, but rather through public accountability. A regulator must be prepared to participate in the regulatory community, explain its actions and be open to criticism of them.

Part 2: Sanctions, supports and partnering for better student outcomes

The second part of this chapter will discuss ASQA's ability to move to more of a leadership role through the use of the dual regulatory models of sanctions and supports in the VET sector. For these models to succeed, ASQA needs to be part of the flow of events in the VET environment and not distant from it. In making the case for more relational regulation, there is no suggestion that ASQA does not already have productive partnerships. But there is the suggestion that ASQA could engage more in relationship building, particularly with those who feel marginalised.

ASQA has embraced a pyramid of sanctions, of sorts, through its hierarchy of regulatory responses in its regulatory risk framework.⁷⁷ While the development of a robust pyramid of sanctions remains a priority to limit harm, an equally substantial benefit for VET is the adoption of a pyramid of supports to showcase the pathways to better student outcomes. Supports pyramids provide for encouragement and resources to not only improve compliance but also reward compliance, particularly when it is compliance that leads to better student outcomes.

⁷⁷ ASQA, *Regulatory Risk Framework*, 10.

The regulator should be an integral part of these proceedings. Among the gifts that the regulator can bring to this collaborative effort are recognising excellence, relaxing the compliance burden for high performing RTOs, and using delegation powers to increase autonomy for the best performing RTOs.

An issue for regulators today is that they often do not have resources for offering assistance wherever it is needed. The network of supports, however, can lie outside the regulator as long as the regulator is well connected to the network and can work cooperatively with the actors within the network. Supports pyramids provide a positive place for cooperation among all those with interests in excellence in VET. Here, advice is shared, resources are offered, new ideas are evaluated and excellent performance is recognised.

There are many major actors in the sector who might benefit from cooperative alliances with ASQA and vice versa. First, state and federal governments drive the behaviour of RTOs because they offer money for training in certain skills. Obtaining a government contract should steer the flow of events in the life of an RTO in a direction that increases chances of winning some of these funds. Offering student loans drives the activity of students. Students may choose to study courses in which the costs are covered by a loan. Here governments' funding arrangements and ASQA's regulatory activity can clearly be coordinated if parties choose to cooperate closely.

The content of training is steered largely by industry training packages that specify the skills required to be workplace ready. Professional bodies that offer licenses to graduates also steer processes of skill development and training. At times, such bodies also exert an additional influence through assessment. Electricians use capstone testing before issuing their licenses. Nursing uses review and audit processes to professionally accredit programs of study, including student assessment methods, which lead to eligibility to apply for registration as a nurse.

How skills are transferred to students is steered by the deployment of teaching staff, by the quality of these staff, by teaching resources, by methods of course delivery (online or face-to-face), by consultants selling resource packages, and by the strength of the teaching partnership between teachers and industry workplace supervisors. Decisions around these matters are regulatory decisions made by RTOs. This is how RTOs choose to steer the flow of events to determine student outcomes. Choice of well qualified teachers with industry networks who are rewarded for staying with the RTO and building a good training program will increase the likelihood of desirable student outcomes.

Apart from enterprise providers, RTOs market their offerings to potential students in what is a very competitive environment. Some value quality training along with a sustainable business model and seek to build a solid reputation for being a quality provider, or even a preferred provider for certain workplace skills. These RTOs market themselves to students and employers.

Others provide short and cheap training that may not deliver practical skills and knowledge that makes the transition to the workplace easy. This neither contributes to students' educational experience nor employers' recruitment of a skilled workforce. This option, however, remains attractive to students with budgetary and time constraints, or who want to access other benefits through having "student status" without any particular interest in a vocational career.

The differentiation of the quality training market and the "token" training market is a major concern of employers. When employers recruit or provide training for their employees, they want to benefit from having well trained staff who add value to their business. Employers who openly endorse quality RTOs contribute to this differentiation and signal satisfaction to others looking for quality

training. Employers also contribute to the regulation of the training system through cooperating with others in the sector, including the regulator, in identifying “token” providers.

RTO peak bodies such as TAFE Directors Australia and the Australian Council for Private Education and Training play a regulatory role through promoting certain practices and discouraging others among their member RTOs. They have a role to play in lifting standards, even turning minimalist providers into quality providers. These bodies provide professional development seminars and support on good practice in RTO management and service delivery. They can play a role in lifting the quality of teaching and training through invigorating the professional teaching labour market in the VET sector. Engaging in these activities can help the regulator while providing benefits to TAFE Directors Australia and the Australian Council for Private Education and Training.

The mentoring and protection of students is another important regulatory function in the sector that can play a role in influencing how RTOs function. Apprenticeship schemes, group training organisations and TAFEs take pride in supporting students, which impacts how they deliver their service and the quality of the student experience and outcomes. Where students are dissatisfied with their treatment by an RTO they can register a complaint with national hotlines and state consumer protection agencies. The Australian Competition and Consumer Commission, Ombudsmen at the federal level and state fair trading counterparts also provide consumer protection, depending on the circumstances.

There are others in the regulatory community who play an important role in how VET is regulated and how students experience VET such as consultants who provide data management systems, compliance products and teaching resources, unions and other peak bodies of industry and community colleges. All of these actors (or stakeholders) are regulating the flow of events in the VET sector. The influence they exert together is positive in so far as this regulatory community builds shared norms and understandings about educational quality among actors, develops ways of managing risk, and delivers efficiently and effectively relevant workplace skills to students.

ASQA, the formal national regulator, occupies an important place in this space, but as the above discussion illustrates, they occupy only a small portion of this space. However, when the regulation of the sector is brought into question, all eyes turn to ASQA. ASQA’s powers for registration and accreditation are significant and place the regulator centre stage. But beyond this on other compliance matters, ASQA cannot deliver on public expectations through working alone.

A blurring education and training environment

In the past a sharp line has been drawn between education and training, teachers and trainers, and students and learners. The divide is captured by universities at one extreme with a quest to discover new knowledge, and vocational education at the other extreme with a quest to apply knowledge and develop practical skills. The distance between institutions that deliver academic and applied skills, however, is being fast whittled away. In part this is due to the technological revolution that requires everyone to sharpen and broaden problem-solving capacities. The traditional university agenda of discovery in a new age requires practical and operational skills. The traditional VET agenda of skill acquisition must deal with problem solving for skill transferability and skill adaptation. National productivity is seen today as dependent on synergy between the sectors.

The other part of the story of the shrinking gap between higher education and VET is the explosion of jobs at the knowledge-skill interface. Childcare educators today aspire to a deeper knowledge of child development as well as having the skills to care for infants and young children. Three-dimensional printing of metal parts for traditional and as yet unknown uses is another

example of where theory and application, university-based knowledge, and VET based knowledge, collide.

As boundaries blur, the common elements of learning and teaching across sectors become clearer; discovering and imparting knowledge, discovering and sharing applications of knowledge, and serving students through building their confidence and interest in lifelong learning. Stronger connections raise the obvious question of why vocational education and higher education should be regulated differently? Surely there are efficiencies in having one regulator with the same set of standards regulating both. The idea of merging ASQA with the higher education regulator, TEQSA, is not new and has support in many quarters. Integration would, on the surface, reduce the compliance burden of having two regulators for dual sector providers.

This argument only holds, however, if the TEQSA system of regulation will improve student outcomes in the VET system. The assumption that the TEQSA system would dominate the VET system in a regulatory merger is based on the fact that in many ways TEQSA has a more mature regulatory system that the universities have helped shape to meet their needs. TEQSA is less intrusive into the operations of its sector than ASQA. However, the regulatory environments in which TEQSA and ASQA operate are very different.

Differing regulatory landscapes of TEQSA and ASQA

TEQSA regulates 40 Australian universities and 126 other higher education providers.⁷⁸ ASQA indicated that, as of late September 2017, 83 of these Australian universities and other higher education providers also provide VET courses regulated by ASQA.

The regulatory approach for higher education is best described as meta regulation and historically is based on higher education fiercely protecting its academic freedom. In practice meta regulation means that universities and higher education providers have their own in-house regulators and processes for benchmarking against each other and TEQSA regulates their regulatory systems.

As discussed in Part 1 of this chapter, this is a common model of regulation in complex areas where local expertise is important. It is almost impossible, for instance, to evaluate the quality of research without peer assessment.⁷⁹ TEQSA adopts a range of strategies to ensure that universities and other higher education providers have systems in place to regulate their own performance and manage their own risks. For example, as a meta-regulator, TEQSA might ask what are you doing about identifying and dealing with plagiarism, show me your system; how do you know your medical degree is of a high quality, show me your evidence; how many sexual harassment and assault complaints have you had on campus, how do you manage these?

Internal regulatory systems of this kind depend on effectiveness of feedback loops so that organisations can evaluate their own performance, identify shortcomings and learn from mistakes; making changes to their practices accordingly. The regulator too can learn about improved practice when they are part of the conversation about what internal regulatory systems are revealing; the strengths, weaknesses and the changes needed for improvement. When this regulatory approach works well, the regulator learns how the organisation has learnt to adapt. The “steering” process involves double or triple loops of learning. If a regulator can share in the learnings of those in the

⁷⁸ “Search the National Register,” Tertiary Education Quality and Standards Agency, accessed January 11, 2018, <http://www.teqsa.gov.au/national-register>.

⁷⁹ The earlier example of operating a nuclear power plant is another example where in-house expertise and ownership of any problems is essential: A regulator cannot be expected to fix the problem, only ensure that those employed to do the job have good safety systems in place to prevent a problem arising and managing it well if it does.

sector, the regulator can take on a leadership role in sharing good news stories and educating others on the adoption of similar methods. Standards in the sector are expected to rise with this regulatory approach.

TEQSA is designed to be such a regulator. It intrudes into the operations of universities and other higher education providers only when it is necessary (when the organisation cannot find its own solution), when the risks to quality higher education are not being managed and are high, and when TEQSA does intervene, the level of intervention is proportional to risk seriousness. Necessity, risk and proportionality are the principles guiding the activities of the regulator. TEQSA plays a leadership role in encouraging and supporting universities and other higher education providers to move toward a stronger self-improvement framework.

This kind of regulatory framework can work well when feedback is acted upon to fix problems. It is in the nature of institutions, however, to find comfort in their own inertia,⁸⁰ so sometimes feedback that is critical simply becomes the impetus for more data collection and more reviews, not action to fix a problem. Universities in the higher education sector have built up thick bureaucratic crusts to house and operate their self-regulatory systems. These crusts have become the regulatory interface between academic staff and students on the one hand, and TEQSA, funding agencies and other regulatory forces on the other. They are translators, protectors and police activity. The degree to which this system promotes better student outcomes, however, is far less clear.

The higher education regulatory framework is built on a model of regulation where partnerships are set up between the regulator and those they are regulating. The partnership may receive occasional shocks when the regulator is critical of performance in the sector, but the glue that holds the partnership together is deeply cultural around the importance of the academy as a centre for discovery and a repository of knowledge.

Without a doubt, the VET environment can learn lessons from regulation of higher education. At the same time, it would be unfortunate to see VET lose the regulatory direction it has only recently found in the five-step student journey.⁸¹ Regulation need not be a burden when it is grounded in a shared purpose – achieving quality student outcomes.

In future a merger of ASQA and TEQSA may come to fruition. A first step in this direction requires regulatory conversations at the starting gate. The regulatory influence and power that TEQSA relies on to prevent harmful practice mostly lies in who it gives registration to, backed up by capacity to remove registration and course accreditation.

A merger of ASQA and TEQSA is likely to be most threatening to small RTOs. In 2014, about 1,900 providers had fewer than 100 students and a further 2,000 had between 101 and 1,000 students.⁸² If finances allow they will have a compliance officer to compile the documentary evidence that ASQA requires to ensure that standards are being met. It would be difficult though to match the thick regulatory infrastructure seen in higher education.

On the other hand, TAFEs are fast developing such infrastructure. Their governance structures are currently undergoing massive change with some states merging their various campuses into one

⁸⁰ Mary Douglas, *How Institutions Think* (Syracuse, NY: Syracuse University Press, 1986); Nicholas Pidgeon and M. O'Leary, "Man-made disasters: why technology and organizations (sometimes) fail," *Safety Science* 34, no. 1-3 (February 2000): 15-30.

⁸¹ ASQA, *Users' guide to the Standards*, 7.

⁸² Patrick Korbel and Josie Misko, *VET provider market structures: history, growth and change* (Adelaide: National Centre for Vocational Education Research, 2016), 35. Note: some providers report data under multiple provider types, so the number of providers may differ from that reported in other publications.

large organisation (for example, in NSW and Queensland) while other states are opting for a networked model that links campuses across the state (for example, in Victoria). These institutions have the capability of developing processes and procedures that would allow a meta-regulatory model to work. Their history provides the cultural underpinning for developing a quality learning framework through which innovation in training and assessment and continuous improvement can occur. Their state funding means there are mechanisms for accountability around financial and business management. Most importantly, they have the capacity to form cooperative partnerships with regulators and each other. TAFEs may provide the testing ground for experimenting with how the regulation of VET and higher education can be better aligned.

Beyond the accredited vocational education and training market

An important part of the regulatory complexity in VET is that ASQA regulates RTOs and their delivery of AQF qualifications and accredited courses. Skills are being acquired and taught outside this framework. In 2017, 50.8 per cent of employers surveyed provided unaccredited training to their employees to provide skills required for the job, to meet and maintain professional or industry standards, and to meet highly specific training needs.⁸³ The existence of this training market should not be ignored and its potential contribution to the regulated training market should not be underestimated. The unregulated market provides opportunities to responsively identify at the “coal face” sets of new skills and nimbly develop effective and efficient ways of transferring these skills to students.

An industry and RTO partnership beyond the accredited training system

One partnership example encountered in the course of the review had actually received accreditation for their training, but the innovative nature of the partnership observed between private industry and a public provider gave a glimpse of what the future is likely to hold.

A business wanted to retain well trained staff who would commit and build their career within the business, so they invested in bespoke business-specific training delivered through a memorandum of understanding with a reputable public RTO. Students, employers, training providers, trainers and assessors could all share in the benefits of training in this form.⁸⁴

First, students had regular paid work and the opportunity to study for a recognised qualification in a reputable RTO with costs covered by their employer.

Second, employers had training provided to their employees that was tailored to their needs, with instruction given by expert trainers and assessors working within a reputable RTO.

Third, trainers and assessors within the RTO could learn of the adaptations that may be required to tailor courses to suit industry.

Fourth, the RTO had the benefits of a training contract with industry along with access to an industry network for work placements, and insights into future training needs within that industry.

The unregulated market is not part of this review, but it does form an important part of the VET environment, which together with the higher education environment, constitutes Australia’s tertiary

⁸³ NCVER, *Australian VET statistics: employers’ use and views of the VET system*, 7.

⁸⁴ While the training was business-specific, it was later deemed to be eligible to receive national accreditation and the students who successfully completed the course received a Certificate level qualification.

education field. At an early point in consultations, attention was drawn to the risks of the unregulated market primarily in relation to risks to community health when service deliverers lacked skills and/or a sound evidence base for the benefits of their services.

While this casts a shadow over some training delivered outside the accredited qualifications system, there is a bright side as well that deserves recognition. Business-specific genuine and productive partnerships between industry and reputable RTOs are taking place beyond the accredited training system.

Similar developments in pushing the boundaries of standard accredited courses was documented in an earlier review of the regulation of higher education.⁸⁵ Recent discussion of degree apprenticeships highlights the fact that the momentum for change continues across the tertiary sector. However, the path for innovation in teaching and training is not without obstacles as was shown in a 2013 review of regulatory burden in higher education. Regulatory constraints on innovation were informal and social, and possibly more frustrating than anything a formal regulator was likely to impose. Institutional status obstacles confronted higher education providers that were not universities. The essence of their problems lay in being excluded from richer, and often more powerful and privileged networks:

“In terms of teaching and learning, some will be enmeshed in looser regulatory networks than others. This means that the teaching and learning experiences of their students may be less open to critical scrutiny and there may be less opportunity for continuous improvement than for other better networked providers. In our interviews, higher education providers commented on the difficulty of getting universities to partner with them for benchmarking purposes.”⁸⁶

In this rapidly changing sector, the regulatory priority for the future might be a change from course accreditation and regulation, to ASQA working with TEQSA to promote a culture of quality assurance that extends across the tertiary sector with support from education and industry peak bodies.

Protecting the accredited training market

Critics rightly ask what happens when quality RTOs have their reputations and performance compromised by association with those individuals and entities that are not registered and are what is commonly called “dodgy” in the VET market. There is no question this poses a risk for RTOs that do not show due diligence in vetting potential partners. The risk is greater when communication channels do not extend out far and wide to connect RTOs to each other. It is unclear how well the strong VET hub of knowledge and influence has created communication channels with those at the margins of the VET environment. And there is some evidence that serious small business non-compliers in other industries prefer to keep their distance from “hubs of influence” be they government or non-government.⁸⁷

The power of social networks to regulate for responsible conduct should not be underestimated, providing those networks share principles and values that promote quality in VET. The practicality of this approach is taken up again in Chapter 5 when submissions and consultations are discussed in detail. For the moment, the argument is theoretical. The right partnerships enable best practice to

⁸⁵ Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation* (Canberra: Australian Government, 2013).

⁸⁶ Ibid, 19.

⁸⁷ Valerie Braithwaite and Deborah Cleland, *Compliance and Defiance in Work Health and Safety Regulations. Report to WorkCover Queensland*, (Queensland Government, 2017).

spread. Choosing partners because they value quality in VET, and rejecting others because they do not, creates a market that strengthens a shared understanding of what it means to be a good provider and what is involved in good course delivery.

Partnerships and market principles together can in theory create a culture where RTOs choose to act according to regulated standards. The issue of course accreditation will pose far less of a risk for ASQA if the regulator exercises its right to ensure that those entering the VET market are both well qualified educationally and industry-wise. In subsequent chapters, consideration will be given to ASQA asking registrants to demonstrate a commitment to quality and desirable student outcomes that is commensurate with the privilege of being a VET provider.

Conclusion

This chapter has provided an overview of how we should be thinking of regulation in the VET sector. Implicitly, the chapter is critical of regulatory approaches that are overly reliant on technocratic methods and legal formalism. Both have a place, but complexity and change in the VET environment requires a more dynamic and responsive regulatory framework. The new ASQA audit model that follows the student journey on recruitment, enrolment, support, learning and completion provides a starting point for grounding regulation in the everyday experience of RTOs and inviting RTOs to mainstream key regulatory principles in their operations.

The chapter details the benefits of a more relational approach to regulating VET where principles of desirable student outcomes are centre stage and where the regulator is flanked and supported by like-minded others in the sector. With restrictions on resources to oversee all activity in the sector and with the need to join up with regulation of the higher education sector in due course, this report commends a more relational approach in which regulators are nourished by professional relationships with other sectoral actors.

At the same time, this sector, like many others, has attracted far more than its fair share of providers who ruthlessly privilege profit over educational and training purposes. Untold harm has been done by providers who have little interest in education but are attracted by the opportunities to exploit government funds and students as demand explodes for skilled workers in growing industries. It is in this respect that strong legal provisions to limit harm remain a high priority. For more years yet it will remain necessary for ASQA to expend a lot of time at the peak of the regulatory pyramid to purge the industry of non-performing providers who have been eroding the reputation of the VET industry and, as a result, its potential contribution to future economic growth.

In the next chapters we consider the issues that emerged from submissions and consultations in the sector and put many of these ideas to the test to assess others' views of their feasibility and desirability.

Chapter 3: Review methodology

The methodology used to review the NVETR Act and its subordinate legislation for guiding ASQA's regulatory activity followed three paths. The purpose was to gather information from these different perspectives and then triangulate findings to develop a set of recurring issues that involved regulation and affected student outcomes. Student outcomes served as an anchor for the review of the NVETR Act at the request of the Hon Karen Andrews MP, Assistant Minister for Vocational Education and Skills.

First, input from ASQA was sought about the legislation, its implementation and the extent to which the regulator was hindered by the legislation in achieving its objectives. ASQA was privileged above other stakeholders in the vocational education sector because of its unique position as the main interpreter and implementer of the legislation. The secretariat and I spent 11 hours with ASQA learning about its operations, with ASQA also providing supporting documentation. A one-day audit was also attended to get a better understanding of how the regulatory process unfolded in practice. ASQA provided four audit reports to give insight into the output that would be used for deciding enforcement action, should that be necessary.

ASQA also made a submission to the review, which contained two parts. The first part of ASQA's submission is publicly available and includes proposed changes to ASQA's regulatory approach and suggestions about the operation of the VET system more broadly that require changes to the NVETR Act and supporting instruments. Many of these recommendations are in accord with the main findings of the review. Their intent is captured by the review's recommendations at Chapters 4, 5 and 6. Some of ASQA's recommendations have not been fully addressed in this report, as they go to matters currently subject to reviews or reforms being undertaken by the Australian Government or under the auspices of COAG.

The second part of ASQA's submission was submitted to me confidentially and contained operational legal issues that have been informed by legal advice to ASQA over its years of operation. I do not profess to have a sufficiently strong legal background to make a judgement call on some of these more technical proposals. I am, however, broadly supportive of 'tidying up' the legislative framework and recommend that ASQA canvas these technical proposals with the Australian Government Department of Education and Training as part of the Australian Government's response to this review.

The review's second approach to gathering information about the adequacy of the legislative framework for ASQA relied on consultations with a broad cross section of stakeholders including sector and industry representatives, public and private RTOs, state and territory governments and other regulatory agencies and experts. The process of compliance with rules involves many actors as described in the previous chapter. A major objective of the review was understanding how these rules improve student outcomes. Therefore, broad consultation was a necessary part of the review, particularly with those who were closest to seeing how regulation played out in terms of student outcomes. Those who took part in consultations are listed in Appendix C. Consultations began with an open invitation to address ways in which the legislative framework guiding ASQA might be changed for better student outcomes.

Most stakeholders understood the legislative framework with reference to how the legislation was interpreted and practiced. This is not unusual. All legislation has to be infused with meaning and this occurs through daily practice as regulators interpret the legislation and others interpret the actions of the regulator. Discussion therefore focused on the issues that stakeholders considered were

important to them in the context of a review of the legislation. The task was then to interrogate these issues and ask whether addressing each issue required legislative change or not.

Consultations were held in Canberra, Melbourne, Sydney, Brisbane, the Gold Coast, Adelaide, Perth and Dubbo. Teleconferencing was used for consultations with stakeholders in Tasmania and the Northern Territory.

In order to enrich understanding of the relationship between the legislative framework governing the regulation of VET and student outcomes, nine RTOs were visited to demonstrate the breadth and diversity of training practice and delivery in the sector. These visits provided the opportunity to talk to those responsible for running the RTOs primarily, but also gave insight into day to day functioning through observing training delivery and touring facilities.

Third, public submissions were invited on the legislative framework with the following set of seven guiding questions as well as an open question at the end:

- a) In the interests of quality student outcomes, which aspects of vocational education and training (VET) should be under the closest scrutiny by the regulator, the Australian Skills Quality Authority?
- b) What are the principles that should drive the business plan of a quality VET provider?
- c) Are regulatory and legislative changes required to support RTOs to continuously improve across all areas of their operations and to go beyond meeting minimum quality standards?
- d) How effective are the enforcement powers of ASQA for ensuring a quality VET sector and how might they be improved?
- e) How could quality be effectively measured and reported as part of an outcomes-based approach to regulation? What is the best way to measure student outcomes?
- f) What measures can be taken to give students, parents and communities a stronger voice in the regulation of VET?
- g) Are there areas of overlap, inconsistencies or gaps between the *National Vocational Education and Training Regulator Act 2011* and other legislation that impedes the effective regulation of the VET sector?
- h) Other comments. Please address any other issues related to the terms of reference.

These questions were designed with the intent of evaluating the adequacy of current legislation and exploring how future legislation might be framed to be responsive to the regulatory environment described in the previous chapter. From Chapter 4, the two themes outlined for designing a future regulatory system are integrating quality and improvements in quality into the regulatory framework and increasing participation by members of the regulatory community. Part of the challenge of participation is transparency around regulation and VET practice. The remaining part is finding a role for others in the sector in regulatory processes.

Of the 68 submissions received, 43 of them responded to the guiding questions through the review's online submission portal, and 25 submissions were free responses received via email. In addition to these official submissions were a number of personal emails providing input to the review.

Some submission authors chose for their submissions to remain confidential or anonymous. A list of the 53 publicly available submissions, along with additional demographic information about the submission authors, is at Appendix D.

The conduct and direction of the review was guided by an Expert Advisory Panel (the Panel) appointed by the Hon Karen Andrews MP, Assistant Minister for Vocational Education and Skills. The

Panel advised on the scope of consultations and served as a sounding board for the analysis, findings and draft recommendations of the review. Members of the Panel are listed at Appendix B.

Finally, a number of issues were referred for consideration under the review from the activities of the Training and Assessment Working Group. These issues all fit within the remit of the review's terms of reference and included exploration of:

- The potential for improvements in quality that may result from establishing a mandatory national registration scheme for all VET practitioners.
- Reviewing the professional development requirements in the Standards for Registered Training Organisations (RTOs) 2015 to establish a definition for, and minimum standard for participation in, professional development.

These issues were also raised by ASQA and other stakeholders during the course of the review. The review's response to these issues will be outlined in discussion throughout the report and in the report's recommendations in Chapters 4, 5 and 6.

Chapter 4: ASQA’s regulatory philosophy and culture

This chapter considers ASQA’s regulatory philosophy and culture. It is the first of three chapters that review submissions and consultations to consider the suitability of the legislative framework for delivering desirable student outcomes, that is, competent graduates who have had a positive learning experience.⁸⁸

Overall, there were relatively few concerns in submissions and consultations about specific legislative provisions. There was general agreement that ASQA had sufficient legislative powers but that it needed to utilise a broader range of interventions and compliance processes to encourage continuous quality improvement to address shortcomings in training and assessment and student outcomes.⁸⁹ This review endorses this near consensus. Mention was made of ASQA needing serious teeth around fit and proper persons, and increased scrutiny of new providers to lift the requirements for registration and to have more timely decision making.⁹⁰ This review supports legislative changes proposed by ASQA to address these issues.⁹¹ A second set of concerns with direct legislative implications involved consumer rights provisions and poor protection of students who had been harmed by the actions of RTOs. Both are dealt with later in Chapter 6.

The dominant and overarching theme that emerged from submissions and consultations is captured by the term regulatory culture or “the ethos of the framework”. Across the sector, concerns were expressed about ASQA’s interpretation of the legislative framework and its connection with ensuring desirable student outcomes. Some may consider this operational and not within the remit of this review. Indeed, many of the submissions speak in operational terms. But the overarching theme that is taken from specific concerns has to do with regulatory philosophy and culture. Regulatory philosophy and culture contextualise legislative provisions and give them meaning in practice. Different meanings will lead to different enactments of the same legislative provision. Changing legislation without addressing the culture driving its interpretation will not necessarily produce the outcomes expected. Through their culture and application of legislation, some regulators may identify with a “police on the beat” philosophy, some with a “support improvement” philosophy, or indeed as suggested in Chapter 2, some may identify with both. ASQA’s use of its existing powers, guided by its regulatory culture, and the sector’s perception of the effectiveness and transparency with which they apply the legislation, falls squarely in the remit of this review.

On the basis of submissions and consultations, ASQA’s application of the legislation was most noticeable at audit. The sector saw ASQA as missing opportunities to support quality and for “openness and accessibility” to “talk things through before becoming big issues”. Submissions suggested that audits should be seen as *“a support process rather than a disciplinary requirement”*,

⁸⁸ Chapter 1 concluded that an RTO with desirable student outcomes will graduate students who have experienced quality training and rigorous assessment, both of which equip such students with (a) confidence and capacity to use their skills in the workplace, (b) a positive attitude to learning, and (c) a positive and capable approach to transferring those skills to a changed work context.

⁸⁹ Australian Council for Private Education and Training (ACPET), “Submission 043,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Industry Reference Committees of SkillsIQ LTD, “Submission 042,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Australian Dental Association, “Submission 054,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

⁹⁰ J&S Learningwork, “Submission 055,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Australian Children’s Education and Care Quality Authority (ACECQA), “Submission 046,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; ASQA, “Submission 030,” Review of the *NVETR Act*.

⁹¹ See ASQA, “Submission 030,” Review of the *NVETR Act*.

and that ASQA audits were preoccupied with minor issues and strict compliance for the sake of checking boxes rather than a broader assessment of the quality of student outcomes.⁹² In the words of one of the people interviewed, *“it’s hard to understand where they come from sometimes”*, they should *“monitor and support”*. Further to this, a high performing RTO observed an absence of *“rewards for proven good performance”*, a view echoed in other submissions. They were critical of *“all stick and no carrot”* on the grounds that it bred *“defiance and perplexity”*. They also conveyed their frustration when students came to them with stories of their experience with *“shonky providers”* who were still operating. The solution may lie in increased regulatory conversations that provide greater transparency about ASQA’s activities and application of the legislation.⁹³

In consultations it was clear that the sector distinguishes real transgressors from RTOs that were *“neither knights nor knaves”* but *“mainly in the grey”*. Reference was made to *“needing to deal with real transgressors”* and that relying on *“documentation is slippery”*. There was no tolerance for RTOs that were cutting corners and not providing quality training and assessment and proper supervised work placements. One submission noted that, *“Our members strongly support reforms that allow the swift enforcement of sanctions when poor quality training is detected”* and another that, *“RTOs who are not providing students with access to quality education and training, minimum number of practicum or those who do not have appropriately qualified teachers and clinical supervisors should be subject to immediate sanctions”*.⁹⁴ However there was considerable sympathy for those trying to comply, even if not totally successfully, and ASQA was seen as needing *“to find a way to talk to them”* and explain what it was that *“they needed to change”*. A senior member of the legal community explained that *“most will want to settle”* without blame and animus. So the sector understands the need for ASQA’s regulatory culture to vary from a heavy-handed enforcement to the *“support improvement”* philosophy.

It should be acknowledged at this point that some saw the desired culture change in ASQA as achievable through greater specification by ASQA on the meaning of standards and provisions. A move in this direction, if done unilaterally by an authority (the regulator or another), is likely to bring even greater concerns about disconnection between regulation and desirable student outcomes. Other examples show that it can have negative consequences. For example, tax codes extend into volumes and are so complex that not even experts are sure of what they mean. They are products of increasing specification to tie down meanings, then further detail to plug loopholes created by the specific meanings.⁹⁵ Similarly, health providers in the US are incapable of managing upward of 1,000 clinical practice guidelines that they are expected to take seriously.⁹⁶ The problem with dealing with the understandable lack of clarity and ambiguity with more and more specification is that it becomes impossible to remember all the conditions and all the clauses, let alone apply them in the day to day functioning of the RTO. The 59 clauses that currently exist in the standards, admittedly fewer than those found in other regulatory systems, already challenge providers and auditors alike. It is difficult to imagine how casual trainers or students would have anything other than a superficial, check-list

⁹² Australian College of Applied Animal Studies, “Submission 016,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Australian Dental Association, “Submission 054,” Review of the *NVETR Act*; Community Colleges Australia, “Submission 059,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

⁹³ For a discussion of the importance of regulatory conversations, see Black, “Regulatory Conversations,” 163-196.

⁹⁴ United Voice, “Submission 064,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Australian Dental Association, “Submission 054,” Review of the *NVETR Act*.

⁹⁵ Judith Freedman, “Defining Taxpayer Responsibility: In Support of a General Anti-Avoidance Principle,” *British Tax Review* 332, (2004): 347-350.

⁹⁶ Carol Heimer, Juleigh Petty and Rebecca Culyba, “Risk and Rules: The Legalization of Medicine” in *Organizational Encounters with Risk*, eds Bridget Hutter and Michael Power (Cambridge: Cambridge University Press, 2005): 92-131.

understanding of their relevance and significance. So improvement to the standards should not come through more specific standards but through clearer and more consistent application.

Specification and letting the measurable drive out what is important is the weakness of overly technocratic regulation backed only by a philosophy of legal formalism. The answer lies in ASQA developing its regulatory culture to provide a better explanation of how its powers are used to achieve the overarching principles that drive enhanced student outcomes, and engaging in clearer regulatory conversations.⁹⁷

A metaphor for modern day regulators

A metaphor may prove useful in communicating the culture change that will make a difference in VET by making two key points. First, compliance is everyone's business, and second, *"the social responsibility of regulators, in the end, must be not simply to impose controls, but to activate and draw upon the conscience and the talents of those they seek to regulate"*.⁹⁸

In studying the quality of health care, Carol Heimer observed *"We would not have great symphony orchestras if conductors focused only on keeping musicians from playing out of tune"*.⁹⁹

Modern day regulators have to be like symphony orchestra conductors. They need a vision of what it is they are trying to achieve collectively, they need to show leadership through communicating and recognising the fine exponents of that vision, and they need to skilfully detect weaknesses and bring them to the attention of the orchestra. Sometimes the weakness will be systemic and relate to a whole section of the orchestra, sometimes it will be more individualised. Whatever the case, the conductor is not expected to give the orchestra member a lesson in playing his or her instrument, the responsibility for correcting the problem is that of the orchestra member with support from musical mentors and colleagues. The conductor is the arbiter of quality and when the orchestra is ready for its performance.

As the orchestra conductor is bringing all sections together to deliver a quality performance, there will also be occasions for sanctioning players who do not turn up on time or who are spoiling the performance of the orchestra. Sometimes the bassoon player just has to go.

Supporting and sanctioning are equally important to the delivery of an inspiring symphony.

Auditing through documentation as a preferred regulatory methodology has been a global phenomenon, not unique to ASQA.¹⁰⁰ A key feature is a shift in workload from regulator to those they are regulating. Yet the freed-up resources of the regulator often do not produce the outcomes that the public expects.¹⁰¹ In the VET sector, VET FEE-HELP provides a clear example of regulatory failure across government that everyone would have preferred to avoid. The problems posed by abstract risk models and documentary audits, where regulators are less likely to leave their desks to

⁹⁷ Josie Misko makes a similar observation in Josie Misko, "Regulating and quality-assuring VET: international developments," *Research Report* (Adelaide: NCVET, 2015): 16.

⁹⁸ Eugene Bardach and Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Philadelphia: Temple University Press, 1982): 321.

⁹⁹ Carol Heimer, "Legislating Responsibility," *Working Paper no 9711* (Chicago: American Bar Foundation, 1997): Cited in J Braithwaite, Makkai and V Braithwaite, *Regulating aged care*, 289.

¹⁰⁰ See Power, *The Audit Society*.

¹⁰¹ Power, "The Audit Society – Second Thoughts," 117.

“kick the tyres” to understand issues developing on the ground are being increasingly recognised.¹⁰² One submission noted that, *“Quantitative metrics are largely ineffectual when considered in isolation or without consideration of qualitative factors, such as the effectiveness of an RTO’s management and governance structures. Many of the current and proposed quantitative metrics are easily manipulated and do not measure quality of outcomes”*.¹⁰³ Knowledge of these weaknesses in the sector breeds pessimism. Another submission reflected commonly encountered concerns about what ASQA audits were achieving, noting, *“Until ASQA changes its focus from compliance with standards – many of which do not relate to student outcomes or experience – the regulation of VET will not improve student outcomes”*.

The standards, through their text or their interpretation, must enhance student outcomes without placing unnecessary regulatory burden on those required to comply. So often failure to comply in such systems is not the result of unwillingness, but rather being overwhelmed by the enormity of the task of compliance. Many submissions and interviews made reference to the enormity of the task of collecting documentation and evidence to demonstrate compliance to ASQA. A Community Colleges Australia (CCA) survey found that small RTOs had 0.3 to 0.4 full time equivalent staff working on compliance while large RTOs could have 5-6 people.¹⁰⁴ Others referred to being constantly barraged by a “ridiculous” number of consultants offering their compliance services. The general comment accompanying the CCA survey was that compliance was a *“necessary and important part of their operation”* but there was a large amount of *“unnecessary process work required that could be minimised if more holistic forms of quality oversight were employed”*.¹⁰⁵ ASQA must clearly explain the connection between the documentation it requests and the benefits for students and the sector.

The workload of RTOs to prove their compliance to ASQA (and other regulatory actors) was perceived to significantly reduce an RTO’s capacity to focus on quality training and assessment. Submissions noted that client focused, flexible learning and assessment often take second place because of onerous compliance requirements. Furthermore, there was little evidence of compliance understanding trickling down to teachers and students in a positive way. Indeed, at this level, the attitude to compliance was decidedly negative. Submissions noted that, *“the current system has forced us to become good at ticking boxes at the cost of real learning experiences”* and that, *“we are so boxed in by compliance and auditing that our delivery is suffering for it”*.¹⁰⁶ Through regulatory conversations, where ASQA supports RTOs to understand and comply with the standards, audits and interactions with the regulator can refocus on student outcomes.

Some reading this report might be critical of the time involved in regulatory conversations as “wasteful”. If people could be programmed to be perfectly deferential they may be right. Where people are expected to be responsible for their own actions, they have every right to be engaged in conversations that explain to them why compliance will lead to desirable student outcomes. The submissions make it clear that the link is not immediately apparent to those working in the sector. RTOs are investing substantial resources to deal with auditors’ expectations. Compliance consultants, practice audits, and heavy demands for documentation are oriented more to satisfying the regulator than improving student outcomes. Many advocated for change, not finding a document analysis credible. One submission illustrated the importance of regulatory conversation

¹⁰² J Braithwaite, Makkai and V Braithwaite, *Regulating aged care*, 242.

¹⁰³ Navitas, “Submission 058,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁰⁴ Community Colleges Australia, “Submission 059,” Review of the *NVETR Act*.

¹⁰⁵ Ibid.

¹⁰⁶ Anonymous, “Submission 018,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

by suggesting that auditors have verbal contact with students and employers to discuss quality of training.¹⁰⁷ The time spent preparing for audit will be justified and replaced to some extent by fruitful time spent in regulatory conversations.

ASQA to its credit has made significant progress in responding to some of these concerns. The new audit model recognises the need to prioritise the student experience and outcomes. The new audit model prioritises standards relating to the student journey from recruitment, through enrolment, support, and learning to completion. It is within ASQA's power to take the next step of re-thinking audit as documentation and having conversations with the sector about alternatives to bring assessment of compliance with the most important standards into line with the day to day concerns of students, teachers, RTOs and employers.

Better regulation will not come from ASQA alone. As argued previously, in a field that is as large, diverse and changing as VET, a regulator, no matter how experienced, will not have the knowledge and capacity to direct RTOs in how to achieve desirable student outcomes. Some submissions recommended segmentation of types of providers and the use of industry experts to create more outcomes-focused regulatory standards. Others questioned whether industry experts were suitable judges of their students' accomplishments. One explained that,

"The student cohort we get tends to comprise people who have difficulties with mental health issues, social issues, lower levels of education, from varied cultural background and so on. Even though some of these people may not gain employment directly as a consequence of their study, they have gained valuable life skills and confidence and an understanding of the requirements of the work place in Australia. These are skills and knowledge areas that can be applied generally to life situations".¹⁰⁸

Accordingly, top down segmentation and tailoring regulation is not practicable. It would introduce another level of complexity and rigidity in a system where, to be fair to ASQA, it is difficult to know what the next source of systemic risk will be. All that we can be sure of is that the next "abuse" of the system will sidestep whatever fixes are in place.

The extraordinary variability in the sector and the pace of change in employer, community and individual student needs means ASQA must include the sector in its regulatory culture. It was in this context that partnerships were promoted in Chapter 2 as a way of regulating for quality cooperatively. Many other parties must become "the eyes" of ASQA, not only monitoring but also taking action to steer in the direction of quality wherever possible. The steering may take the form of nudges, not directives, but every kind of contribution to improved student outcomes will help.

The submissions were highly supportive of the importance of partnerships between ASQA and other members of the regulatory community. Proposed partnerships involved industry, professional training staff, peak bodies, licensing bodies and high performing RTOs. Partnering was seen as an obvious pathway to gaining data for intelligence purposes in a timely fashion and gaining better quality student and employer input on training experiences. Submissions mentioned coordinating data between ASQA and state regulators, state training authorities, NCVET, the Unique Student Identifier (USI) system, My Skills, student and employer survey designers and analysts. Positively, ASQA is already taking steps in this direction.

Partnerships were also seen to be at the heart of resolving problems, particularly the assessment crisis. For example, one RTO had involved staff, local industry and other stakeholders in assessing

¹⁰⁷ Australian College of Applied Animal Studies, "Submission 016," Review of the *NVET Act*.

¹⁰⁸ Anonymous, "Submission 018," Review of the *NVET Act*.

the skill level of students transferring from another training provider. The meaning of standards and the lifting of standards was seen by some to require regular discussion and collaboration with providers and industry. One submission recommended that the development of ASQA's risk matrix be discussed and reviewed with the sector by making *"the RAF [Risk Assessment Framework] publicly available...[urging] ASQA to involve RTOs, students, industry and other interested stakeholders to participate in future reviews"*.¹⁰⁹ This could also identify systemic risks and solutions. Few submissions mentioned the value of ASQA's strategic reviews.¹¹⁰ A number of submissions considered such matters to be part of on-going conversation with industry, auditors, and providers, that could be advanced through frequent, small doses of monitoring, addressing observed problems through providing support, and issuing guides on good practice across the sector.

Partnering could also lift standards through excellence ratings provided by industry. While not a new idea, one submission suggested, *"Introduction of industry certification /support/ticks of approval for providers who meet certain criteria/industry standards by going over and above minimum requirements"*.¹¹¹ ASQA has an active education program with different modes of delivery, but perhaps not enough attention has been focused on what RTOs can do to improve the quality of their education and training and thereby improve student outcomes. More than one submission recommended, *"Focus on attributes of successful quality RTOs (if able to assess this) and determine how best to embed that"*.¹¹² Incorporating such positives into ASQA's regulatory culture would both strengthen industry partnerships and enhance the quality of the VET sector.

The submissions offered insightful reflections on dealing with the sector's diversity and recognising innovation and excellence of the sector. One suggested that in order to personalise ASQA audits while keeping them on a high level, providers could write a self-evaluation document that would allow them to reflect on their own practice and give the auditors insights on the particular organisation. RTOs could use such a document on their websites to promote the services they offer, ensuring its usefulness to the RTO rather than an additional regulatory burden. And, at the risk of depersonalising this insightful idea, artificial intelligence capabilities will soon be able to review and compare thousands of documents, without putting the authors in too much of a straightjacket in how they write such a document. So it need not be too much of a burden for ASQA either. Such steps would help ASQA develop a more positive, and more transparent regulatory culture.

The purpose of this chapter has been to propose change in the regulatory philosophy that gives meaning to the legislation through ASQA's use of its existing powers. Part of the reason is the critique from the sector of the current philosophy, because they see little connection between the actions they are taking to satisfy the regulator and their main business of delivering desirable student outcomes. ASQA is already taking steps to implement some ideas and has given welcome indications that it is willing to develop a more transparent regulatory culture.

¹⁰⁹ Australian Dental Association, "Submission 054," Review of the NVETR Act.

¹¹⁰ One submission criticised their timeliness: see Logistics Training Council, "Submission 032," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹¹¹ Ibid.

¹¹² Anonymous, "Submission 057," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

Recommendation 1: ASQA develop and implement processes to enhance its capabilities and opportunities to proactively engage in regulatory conversations with students, teachers, RTOs, industry and other interested stakeholders. The desired outcomes are to improve the value of the student-focused regulatory approach and involve the sector in developing the regulatory culture that drives ASQA's use of its legislative powers.

This recommendation acknowledges that the sector is too complex to be regulated alone and warrants a word of sympathy for ASQA's challenges. Gaming the system has been rife in VET. The gaming involves legalistic and technical manipulation of rules and their meaning to sidestep regulatory control. When gaming consumes a regulator's time and dominates its frame of reference, those who are willing to cooperate and are trying to do the right thing become captured in regulatory jargon and processes that are foreign and anathema to them. As the Chief Commissioner has indicated to me: it is a privilege to be a provider of VET, not a right. This reflects a profound respect for those who are contributing their best and delivering desirable student outcomes and experiences. All that is required is a correction to strike a new balance in the system. Reflective practice is a pathway to achieving this outcome.¹¹³

Being a reflective practitioner in the regulatory context means first engaging with the many different actors in the sector in the responsive regulatory tradition: listening, settling and monitoring agreed outcomes, building commitment in actors so they find their own motivation to improve, and communicating firm resolve to stick with a problem until it is fixed.¹¹⁴ Reflection on such interactions is the second step, privately and with colleagues, learning from collective experience how to change behaviour, build cooperative relationships, appreciate cooperation when it is offered, and know how to escalate pressure to comply when necessary. It lies in regulatory conversations with the full range of actors in the regulatory community.

Recommendation 2: 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 regulatory community the principles applied to the interpretation of legislation and the use of powers.

One way of helping achieve a new balance is through introducing the notion of principle-based regulation more broadly into the text and interpretation of the legislation. The idea is that principles overarch the specific standards so when there is dispute over compliance with a specific standard, resolution can be found by considering whether there is compliance with the broader principle. Desirable student outcomes already motivate a range of sub-principles in the legislative framework, some of which are captured in the standards. For example, good employment outcomes links with Standard 1: The RTO's training and assessment strategies and practices are responsive to industry and learner needs and meet the requirements of training packages and VET accredited courses. Similarly, the sub-principle that a student is nurtured to be a life-long learner links with Standard 4: Each learner is properly informed and protected. With a principle-based approach, issues not mentioned explicitly in the standard can also be considered. For example, a standard requiring a safe learning environment for students, through the lens of broader principles, brings safety from harassment and bullying into focus. While some standards cannot be effective without tight specification, overarching principles provide the most practical steering toward better outcomes.

¹¹³ See Donald Schön, *The Reflective Practitioner: How professionals think in action*. London: Temple Smith, 1983.

¹¹⁴ John Braithwaite, "The Essence of Responsive Regulation" *UBC Law Journal* 44, no. 3 (2011): 475-520.

This is a useful way to curb game playing with more specific standards, helps auditors refocus on important issues, and makes ASQA's application of the legislation more transparent.

In considering the issues discussed in this chapter, desirable student outcomes should be the broadest principle used for final arbitration over contentious decisions. With this in mind, the principles should reflect the Objects of the NVETR Act while maintaining some flexibility. ASQA should continually engage with the sector in developing and applying these principles to ensure they sustain constructive relationships with the majority of RTOs that are willing to work with ASQA to deliver desirable student outcomes.

Alongside the transparent application of these principles, ASQA must ensure the sector understands how and why it uses its regulatory powers. For example, the sector must understand the significance of ASQA's use of infringement notices and enforceable undertakings where they indicate different levels of concern about the impact of non-compliance on student outcomes. This must be clear to both the RTO in question, but also other RTOs, to effectively deter similar non-compliance elsewhere by demonstrating the potential consequences and giving the concept of the regulatory pyramid tangible meaning. Similarly, written directions will only be effective as a warning sign, if they are understood in the context of other possible sanctions, namely, infringement notices, enforceable undertakings and administrative penalties including suspension or cancellation of registration. Intuitive understandings of ASQA's determined escalation of penalties will lead to quick resolution under ASQA's responsive regulation model when the process is better understood (see Appendix E). Complex legal tree diagrams of when sanctions can and cannot be used by ASQA will not translate into a human sensibility that a better pathway is to avoid increasing cost through a quick cooperative settlement of a problem. Across their regulatory activities, more transparent use of ASQA's different powers, explained by broad principles, will be more effective in enhancing quality across the sector.

Conclusion

This chapter provides support from the written submissions and consultations to urge ASQA to reflect on its regulatory philosophy. Changes that make use of sanctions and supports, pyramids and regulatory conversations to establish shared understanding of what the standards mean for desirable student outcomes would be welcomed by the sector.

Before concluding this chapter, commentary on the term "student outcomes" in the submissions and consultations was insightful and worthy of mention here. Student outcomes has possibly become the "focus of the review", not so much because of support for a narrow meaning of successful completion, but as a counter to the process of collecting documentation for desk auditing. This message was conveyed through a submission that suggested,

"The highest level of scrutiny by the regulator on vocational education and training (VET) should be on aspects of the system that present the highest risk. These are not only the outcomes of training, but also the way organisations treat students, the quality of the teachers and assessments, plus reports from students and other stakeholders pertaining to quality of training and assessment".¹¹⁵

¹¹⁵ Anonymous, "Submission 053," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

A number of other voices warned against regulation that focused narrowly on outcomes. One example provided was of the outcome of having a 100 per cent success rate in a course. The quality of regulated VET, as assurance that a person has the appropriate skills and experience to perform certain work, should be more important than the completion rate of students enrolling at a particular RTO. Only with quality data can the regulator more closely scrutinise providers making guarantees such as a 100 per cent success rate. ASQA must avoid overreliance on quantitative measures as it further incorporates student outcomes into its regulatory culture.

In doing so, ASQA will find many willing partners. There is no suggestion from submissions or consultations that the student experience does not matter to those working in the sector. It is true that the outcome of being qualified to do a job represents the common bottom denominator but there are many submissions that advocate for decency and professionalism in how students become “work ready”. Relevant suggestions discussed in a later chapter, such as fair contracts for students and appropriate support services to facilitate learning, are mentioned repeatedly in submissions. One captured the dominant view that RTOs involved in VET had more to offer students, employers and the community than simply supplying labour for the market. It described that honesty and integrity need to flow through marketing, the student experience and financial decisions, and be ingrained in the culture of the organisation.

In the next chapter, consideration is given to the concerns raised in the submissions and consultations about whether the regulatory framework sufficiently supports ASQA in safeguarding the quality of training, promoting teacher professionalism and attending to RTO ethics.

Chapter 5: ASQA’s challenges - building training quality, teacher professionalism and an ethical culture

NCVER survey data show relatively high rates of satisfaction among both employers and students with outcomes from VET. At the same time, the sector has been saddled with significant reputational damage, suggesting that poor providers are operating and putting the VET industry at risk. These concerns were expressed in submissions and consultations. ASQA has been focusing its regulatory resources on addressing the problem of poor providers and will continue to do so while the need persists. More significant for this review was a deeper concern emanating from the sector about capacity to meet industry workforce demands in the future and maintain quality and reputation.

The issue of quality training to meet future workforce needs has received a significant amount of research attention.¹¹⁶ A body of research argues against the restrictions imposed by a narrow view of VET as the provider of skill sets to be “job ready”. The proposal is for less fragmented learning and more attention being paid to using the VET system for training in vocational streams and developing occupational pathways. Learning should take place with job clustering in mind, so that teachers and employers see how skills can be translated from one area to another and individuals have confidence to make the switch. This approach addresses future needs for a flexible and adaptable workforce and prepares individuals for changes in employment and the need for lifelong learning.

An example of innovation and rich partnerships in VET

During the course of the review, a visit was arranged to an RTO specialising in film special effects and game programming and design. The variety of learnt skills, one-on-one training and feedback, and the opportunity to experiment with mixing and matching skill sets opened up a surprising range of employment opportunities for graduates.

The foyer of the RTO was decorated with posters from blockbuster films that graduates of the RTO had worked on. While reaching out to Hollywood and the film industry, the RTO also was engaging in a design project with a Group of Eight (Go8) university some seven kilometres away.

The RTO shared its facilities with industry groups that showed a keen interest in the projects being developed by students, which assisted in their commercialisation.

From this one training base, the visit showcased desirable student outcomes of very different kinds. These were possible through cultivating creative problem solving and delivering recognised, high quality training with strong industry partnerships in a niche area.

In other words, for each individual who has studied in VET, a broader range of capabilities is envisaged as sitting above a basket of specific skills.¹¹⁷ Flowing from this conception of VET as the

¹¹⁶ For example, see Lisa Wheelahan, John Buchanan and Serena Yu, “Linking qualifications and the labour market through capabilities and vocational streams” (Adelaide: NCVER, 2015); See also papers presented at the Australian Education Union National TAFE Conference 20 October 2017; Cedefop “Stronger VET for Better Lives: Cedefop’s Monitoring Report on Vocational Education and Training Policies 2010-2014” (Luxembourg: Publications Office of the European Union, 2015); European Training Foundation “Quality Assurance in Vocational Education and Training: A Collection of Articles” (European Training Foundation, 2014).

¹¹⁷ Complementarity of general and more specific skills is the major conclusion drawn in Cedefop “Macroeconomics benefits of vocational education and training” (Luxembourg: Publications Office of the European Union (2014)

provider of greater capabilities is the notion of greater innovation and richer partnerships between providers of VET and local businesses and communities; and as a result, greater capacity for communities to navigate successfully uncertain economic futures.

Four issues emerged from submissions and consultations as concerns for the sector's future prosperity and a challenge to ASQA as the sector regulator: training quality, teaching professionalism, RTO ethics, and student protection and wellbeing. These issues are not new, being first aired in relation to international students.¹¹⁸ Previous discussions and recommendations populate a 2009 Senate inquiry, subsequently in the Baird Review, a Productivity Commission Report, a 2015 Senate Inquiry and an Australian National Audit Office review of VET FEE-HELP.¹¹⁹ The issues are of implicit concern in the future vision outlined for VET. The challenge for the regulator is that laid out in Chapter 4: To encourage and support RTOs as they go beyond minimum standards and do so innovatively, while purging the sector of providers who are abusing the system.

This chapter addresses quality of training, and the related issues of teacher professionalism and an ethical RTO culture. Consumer protection and student wellbeing are discussed in the next chapter.

Regulating for quality

Quality cannot be mandated. The response from a regulator will be that standards can be mandated and then quality follows. This is not necessarily so. One of the outcomes of enthusiastic standard setting across all facets of society is the creation of a lot of froth with very little substance underneath. The collateral damage of a singular focus on a key performance indicator or a standard is well known now in the literature. Even auditors are critical of their own contribution to the science of performance review.¹²⁰ Standard setting risks substituting superficial compliance for substantive quality. Standard setting can cut out the pursuit of quality through pathways that are more difficult, less well travelled, with more risks of failure. In the worse cases RTOs direct their activities only to score well on the quality indicators – a single fatal blow to diversity and innovation in the sector. In other words, standard setting homogenises and can dampen innovation. This is why most people's eyes do not light up at the thought of regulation.

Is this to say that standard setting is unimportant for a regulator? Absolutely not. Setting standards and monitoring is an essential part of the regulator's role. These are the basic signposts on ASQA's map of what an RTO should do and should not do. They are fundamental to safeguarding students, employers and society more broadly in the teaching and training environment. While standards are necessary, they are not sufficient to ensure quality. The other part of the regulator's role that offsets the risk of an RTO offering superficial (or faux) compliance with ASQA's standards is motivating RTOs and others in the sector to build commitment to continuous improvement around better training, greater professionalism and stronger ethics. This is the essence of responsive regulation. Responsive regulation is already part of ASQA's regulatory framework. The next step for developing a responsive regulatory approach, as described in Chapter 4, is summarised in Appendix E.

To date, ASQA has invested in developing methodologies to enable it to identify providers that are poor performers and dragging down the standards of the sector, specifically its risk matrix. One of its

¹¹⁸ International students are defined as overseas students studying in Australia on a student visa as defined in the ESOS Act.

¹¹⁹ See Education, Employment and Workplace Relations References Committee, *Welfare of International Students* (Parliament of Australia 2009); Baird, *Stronger, simpler, smarter ESOS*; Productivity Commission 2011, *Vocational Education and Training Workforce* (Canberra: Productivity Commission, 2011); Education and Employment References Committee, *Getting our money's worth*; ANAO, *Administration of VET FEE-HELP Scheme*.

¹²⁰ Power, "The Audit Society – Second Thoughts," 117.

main intelligence gathering sources is the data collected from RTOs by NCVER, commonly referred to in the sector as AVETMISS data.¹²¹ These data record student enrolments and completions against qualifications and units of competency, reasons for study, demographics, funding sources, RTO and course details as well as employer, apprenticeship and traineeship data where applicable.

ASQA and the sector are in agreement that more timely access to these data is essential for ASQA to do its risk work effectively. This will be addressed in the last section of the chapter. For the moment this review turns to the thorny issue of quality, the hunger in the sector to move forward on quality, and the opportunities for ASQA to bridge the gap that has emerged between itself and the sector. The basic premise is this: The most important role of quality data is to motivate RTOs to use the data they collect to improve their performance and for the regulator to strengthen the motivation of the RTO to do better.¹²²

Training quality

ASQA has progressed toward having a stronger focus on quality through four initiatives. It has undertaken strategic reviews of particular areas that emerge as important and this is incorporated into their e-scan of the VET environment. To date this has been more of a vehicle for understanding systemic risk (identifying which parts of the system have unduly high proportions of ‘laggard’ RTOs) than identifying RTO ‘champions’ of best practice. But in theory, strategic reviews and e-scans can do both. Identifying and showcasing outstanding performance in a sector is an important way for a regulator to lead by lifting the aspirations of the sector and motivating continuous improvement.

The second initiative for improving training quality is the new audit model that focuses on the student journey. First and foremost, it signals to the sector that what happens to students is important from the moment the student shows interest in studying with an RTO to the moment of completion. This initiative takes a huge step to meeting the sector’s needs for greater attention on quality training. In submissions, a common response to the question, “What is the best way to measure student outcomes?” was RTO data results, student feedback, trainer/assessor feedback and that of industry. It was noted that the best way to measure student outcomes is through direct feedback, such as verbal, written, or specific survey questions, ensuring all areas of the student journey are covered.

The third initiative for improving quality is ASQA’s online self-assessment survey that is recommended as part of the Annual Declaration on Compliance.¹²³ The Annual Declaration on Compliance is submitted by RTOs to confirm that they are systematically monitoring their compliance with the Standards for Registered Training Organisations (RTOs) 2015 and implementing any preventive and corrective actions. The online assessment tool can be used by an RTO on a voluntary basis to add to the rigour of their Annual Declaration on Compliance.

The online assessment tool is ASQA’s most definitive step toward building a repertoire of “motivating for quality” strategies. For example, the online tool asks RTO’s to review processes and procedures, evaluate them, and then reflect on the meaning of the findings and the implications for improving performance (against each standard). On their website ASQA communicates the dual

¹²¹ AVETMISS stands for the Australian Vocational Education and Training Management Information Statistical Standard. It is a national data standard which ensures the consistency and accuracy of vocational education and training (VET) information and covers the national VET data collections including the National VET Provider Collection.

¹²² John Braithwaite argues that regulators can use the technique of motivational interviewing to turn around a non-complying entity: see Braithwaite “Essence of Responsive Regulation”: 475-520; Robin Shreeve, “Data for Accountability and Improving Outcomes,” Report on the National Summit on Data for Quality Improvement in VET (ACER, 9 July 2013).

¹²³ “Self-Assessment Tool,” ASQA.

functions of the self-assessment tool (a) preparing for audit and ensuring compliance with the standards, and (b) reflecting on how the RTO's practices and processes affect quality outcomes for students and how the RTO can build an organisational culture that values self-assessment for continuous improvement. This latter point about valuing self-assessment is an important signal to the sector on how to build pathways for better coordination with the regulation of the higher education sector in the future.

The fourth initiative is the Quality Indicator Annual Summary Report. In preparation for submitting data under the Data Provision Requirements of the NVETR Act, an RTO is expected to undergo a process of data collection and review its performance. It is in the self-review process that the opportunity for self-reflection and continuous improvement occurs. Data collection involves surveying students and employers with standard questionnaires. The questions in the Quality Indicator Summary Report require RTOs to report on areas that need improvement on the basis of the data collected and indicate the remedial actions they will undertake. The Quality Indicator Annual Summary Report has a focus on deficits, but it need not.

ASQA views the Quality Indicator Annual Summary Reports as an indicative quality indicator rather than as definitive due to their limitations. That is, data are not provided to ASQA in detail, there is no directive about sampling methodologies (such as whether all students should be surveyed or just a sample), and the RTO itself is in total control of how the data collection is facilitated and reported to ASQA. All that ASQA mandates in effect is the use of the Learner Engagement Survey and the Employer Satisfaction Survey and the lodgement of the Summary Report.

ASQA has recommended changes to the Quality Indicator Annual Summary Reports because it would like more rigorous and reliable data for monitoring the compliance history of RTOs and their improvement. This review accepts that ASQA needs more data of this kind, as did many of the submissions.¹²⁴ The review, however, disagrees that the Quality Indicator Annual Summary Report is the vehicle for achieving this objective; that it has other more important quality enhancing functions to perform. Later in the chapter recommendations are made about improving the data collected by NCVET so that it meets ASQA's needs and that of others in the sector making decisions of a regulatory nature.

In short, NCVET is the organisation that is best resourced and equipped to collect standardised data from employers and RTOs, including data of a regulatory nature. This means extending its scope beyond informing research and policy to informing regulators (broadly conceived) on their effectiveness in lifting VET quality. NCVET's experience and expertise is unparalleled on data collection in VET. ASQA on the other hand has a leadership role to play in motivating and helping RTOs to lift training quality that NCVET can then track quantitatively.

Motivating RTOs to embrace self-evaluation and continuous improvement necessitates giving RTO's freedom to measure outcomes (connected with the standards) in a way that is meaningful to them. If it is not meaningful, they will not be motivated to reflect on the data and commit to improvement. In a sector as diverse as VET and in the early stages of trying to launch a self-improvement culture, encouraging RTOs to develop fit-for-purpose data collection has much to commend it. The angst that was evident in submissions around ASQA imposing what were seen as inappropriate quality indicators can be re-directed to joint efforts and experimentation on measuring quality training.¹²⁵

¹²⁴ For example, "If the quality indicator surveys were improved and mandatory reporting was implemented more information on quality could be shown on a site such as My Skills e.g. quality of training and assessment, student support services, graduate outcomes, etc": J&S Learningwork, "Submission 055," Review of the NVETR Act.

¹²⁵ See National Australian Apprenticeship Association, "Submission 024," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Australian Emergency Care Providers (AECPP), "Submission

There were many examples of sector frustration; the second quote below exemplifying why enterprise RTOs are a type of RTO that does not find current surveys useful:

“Auditors often don’t know the environment of RTOs and their misunderstanding may give a false set of responses to the Audit body – especially when found in a “survey” [ticking boxes]”.¹²⁶

“Unless there is change to these questions, to ensure they are something meaningful, they will continue to be completed only because it’s a regulatory requirement, but not provide any actual useful or accurate data to the regulator or the RTO. Many RTOs conduct the QI surveys and their own, so that they can get some useful data from their own surveys”.¹²⁷

As suggested in Chapter 2, ASQA does not have to be the only one involved in motivating the RTO to improve. Industry and peak body accreditation programs can be equally effective in providing the impetus for improvement. A useful acronym for identifying sources of support for continuous improvement in RTOs is AMP - A stands for awareness and finding partners to help reveal where improvement can occur - M stands for motivation to improve and - P stands for Pathways to improvement and having help in accessing them.¹²⁸ Rewards can be an additional bonus to kick-start or initially incentivise a continuous improvement program. ASQA praise for RTOs that are showing initiative in developing rigorously evaluated quality programs is such a reward. In previous research, it has been shown that praise lifts compliance, significantly more than deterrence, and achieves that at minimal cost.¹²⁹ Once commitment to improvement becomes part of an RTO’s culture, the system should quickly become self-sustaining. Glimpses of how a regulator might use self-reviewed quality data to motivate improvement is apparent in information ASQA provided to me, stating that, *“ASQA does, however, use the information contained within the [Quality Indicator Annual Summary] report as part of its pre-audit research (if it is already conducting an audit on a provider). Anecdotally, auditors have indicated that while limited, the information within the report can be useful in starting a conversation at audit regarding RTO continuous improvement strategies”*.

With artificial intelligence capacity for context-sensitive parsing of documents on the near horizon for use by all regulators, the case for a structured template to assess quality performance is less compelling than it was a decade ago. In the previous chapter, mention was made of one submission that RTOs would benefit from preparing a self-evaluation document for ASQA that provided opportunity to reflect on both strengths and weaknesses. This could extend to reflecting strategically on how the RTO might develop its business model in the future. The submission is useful in illustrating awareness in the sector of the value of self-reflection and being given the opportunity to present a positive view of itself. The document need not be completely disconnected from the sector’s view of best practice or the regulatory standards. RTOs’ preferred indicators could be submitted for external validation, but the fact that the indicators are self-selected to suit the training context means that RTOs have an incentive to own their performance results and learn from them.

027,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Universities Australia, “Submission 029,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Australian Dental Association, “Submission 054,” Review of the *NVETR Act*.

¹²⁶ Australian College of Applied Animal Studies, “Submission 016,” Review of the *NVETR Act*.

¹²⁷ Anonymous, “Submission 057,” Review of the *NVETR Act*.

¹²⁸ Maria Honig, Samantha Petersen, Tom Herbstein, Saul Roux, Deon Nel and Clifford Shearing “A Conceptual Framework to Enable the Changes Required for a One-Planet Solution”, *Environmental Values* 24, (2015) 663-688 https://s3.amazonaws.com/academia.edu.documents/41945431/Honig_-_Copy-3.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires

¹²⁹ J Braithwaite, Makkai and V Braithwaite, *Regulating aged care*.

The advantage to ASQA of this approach is that it has evidence of RTO behaviour that can be used for purposes of assurance as opposed to risk. In other words, giving RTOs an opportunity of reporting on their quality can be viewed by ASQA as a plus, a sign of responsible management. Those that do not take the opportunity remain firmly in ASQA's sights as an RTO that may require external monitoring and intervention. A self-evaluation document becomes a positive flag in ASQA's risk matrix. ASQA already uses 'positive assurance' flags as well as negative 'risk' flags to a limited extent.

The process of developing a self-evaluation document where positive outcomes are backed up with rigorous evidence requires deliberation with the sector. The most fruitful pathway may be to build this into ASQA's self-assessment tool, or there may be other ways of modifying the Annual Declaration on Compliance and the current Quality Indicator Annual Summary Report to accommodate the more suitable aspects of positive quality reporting. While the sector will be rightfully resistant to increasing their compliance burden, submissions to this review suggest that the sector is well-informed on this matter and open to constructive dialogue with ASQA:

*"The recent changes to the regulatory regime that follow the customer journey are a welcome step in the right direction. But whilst most RTO data collection software has the potential to track this journey in real time the regulatory system is not designed to do so."*¹³⁰

*"ADA [Australian Dental Association] urges ASQA to ensure that it addresses the risk of students experiencing 'survey fatigue'; which has been reported by RTOs."*¹³¹

The need for greater transparency around audits and data was raised on a number of occasions in consultations and submissions. It was also one of the key observations of Josie Misko in her review of international developments in quality assurance and regulation of VET.¹³² It is particularly relevant to any discussion of training quality, both negative and positive reports of training quality. Transparency as a principle of good governance is a mechanism for accountability. It is important that RTOs can view each other's accomplishments and learn from each other's failures for purposes of building a culture that values quality, shares good ideas and also tempers hubris. The sanitising effect of the sunlight of transparency could be expected to hold in check greatly exaggerated accounts of performance excellence.

This recommendation is likely to mean modifying current approaches to providing ASQA with quality and compliance information.

Recommendation 3: ASQA works with RTOs to develop positive assurance flags to include in the ASQA risk matrix and develop a mutually agreed method of communicating this information publicly without increasing the compliance burden on RTOs.

Shared visions of quality?

A critic might say that there is no shared understanding of quality in the VET sector and RTOs could not be trusted to take charge of their own quality indicators. The conclusion of this review is that this is not so, as demonstrated through drawing on data from submissions in which the overwhelming majority endorsed the idea of "quality education" or "quality training and assessment" as a recommended principle to underpin an RTO's business plan. With its new student journey audit model, ASQA is well positioned to add a quality dimension to its audits by building on

¹³⁰ National Australian Apprenticeship Association, "Submission 024," Review of the NVET Act.

¹³¹ Australian Dental Association, "Submission 054," Review of the NVET Act.

¹³² Misko, "Regulating and quality-assuring VET".

these shared values. Below, general comments are provided first, then particular issues that have held back discussion of a shared vision of quality in the VET sector in the past are addressed, specifically profit, dependency on government money, and differences in the motivations of public versus private providers.

The vast majority supported quality, noting that business plans of RTOs should be underpinned by core values with a primary focus on providing education and ongoing industry engagement to meet workforce needs. One submission suggested that, *“The focus of all providers should be on the delivery of quality student-centred training which meets the agreed learning outcomes, leads directly to employment outcomes and has industry relevance and currency”*.¹³³ Another that the governance of RTOs should *“support quality training and assessment and student outcomes....[and]ethical behaviour and a commitment to student welfare”*.¹³⁴

The profit motive?

Cynics will say that aspiration is not the same as action. The point is well taken, particularly when consideration is given to the fact that many RTOs are small businesses, and like all small businesses can find it difficult to thrive in unfavourable economic conditions. It would be misleading to say that profit was not recognised as a principle driving RTO business plans, but it was rare for financial considerations to be emphasised over educational goals.

For the most part, submissions converged on the position that the principle concern is bridging between the education and business sides, and that business sustainability is necessary for and dependent on quality training and education. It was noted that profit should not be a dirty word in VET. The value of bridging was described through how financially viable and stable providers are of benefit to the industry, community, government and, most importantly, students. Where providers fail for business reasons, there are devastating effects on all stakeholders, but ultimately students suffer most.

Government over-dependence?

One submission disagreed with a quality agenda, stating that minimum standards should suffice. Some were more motivated by “profit” than others. But importantly, no submission was explicit in defending profit at the expense of quality training. In fact, explicit concern was expressed over private providers with business models that pursued government funding indiscriminately: Reliance on tax dollars was seen as a weakness, a sign of “dodginess”, according to one submission.¹³⁵ The alternative and more desirable principle for private RTOs that was recurrent in submissions was having multiple funding sources:

*“The very first principle that should be applied is that the RTO has a business plan that envisages earning its income from a broad range of private and public sources. Any RTO operating under a business plan focussed on government funded training is sending out a serious warning that it is not a quality provider.”*¹³⁶

¹³³ Industry Reference Committees of SkillsIQ LTD, “Submission 042,” Review of the *NVETR Act*.

¹³⁴ ACPET, “Submission 043,” Review of the *NVETR Act*.

¹³⁵ ASQA’s openness about its risk assessment of RTOs that have changed their scope in response to access to government money may have led to a firming up of values around what it means to have a responsible business plan and be a sustainable RTO. In this way, ASQA may have already led a change in the values and norms of the VET sector.

¹³⁶ AECF, “Submission 027,” Review of the *NVETR Act*.

“RTOs with a demonstrably long history in specific industries, with significant experience in those industries and whose focus is on providing training regardless of who funds it, provide a more secure basis for the delivery of high quality qualifications.”¹³⁷

Submissions repeatedly emphasised strong industry ties, an issue that emerged as being particularly important in this review because partnerships for work placements that would meet training requirements were not always easy to find in periods of economic downturn and in remote and regional areas. Having a stable history of reputable industry partners and providing training over a period of time to employers known to have high standards was seen in the sector as an underutilised marker of quality:

“A key marker of the quality of an individual RTO is a focus on a relatively small number of study areas. ... Many of the smaller providers, who focus on a narrower range of industries, are among the most stable, high quality RTOs with long histories of quality work in a particular area.”¹³⁸

A public/private divide on quality?

It is of note that commitment to quality of education and training crossed the public/private divide, although some submissions and consultations pointed to differences: *“Public providers strive for financial sustainability, rather than profit in a business plan.”¹³⁹* Public providers, particularly in rural and remote Australia, also saw themselves as having obligations to the disadvantaged, providing wrap-around support services and serving communities.

It should be acknowledged, however, that in the course of this review private RTOs were visited that took enormous pride in creating opportunities for individuals who had faced personal struggles. Many private providers shared the values of public providers in supporting students who were struggling and whose educational experience previously had not been a fruitful or positive one. In a related service provider industry, aged care, private not-for-profit nursing homes tend to out-perform public providers in quality of care in Australia and overseas¹⁴⁰. The vocational education sector should be open to the proposition that how profit seeking is managed is likely to be the issue that undermines quality, not the status of being a public or private provider.

Submissions and consultations revealed a surprising level of agreement around quality training and education. Certainly there was variation in the ideas for assessing quality, as might be expected.¹⁴¹ No single indicator will be perfect or suffice, but there is no reason why ASQA should not join with RTOs in the sector to strengthen incentives and capacity to promote quality training.

¹³⁷ Ibid.

¹³⁸ Independent Education Union of Australia – QLD & NT Branch, “Submission 025,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹³⁹ Victoria University, “Submission 039,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁴⁰ J Braithwaite, Makkai and V Braithwaite, *Regulating aged care*.

¹⁴¹ See aXcelerate, “Submission 004,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Anonymous, “Submission 014,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Australian College of Applied Animal Studies, “Submission 016,” Review of the *NVETR Act*; Independent Education Union of Australia – QLD & NT Branch, “Submission 025,” Review of the *NVETR Act*; Logistics Training Council, “Submission 032,” Review of the *NVETR Act*; Australian Manufacturing Workers’ Union, “Submission 038,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Victorian TAFE Association, “Submission 048,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Anonymous, “Submission 053,” Review of the *NVETR Act*.

Protecting while lifting

Lifting quality cannot be pursued credibly by a regulator without sanctioning providers who are exploiting the system and doing harm. In consultations with stakeholders and in submissions, deep discontent was expressed over inadequate action on RTOs that cut corners on training and were centred more on profits than their students. There was overwhelming support for discouraging this practice in the sector. ASQA's commitment is reflected in its risk matrix: The "*primary risk for ASQA to manage is a Registered Training Organisation certifying that a person has competencies that do not reflect his/her skills, knowledge and attitudes.*"¹⁴²

ASQA requires a considerable amount of documentation before an RTO is registered. Given the number of registrations that ASQA manages and ASQA's commitment to becoming less focused on inputs and processes and more on student outcomes, care is required in going down the path of restrictive entry requirements. It is important not to create more work for ASQA at this end of its operations as a substantial amount of their time is still dedicated to what ASQA refers to as the "bookends" of their operations. It is also important not to rule out providers who have capacity to be innovative at a time when innovation in training is at a premium. The cautious pathway to limiting entry lies in seeking a higher standard around a provider's demonstrated capabilities in delivering desirable student outcomes.

Adding a statement of commitment to education of the highest standards as a principle that overarches the specific documentation required for registration will allow ASQA to take action when an RTO consistently plays at the margins of the standards to reduce costs at the expense of the training, support and treatment of students. There is no reason why VET students should be at greater risk than their peers in higher education or secondary school.

Recommendation 4: The Australian Government amends the legislative framework to ensure that entrants to the registered training market be required to clearly demonstrate educational commitment and knowledge of how to provide best practice support to students. This statement of commitment should be required as a condition of registration and include quality performance objectives, which, if breached, could lead to sanctions and ultimately de-registration.

Related to strengthening the educational commitment of new RTOs, submissions also focussed on the need for ongoing scrutiny of RTOs throughout the period of registration, particularly where changes to ownership and management structures occurred. It was suggested that ethics or ethical behaviours should be further explored in the context of compliance, and perhaps clarified or specified under the 'fit and proper person' standards. It was also emphasised that these standards should be applied to all owners and not just at registration.

In 2017 fit and proper person requirements and change of ownership provisions were updated under the ESOS Act to monitor and prevent unscrupulous businesses from gaining registration to deliver education to overseas students and ensure the timely notification of changes to a provider's operations. More recently TEQSA has consulted on proposed fit and proper person requirements under its legislation with a view to implementing changes in 2018. In view of the reputational damage that VET has suffered at the hands of irresponsible RTOs, the following recommendations support strengthening and streamlining of requirements with the TEQSA Act and ESOS Act provisions and further scrutiny of new entrants to the market.

¹⁴² ASQA, *Regulatory Risk Framework*.

Recommendation 5: The Australian Government strengthens the fit and proper person requirements and change notification requirements under the NVETR legislation and where appropriate aligns them with TEQSA and ESOS Act provisions and any other relevant legislation.

Recommendation 6: The Australian Government amends the legislative framework to ensure greater scrutiny of new providers to:

- **provide that where an RTO without reasonable justification does not commence providing training within 12 months of being registered, or during its registration ceases to provide training for a 12-month period, its registration automatically lapses, meaning that it would no longer be registered.**
- **prevent RTOs changing the scope of the courses they deliver where an RTO has been operating for less than 12 months.**

Strengthening the requirements around educational commitment, change of ownership and scope, and fit and proper persons will underpin the quality of the operations and ensure those setting up or taking up managerial positions within the organisation have a sound understanding of the educational integrity and commitment required to operate in the VET sector and enhance ASQA's risk based approach to regulation.

Teacher quality

Quality training depends on teacher quality.¹⁴³ Poor teacher quality directly compromises student outcomes. Professional teachers and trainers, in effect, regulate the quality of delivery and assessment at the coalface. When they do it well, they build the confidence needed to take skills into the workplace and transfer those skills to meet new challenges. Learning to learn is part of the gift quality teachers bestow on their students.¹⁴⁴ In times of rapid social and technological change, employers benefit from employees who have learnt how to learn and adapt to change. Quality teachers prevent lifelong learning from degenerating into a state of perpetual training. The importance of raising teacher standards in VET has been the subject of a review by the Training and Assessment Working Group following their 2016 report: *Improving the quality of assessment in vocational education and training*.¹⁴⁵

The close link between quality of teachers and desirable student outcomes was recognised in submissions. Particular mention was made of the fact that one of the biggest determinants of quality training is the ability of the trainer. Trainers must have the proper skills, experience and qualifications. Many were concerned that RTOs are using trainers to teach courses without the appropriate qualifications and, "*the focus of regulation should shift decisively in the direction of measuring and assessing quality teaching and the achievement of high level student outcomes.*"¹⁴⁶

¹⁴³ Misko, "Regulating and quality-assuring VET".

¹⁴⁴ One submission expressed the gift of teachers as the, "ability to develop rapport with [a] student cohort to best maximise learning." Anonymous, "Submission 018," Review of the NVETR Act.

¹⁴⁵ Training and Assessment Working Group report: *Improving the quality of assessment in vocational education and training*.

¹⁴⁶ Federation University Australia, "Submission 051," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

Concern about teacher quality also has come to public attention with TAFE cut-backs, casualisation of staff, and uncertain career paths for teachers and trainers. The issue of recommendations relating to teacher quality arising from the Training and Assessment Working Group was referred to this review by the Australian Government Department of Education and Training.

One reason why there is no simple fix to the problem of unskilled teachers and trainers is that the source of the problem lies at the interface of teachers and their RTOs. Much focus from a regulatory perspective has been on teacher qualifications. If teachers lack skill in imparting knowledge and encouraging learning, if they do not have command of their subject matter, if they lack skill in assessment, or are disconnected from industries in which the skills are to be used, RTOs will be unable to produce desirable student outcomes. The solution is to require teachers to have higher qualifications.

But equally, the finest trainer or teacher will be thwarted if the RTO does not provide the resources or opportunity to teach or train students well. As expressed in one submission, in order to lift quality through teachers, it is necessary to ensure that, *“teaching staff in private VET providers are well resourced and equipped to enhance quality learning.”*¹⁴⁷ Teachers who are responsible for too many students or who are paid sessional rates that do not cover the hours required to teach well are more likely to deliver poor quality training, regardless of their level of qualifications or experience. Perhaps more importantly, attracting the best teachers becomes near impossible if work conditions are poorly remunerated, stressful, and without prospects of advancement.

Professional development

Recommendation 7: The legislative framework be revised to require an RTO to assess the quality of its teaching workforce and develop teacher quality improvement actions, which must be submitted to ASQA annually as a part of the Quality Indicator Annual Summary report.

In submissions and consultations there was a common view that change at the RTO–teacher interface could come about with an investment in professional development by both the RTO and their teachers. One submission pointed out that professional development is already embedded in other parts of the education system and it was a small step to extend the model to VET:

*“[I]n the higher education sector, funding models support a greater balance for academics to undertake research, educate, benchmark and support their communities of practice. The Victorian TAFE Association considers that similar initiatives could be framed for and adopted in the VET sector.”*¹⁴⁸

With rapid changes in industry standards and technology, professional development for staff is seen as essential for quality training in the VET sector, in particular:

*“VET teachers require access to regular upskilling opportunities to ensure their skills and knowledge remain relevant to emerging trends and demands of business/industry.”*¹⁴⁹

In another case the argument for professional development rested on the broad set of skills that VET teachers need to ensure the smooth operations of the RTO:

¹⁴⁷ Electrical Trades Union of Australia, “Submission 049,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁴⁸ Victorian TAFE Association, “Submission 048,” Review of the *NVETR Act*.

¹⁴⁹ Isolated Children's Parents' Association of Australia, ICPA (Aust), “Submission 047,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

*“Quality is assured by the professional capability of educators, built through entry-level qualifications and professional development; robust educational qualifications and internal (and, on occasions, external) moderation of educational approaches generally, not just on assessment, or a narrowly defined ‘outcome’.”*¹⁵⁰

Minimum specifications for what constitutes professional development was part of ASQA’s submission to the review.¹⁵¹ Undoubtedly, ASQA has seen RTOs that have failed to act in the spirit of the professional development requirements in Standard 1 of the Standards for Registered Training Organisations (RTOs) 2015 (the Standards). Even so, the value of any recommendation on professional development depends on trainers and providers sitting down together to review teaching performance and reaching agreement on professional development that would improve the RTO’s student outcomes and enhance the teacher’s skill set. This already occurs in some RTOs.

For others, a prescriptive requirement of this kind will be met with a perfunctory response. Professional development might be arranged by the provider at low cost so that a box could be ticked. For others, creative accounting on professional development might allow the box to be ticked. This is a common observation of society’s adaptation to what has become known as the ‘audit society’.¹⁵² There is no guarantee that a prescriptive rule on professional development will build teaching capability or improve student outcomes. It would depend entirely on an RTO’s commitment to staff and students.

As a first step, the regulatory challenge in VET is to build commitment to teachers and trainers. As such, support for professional development needs to take place under the umbrella of building a quality training culture as discussed in the previous section.

The recommendation that has been made above aims to encourage RTOs to become better informed about the benefits of having well trained staff and motivated to incorporate this knowledge into their business plan. Workforce development and professionalism is a principle that RTOs are seen as responsible for putting into practice:

*“A business plan of a quality VET provider should ... include ... [a] workforce development plan and monitoring system that demonstrates commitment to an organisation that supports ongoing development of all of its staff.”*¹⁵³

The recommendation requires RTOs to provide ASQA with a narrative on what is being done to improve teaching quality and how the RTO plans to assess the effectiveness of its strategies. This should be a mainstream activity for some RTOs who already have, ‘[p]lans to collect and act on feedback from its employees, students and current and graduate student employers.’¹⁵⁴

This approach also aligns with that of the higher education sector. In an earlier review of TEQSA, TAFE Directors Australia proposed seven questions that could span the regulation of higher education and VET.¹⁵⁵ One question is directly related to the current discussion: How do you know

¹⁵⁰ Australian Education Union, “Submission 045,” submission to this review of *the National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁵¹ ASQA, “Submission 030,” Review of the *NVETR Act*.

¹⁵² Power, “The Audit Society – Second Thoughts,” 111-119.

¹⁵³ Anonymous, “Submission 053,” Review of the *NVETR Act*.

¹⁵⁴ *Ibid.*

¹⁵⁵ Lee Dow and Braithwaite, *Review of Higher Education Regulation*, 44: “In its submission, TAFE Directors Australia suggests TEQSA should require evidence-based responses from institutions in response to a core set of questions such as:

- o How do you know that your students have consistently achieved the required level of professional competence?
- o How do you know that your students have been engaged in a meaningful and quality learning experience?

that your teaching staff have the educational skills and experience to contribute to the development of individual student capability? In the present context, an annual report to be submitted to ASQA should outline actions to continuously improve teacher quality together with answers to the question: How do you know that the quality of your teachers and trainers is higher this year than it was last year?

The present recommendation does not propose a requirement for quantification of professional development for ASQA's purposes. As the regulator, ASQA cannot in itself lift teaching quality; nor should it be suggested it takes on responsibility for rating RTOs in terms of the quality of their teaching.

With regard to improving teacher quality, ASQA can motivate RTOs to see the benefits and implement their own programs for continuous improvement in this area. Motivating RTOs will take a variety of forms. Sometimes a reporting requirement is enough to prioritise action on teaching quality. Sometimes RTOs will need mentors and will need help in finding pathways so that they know how to develop a professional development program that benefits the RTO and benefits staff. And sometimes, the absence of a report, in spite of encouragement and warnings, will trigger a sanction that serves to capture the attention of the provider.

This recommendation places trust in the RTO. Trusting an RTO is not a regulatory weakness, indeed it is a regulatory strength when it empowers RTOs and gives them responsibility for making their own change. The proviso is that measures need to be in place to make sure teacher quality improvement programs are genuine.

ASQA regulates teachers and trainers through its audit of RTOs against the Standards.¹⁵⁶ ASQA relies primarily on documentary evidence to audit for teacher quality, complemented by the views of students and employers in the new audit model of the student journey. The extent to which the quality of teachers and trainers stands out in the audit process is probably not high.¹⁵⁷ Very bad teachers or trainers might attract complaint, but very good ones are likely to go unnoticed. Furthermore, there is limited opportunity in the audit of capturing teacher skill in fostering an inquiring mind, problem solving, confidence in applying skills, or skill transferability, all of which are of utmost value in the workplace. As noted in one submission, *'[t]here is little focus on assessing what the students are learning, the effectiveness of the pedagogies used by teachers and the quality of the learning experiences which students have.'*¹⁵⁸

Given this situation, reviewing the narratives provided by RTOs through the Quality Indicator Annual Summary report would prove complementary to the current situation.

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- o How do you know that industry/employers or licensing/registering bodies are satisfied with the skills of your graduating students?
 - o How do you know that your educational and operational systems reflect international practice?
 - o How do you know that your facilities, support services and learning and information resources accord with student expectations and curriculum requirements?
 - o How do you know that the rights and interests of your students are being respected and safeguarded?
 - o How do you know that your teaching staff have the educational skills and experience to contribute to the development of individual student capability?"

¹⁵⁶ See chapter 4: ASQA, Users' guide to the Standards, 36-76.

¹⁵⁷ Although it was noted in review visits to RTOs, high performing RTOs were inclusive of their teachers, trainers and workplace supervisors and signalled publicly their worth to the organisation. Giving teachers and trainers a higher profile in quality assurance projects would display the value they add and may provide the regulator with another assurance flag of RTO quality.

¹⁵⁸ Federation University Australia, "Submission 051," Review of the NVETR Act.

In the not too distant future, data mining of written reports to ASQA will produce all sorts of new leads for detecting non-compliance. In the meantime, ASQA's new audit model of the student journey means that ASQA can talk to teachers and students to gain feedback on whether the RTO is investing productively in lifting teacher standards and compare these responses with an RTO's annual reporting on its teacher quality improvement actions.

As explained above, improving the quality of teachers should not be a matter for ASQA to solve for the sector. Others can make a valuable contribution, and in some cases, they can make a stronger contribution than ASQA because they are closer to the teaching and training profession (for example professional industry associations such as the Australian Education Union). Professional and peak bodies can become involved in advising and evaluating teacher quality improvement programs for RTOs by providing independent endorsement for programs achieving good outcomes. But the real test is the quality of the graduate: Do graduates display the desirable student outcomes described in Chapter 1? Employers can provide the answer. So too can Master Assessors, discussed below.

Structures and authorities

Concern in the sector about the quality of teachers and trainers has been longstanding.

As noted by Josie Misko, VET qualifications are recognised as important: *"The standards for entry-level teacher training and continuing professional development emphasise the need for teachers and trainers to understand their specific disciplines or trade areas as well as the pedagogy of training and assessment."*¹⁵⁹ The Training and Assessment Working Group report noted approaches to strengthening the skills of trainers and assessors and improvements to professional development.¹⁶⁰ Serious consideration was therefore given in this review to proposals for mandating a dedicated Education Officer in RTOs or providing an organisational umbrella for dedicated teachers and trainers. Neither proposal is without merit.

The thrust of this review, however, has been to try to uncover the root causes of problems and then consider the regulator's capacity to contribute to solutions. This review regards professionalisation of VET teachers, Chief Education Officers or Pro-Vice Chancellors for Education, as initiatives that need to be accompanied by the regulatory priority of cultural change within RTOs. The challenge for ASQA and of ASQA's allies in the regulatory community is to convince RTOs that the quality of teachers matters and to persuade them to invest in lifting teacher quality.

Qualifications

Recommendation 8: The Training and Education Training Package be reviewed with the purpose of creating a career path for teaching excellence in vocational education and training.

It is rarely the case that one intervention will achieve a desired outcome. Usually a set of mutually reinforcing interventions are required. This is why Chief Education Officers in RTOs and professional associations for VET teachers and trainers should not be ruled out for future consideration. Some submissions advocated direct intervention by ASQA on teacher quality. The persistence of poor quality trainers in the sector demands more direct action.

The most practical avenue for ASQA to pursue to directly assess teacher quality (as opposed to relying on evaluations of other parties) is through the current requirements around qualifications.

¹⁵⁹ Misko, "Regulating and quality-assuring VET," 8.

¹⁶⁰ Training and Assessment Working Group report: *Improving the quality of assessment in vocational education and training*.

Submissions and consultations express the view that the standard of the Training and Education (TAE) qualification is too low:

*“A key area for future regulation is teacher quality and the qualifications and training of VET teachers. The Cert IV TAE is a widely derided qualification and rightly so. Recent research in Victoria and nationally has shown that teachers with higher level VET teaching qualifications such as the Diploma of VET or a degree in adult or vocational education make far better teachers. The Diploma level must be adopted as a base line teaching qualification and the Cert IV discarded. Beyond this, there should be a national commitment to the progression of VET teachers to a vocational teaching degree, delivered by a University, in order to bring VET teachers to the same level of skills and knowledge as school teachers. There is a role for ASQA in moving into the area of the better regulation of VET teaching quality and qualifications.”*¹⁶¹

A review of the TAE has recently been undertaken by the Industry Reference Committee and changes made to the TAE qualification to require additional core competencies.¹⁶² Mandating minimum standards for teaching has been accepted in the sector as a way of lifting teacher standards and this on-going process of demanding higher and higher qualifications is supported in this review. More progress might be made, however, if RTOs saw a competitive advantage in employing excellent teachers and trainers.

The absence of a vibrant labour market where excellent teachers and trainers in VET are in high demand and are rewarded makes it difficult to lift teacher quality through mandatory qualifications alone. A vibrant labour market assists quality because it creates institutional pathways where teachers and trainers receive the highest standards of training, RTOs begin to compete to retain staff who are both highly qualified and highly regarded as successful teachers, and teachers and trainers invest in advancing their careers as professional VET teachers.

Career paths offering advancement in teaching are a common feature of primary and secondary school teaching. The notion of a master teacher is flagged in Josie Misko’s review of VET regulation.¹⁶³ Creating institutional pathways in VET will require cooperation across the sector (educationalists, industry leaders and government) and would have financial implications that require consideration. However, for the future prosperity of the sector, the costs will have to be absorbed as part and parcel of being a quality RTO.

The regulatory challenge involves the whole VET community: It is professionalising the VET workforce through a push for more rigorous graduate qualifications combined with more stable career pathways that are supported by industry and RTOs.

¹⁶¹ Federation University Australia, “Submission 051,” Review of the NVETR Act.

¹⁶² Training and Assessment Working Group report: *Improving the quality of assessment in vocational education and training*.

¹⁶³ Misko, “Regulating and quality-assuring VET”.

Recommendation 9: The Australian Government leads a process to raise the standards of teaching and training excellence and professionalism in the sector through creation of the role of Master Assessor. A Master Assessor would be placed at the pinnacle of the VET teacher/trainer career path with the responsibility to mentor through professional development programs and assess the quality of an RTO's next cohort of graduating students.

Although assessment is at times separated from training, this review treats them as inseparable components of being a quality teacher and trainer.¹⁶⁴ Within an RTO, the best lessons are likely to be learnt in the context of assessment if feedback is provided and students can learn from their mistakes. The inseparability of teaching and assessing within an RTO environment is also consistent with the relational regulatory perspective that lies at the heart of this review: Better regulation is sought through connections, not siloing.

However one conceptualises teachers and assessors, there is appetite in the sector for responsibility for quality training and assessment being at the core of the RTO's business plan:

*"A quality VET provider should focus on a learner-centered [sic] approach, with the organisation's business plan directed towards employing competent and capable staff, trainers and assessors who understand the regulations and legislation under which they operate."*¹⁶⁵

The following ethos dominated a minimalist view of training and assessment in the submissions:

*"Our principles are: trust, transparency in feedback, verbal and written, creating a training experience, not just delivering content. Support (not feeding the answers) but genuine 'coaching' support for students to achieve."*¹⁶⁶

The topic of assessment emerged repeatedly during consultations and submissions as the ultimate test of RTO success in pulling everything together to produce quality student outcomes. There is understanding that assessment needs to be at arm's length to remain impartial and rigorous, but an even stronger message that assessment cannot be divorced from work contexts. The value of assessment is firmly embedded in sector collaboration and communication around what work readiness means.

ASQA cannot reasonably be expected to observe assessment taking place as part of their auditing process. ASQA can, however, ask an RTO: How can you be sure that your graduates are able to do the tasks expected of them in the workplace? At present, an RTO can claim that it has its assessment tools validated externally, that students were assessed by two different persons, or that they can show student records of progress through theory and a practicum. Usually, regulating assessment is a two-step process where a teacher or trainer produces documents to show that assessment is valid and reliable, and then the RTO shows the teacher's document to ASQA. Part of the difficulty of ensuring the quality of assessment is that it is regulated through a "trust chain."

¹⁶⁴ The focus is on what happens within an RTO's day to day functioning. The situation is different with capstone testing and external validation where assessment processes are at arm's length from the RTO's training.

¹⁶⁵ Mrs Lynne McWilliam, "Submission 012," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁶⁶ Anonymous, "Submission 007," submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

One possible answer to improving ASQA's connection to "assessment in action", which was discussed during stakeholder consultations, is through a new professional role of Master Assessor. A Master Assessor would visit an RTO and provide an independent work-based assessment of a cohort of students who were about to graduate in a particular field. Their assessment would be in the form of a master class where teachers, ASQA auditors, even the RTO's product developers could see how well the cohort of students could perform the tasks expected of them. This model builds on a strategy that has been used to place VET FEE-HELP students who lacked transcripts from their old RTOs into appropriate (right skill level) programs in new RTOs.

Professionally, a Master Assessor would encapsulate the very best of VET. This person would have (a) strong qualifications in education as well as (b) current industry knowledge and experience. She (or he) would be a madonna of VET. She would (c) understand how RTOs operated and she would (d) know the skills that were required for certification and how to (e) test for those skills to the level expected at that point in a student's training.

The position of Master Assessor incorporates teaching qualifications, expertise and practical experience and represents the pinnacle of the career path recommended previously to encourage teachers to stay in the VET sector. Master Assessor would be a position of privilege demanding high levels of proof of capability to be successful. The numbers would necessarily grow slowly, giving the sector the time to acclimatise to the change Master Assessors would make to the regulatory landscape.

Master Assessors would be registered and bound by a code of conduct that upheld professional standards of integrity and honesty. It would be a joint decision of ASQA, RTOs, industry and educational institutions, and government as to how appointment to the position for Master Assessor was made. The appointment would be for a limited time, with renewal dependent on maintaining up to date skills and knowledge. Needless to say, Master Assessors would not populate every field of VET endeavour. The objective would be to prioritise fields that were high risk from the perspective of ASQA, industry, government, and/or the community.

In the current VET environment, a Master Assessor could fill at least two roles that would help lift quality and strengthen the regulatory framework of the sector. First, Master Assessors would be an approved source of external validation for RTOs with students about to graduate from their programs. The external validation would be done by a recognised expert and would be conducted in the workplace, thereby adding further quality to current practices. In conjunction with doing work-placed assessments of students, Master Assessors could also play a role in professional development of RTO staff. A report made by a Master Assessor in this instance would form part of the RTO's continuous improvement plan for lifting teacher and training quality. In these situations, Master Assessors would engage with an RTO at the invitation of the provider.

While Master Assessors could be invited into an RTO to contribute to quality improvements and provide quality assurance, a Master Assessor could also be called upon by ASQA to provide an assessment of the outcomes of an RTO's training. A Master Assessor could be the missing link between audit claims (by either ASQA or the RTO) and what students can actually do in the workplace. Submissions and consultations revealed acute awareness in the sector that an RTO could look good for an audit but deliver mediocre training outcomes, while an RTO with less than perfect

documentation could be delivering valuable training with excellent outcomes. This is the weakness of regulating using an audit technology.¹⁶⁷

Master Assessors could provide credible “outcomes” data that could be useful in preventing or settling conflict with ASQA over training. An RTO might engage a Master Assessor to provide an expert, independent, assessment of student learning that the RTO would use to demonstrate their compliance case with ASQA. Alternatively, ASQA could use the services of a Master Assessor to help settle disputes with RTOs before conflict escalated to levels that were costly in time or money for both sides.

In neither case would a Master Assessor’s report necessarily resolve disagreement, but it would bring into play a new source of evidence about what students were able to do nearing the end of their course. A Master Assessor would provide a respected view on whether non-compliances with regards to teaching and training excellence were of a serious enough level that harm was being done to the students and future employers, and potentially to the communities in which students could soon be working. To this extent, Master Assessors would shed light upon the level of regulatory intervention warranted to protect students, employers and communities.

Regardless of whether the Master Assessor was invited for purposes of professional development and quality training, or compliance, dialogue on compliance issues would be enriched by their engagement. Master Assessors would be the conduit for ASQA moving further toward the coalface to capture the effectiveness of knowledge exchange between teacher and student.

Identifying invisible RTOs failing on quality

Perhaps not surprisingly, consultations and submissions brought many requests for action that would allow ASQA to act in a timelier fashion against RTOs that did not have a serious educational intent.

ASQA has pointed out that taking timely action depends on timely identification of such RTOs. ASQA would benefit from access to the AVETMISS national data and other quality data on changing enrolment patterns, student retention, completions, satisfaction, and employability as soon as it is entered by an RTO into the sector-wide data management system.

Recommendations below support improving ASQA’s timely access to data. Specifically, the following recommended changes cover areas that involve RTOs, the NCVER, and other contributors in the broader regulatory community. These changes are supplementary recommendations to the revised National VET Provider Collection Data Requirements Policy, which forms part of the National VET Data Policy, that came into effect on 1 January 2018.¹⁶⁸

Before discussing these recommendations, it is important to recognise a caveat on the usefulness of big data of the kind that NCVER collects and ASQA uses for its risk matrix. One should not mistake such data as a silver bullet for identifying non-compliance. One should also not regard risk models as technologically impartial decision makers on non-compliance. Instead, risk analysts use big data to identify risk. It remains the responsibility of the regulator to investigate these risk cases with care and respect to establish whether a particular RTO is managing risk responsibly and whether there is evidence of non-compliance with Standards.

¹⁶⁷ While injustices of these kinds are inevitable, ASQA is trying to address them through its student journey audit model that provides opportunity to more directly tap into student experience.

¹⁶⁸ Department of Education and Training (DET), *National VET Data Policy* (Australian Government, November 2017).

Recommendation 10: The legislative framework be amended to increase the frequency of data provision to the National Centre for Vocational Education Research to quarterly for all RTOs.

In order to assess risk in real-time, ASQA ideally requires real-time data. A risk matrix and a risk methodology is not of much use if the risk is recognised 12 months after it first appeared. It is of note that many in the sector would argue that ASQA has been slow to act on sector warnings of serious systemic failings. In response, it could be argued that in future ASQA would have no reason not to act if they could access real-time data that supported anecdotal reports from the sector. Moreover, awareness of emerging problems would assist in ASQA issuing warnings and advice to steer the sector along safer paths.

Real-time data is the ideal for ASQA, but it may be a step too far at this point in time. A more modest recommendation is more practicable. The current data provisions require RTOs to submit Nationally Recognised Training data to NCVER by no later than the end of February each year (although it is suggested RTOs submit this data as soon as practicable).¹⁶⁹ However, a quarterly data provision is a suggestion made in the submissions by NCVER. Currently, only RTOs delivering government subsidised training are required to submit their nationally recognised training data to NCVER quarterly.¹⁷⁰

In consultations and in visits to RTOs, the issue of quarterly data provision did not provoke a negative reaction as a substantially increased burden. Indeed, many commented on the positive side of making data entry a regular routine. It could decrease administrative burden on RTOs by ensuring that the corporate knowledge on navigating the system is maintained by being frequently exercised. Additionally, the already existing burden would be spread throughout the year, decreasing the peak periods of demand and reducing corporate knowledge impact if key staff members are not available for the yearly collection. In time, entry of data in real time with the new and improved systems that are currently under development should improve efficiency both for RTOs and NCVER.

In the course of the review, the support that RTOs received by data software providers became apparent, as was the appreciation of RTOs that someone was there to train and assist them with the data management systems. Increased contact with this source of support did not appear to be a problem for those people approached on the issue of a quarterly data provision during consultations. Inclusion of data software providers as partners who can assist RTOs in solving their non-compliance issues is recommended in this review and is discussed further below.

Recommendation 11: The Australian Government prioritises the improvement of policies and systems that allow for transfer of real-time data for timely use by other agencies with regulatory responsibilities for identifying and responding to emerging sectoral and provider-based issues.

Ways to expedite transfer of real-time data should be explored so that regulatory agencies such as ASQA can discuss emerging risks with RTOs at an early stage.

Reasons for delayed release of data relate primarily to data quality. To increase the speed at which data is shared, the data may need to be released in a raw state compared to that used for NCVER's research purposes. This raw data can be used as a diagnostic tool for ASQA regulatory decisions rather than a platform on which to make long-term policy decisions. Others with interest in RTO activity in real time would also benefit from access to a raw form of the data. This is not currently in practice and stakeholders have expressed their frustration in meetings and submissions. Benefits

¹⁶⁹ Ibid, 4.8.

¹⁷⁰ Ibid, 4.9(a).

would be felt primarily by those with some kind of regulatory responsibility, but feedback to NCVET could possibly improve their capacity to streamline their data collection processes further.

Recommendation 12:

- a. The Australian Government and the National Centre for Vocational Education Research explore ways to increase student response rates to the Student Outcomes Survey, and**
- b. The National Centre for Vocational Education Research, ASQA, and the sector identify a module of questions that directly addresses the quality of the student journey in the Student Outcomes Survey.**

Students are an important source of information both for assessing quality of training and basic compliance with the Standards for Registered Training Organisations (RTOs) 2015. Survey response rates on student satisfaction surveys can be low, raising concerns about the meaningfulness of aggregated statistics particularly for subsets of students. Survey fatigue and not seeing beneficial change are two explanations for low response rates.

Even so, surveys remain the most efficient means for gaining feedback on the student experience and whether or not students were satisfied with the outcomes of their training. Survey data that provides quantitative indicators of quality for VET regulation is likely to be most useful and rigorous if a new deal is struck between government (that is expected to safeguard the quality of Australian education) and students.

Noting that the USI is a new initiative that still needs to establish its success, the basis for reaching out to establish a more cooperative relationship with students rests on the USI service offered to them. On completion of qualifications, courses and units, students who have obtained a USI have the guarantee of a secure electronic record in the form of an Authenticated VET Transcript.¹⁷¹ Having been given this guarantee, it is not unreasonable for government to ask for reciprocation in the form of completion of a survey, modelled on the current Student Outcomes Survey, but that also directly addresses the students' journey from choosing their VET provider to graduation.

This new form of the Student Outcomes Survey could be distributed through the USI portal as part of the process for receiving one's own Authenticated VET Transcript. Mandating completion of this survey for access to one's own transcript provides an opportunity for achieving higher survey response rates, independent evaluations, reduces the compliance burden on RTOs and offers a useful service to RTOs in exchange for RTOs' extensive data reporting obligations.

Most importantly, the Australian Government can assume a leadership role in activating the principle of reciprocity in the VET sector to move the desirable student outcome agenda upfield.

Recommendation 13: The legislative framework be amended to enable the National Centre for Vocational Education Research to make the RTO level data it holds publicly available and identifiable.

At the heart of this review is the idea that regulation is a community affair, with a lead regulatory agency certainly, but also with supplementary steering of the flow of events occurring at many other points of engagement of members of the regulatory community. For this to happen, the data that is

¹⁷¹ "Training records or Transcripts," Unique Student Identifier, Australian Government, accessed 24 January, 2018, <https://www.usi.gov.au/training-organisations/using-usi-registry-system/transcripts-training-records>.

collected needs to be shared, discussed and used to enhance regulatory effectiveness, and to improve the regulatory system if necessary.

Open access to data held by NCVER benefits potential users in a number of ways. It can inform choice and hold RTOs to account. The data can aid consumers in reviewing the history of performance of RTOs and making informed decisions. Of importance to note is that while the operations of NCVER are not governed by the NVETR Act, the National VET Data Policy stipulates how and what data held by NCVER can be accessed and disclosed.

Certain identified RTO data can already be published by governments across multiple platforms such as myskills.gov.au and NCVER reports.¹⁷² Wider availability and transparency of data will allow the public to hold an RTO to account in terms of claims made by or about the RTO.

The data can also aid RTOs. Currently RTOs are only able to access their unpublished RTO level data upon application to NCVER.¹⁷³ Upon providing their data to NCVER, RTOs should be able to easily access how they are performing, facilitating their ability to improve their work and training practices. Exemptions could be made available on a case by case basis.

Open access to data brings much needed transparency, but perhaps more importantly at this moment in time, it is a signal of welcoming accountability and other players who are working at the cutting edge of analysing big data for the purposes of gaining risk intelligence.¹⁷⁴ ASQA and NCVER could benefit from more eyes and minds on risk data analysis.

The need for more dialogue for quality improvement

Recommendation 14: The Australian Government explores 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 an RTO's performance.

In submissions and consultations, mention was often made of inconsistent auditing and the need for better trained auditors. Auditing can always be improved, but auditing of service delivery in general is a very imperfect science as has been observed repeatedly in submissions and recognised in this report. A better way of offsetting the dangers of big data or auditors getting it wrong is a dialogic process post audit to discuss differences and work out an action plan for resolution.

At present there is a high level of fear and adversarialism around audits in the sector. This is counterproductive to problem resolution. RTOs reported spending many months preparing for audit. They reported anxiety and uncertainty about "passing". They reported that any rectifications would trigger disapproval from their bosses. They felt it was unfair if being out of compliance on one clause meant being out of compliance on others. Bosses read this as multiple instances of non-compliance and staff members were held accountable for multiple failures. Staff feared audit failures. In other cases, staff turnover meant some were preparing for audit for the first time and confessed to feeling out of their depth. It was not uncommon for RTOs not to "own" their audit. Concerned RTOs paid consultants to run "practice" audits so that they could be assured that they would pass their proper audit. And some of those interviewed reported feeling annoyed when the practice runs did not guarantee success. If the time, money and effort put into preparing for audit translated into

¹⁷² DET, *National VET Data Policy*, 11.4.

¹⁷³ *Ibid*, 11.2.

¹⁷⁴ The tertiary sector has been active in supporting defence and the financial sector.

providing better quality education and training, it could be argued that this is money well spent. This does not appear to be the case.

A climate of fear, defensiveness and adversarialism is not conducive to providers acknowledging their shortcomings and working with the regulator to find a solution. The other problem that arises when adversarialism is rife is that it is difficult to differentiate resistance from dismissiveness. As discussed in Chapter 2, those providers who are resistant to accepting the auditor's assessment can respond well when authority treats them with respect and offers avenues for help. Those who are dismissive are more likely to game play and look to win in court. Resistant defiance slips into dismissive defiance if efforts are not made for grievances to be aired and solutions developed.¹⁷⁵

This review has concluded that the formal legal processes that define the timeline for audit, auditor's report, an RTO's response and ASQA's response, decrease the probability that ASQA will quickly and cooperatively resolve their differences with providers. The answer is not to change the legal fabric, but rather to introduce more regulatory conversations in mediation conferences that seek resolution sooner, preferably involving more parties who can assist the RTO come back into compliance.

In consultations with ASQA, it became apparent that cooperative problem solving between auditors and providers is already taking place. Thus, the emphasis is on strengthening regulatory conversations for problem resolution, without presuming none take place presently. ASQA can lead regulatory conversations that recognise strengths of RTOs alongside their weaknesses and work with RTOs and those who support them to find a pathway forward that delivers compliance and establishes a future cooperative relationship. On most occasions this will be more effective than entrenching a more resistant and begrudging pathway where RTOs focus on their day at the Administrative Appeals Tribunal.

A more novel part of the recommendation is to increase the circle of dialogue for problem solving when non-compliance is found. In order to improve compliance and advance the quality agenda, the RTO or ASQA should be able to convene a mediation conference to which all stakeholders are invited – students, parents, teachers, administrative staff, CEO, consultants, auditors, master assessors, and industry. The aim of the process would be to settle on what needed to change and elicit ideas for solutions and commitment to action from a range of participants. It is not just about one-on-one conflict resolution between ASQA and the RTO. It is about the RTO taking responsibility and partnering to find a pathway to compliance, hopefully committing to exceeding regulatory standards with help from those in their networks.

The integrity of a provider can be reflected in the support it receives from the community. RTOs that have established good professional relationships with industry, students and community services or groups, will have no trouble bringing people to the table for a discussion of how the RTO might improve in directions recommended by ASQA. Previous research suggests that non-compliance is a greater problem in small businesses that are isolated and disconnected from networks that could support and raise their performance standards.¹⁷⁶

The main opportunity for conversation, at present, between ASQA and the provider occurs at the audit exit interview. Two options could save ASQA from the increased costs of premature escalation toward legal action. First, on the basis of the identification of risk flags, along with appropriate recognition of assurance flags, some RTOs will be willing to discuss their risks with ASQA and agree

¹⁷⁵ Braithwaite, *Defiance in Taxation and Governance*.

¹⁷⁶ Braithwaite and Cleland, *Compliance and Defiance in Work Health and Safety Regulations*.

to remedial action should a potential non-compliance be identified. This would be a pre-audit conference undertaken to avoid audit. ASQA may conclude that an audit is still necessary, but an opportunity to correct potential problems before audit can save time and resources and establish goodwill.

The involvement of Master Assessors (discussed earlier in this chapter) or other supports that ASQA trusts in implementing remedial action can attest to the meaningfulness of the changes that have occurred in an RTO that admits to compliance problems and has taken steps to pre-empt an audit. This scenario is particularly likely when new managers are appointed or new owners take over and are unhappy with compliance standards. Strategies of this kind are operationally familiar to ASQA. This recommendation aims to extend and formalise their use.

In consultations, stories were told of mediation being held where auditors were dominated by consultants and lawyers who took over negotiations. There were also reports of CEOs not attending exit briefings after auditors had spent two days on the premises. Expert mediators and restorative justice facilitators are experienced in dealing with the power tactics that can silence or intimidate participants in dialogic processes. Past failures should not close ASQA's mind to considering new ways of using regulatory conversations to solve compliance problems more quickly and cheaply.

Opening up the risk diagnosis and audit space for regulatory conversations involving parties who can help RTOs engage constructively with the expectations of the sector means that all in the sector need to be better informed about the outcomes of audits and the kinds of problems that need to be resolved. With over 4,000 providers, a systematic process for transparency and accountability is proposed.

Recommendation 15: The *National Vocational Education and Training Regulator Act 2011* be amended to require ASQA to publicly release audit reports.

Through the public disclosure of audit reports, possibly on the ASQA website, on training.gov.au, or on the RTO website,¹⁷⁷ the auditing process and the strengths and weaknesses of RTOs will become more transparent, serving an educative function, informing on systemic issues in the sector, and allowing other RTOs to look for good and bad practice examples.

RTOs that choose to publish audit reports on their own website should also be encouraged to publish changes they have made in response to the audit. This would be another welcome step in the direction of greater transparency around RTO quality and improvement.

Conclusion

This chapter raises prospects of ASQA using responsive regulation within its regulatory framework to motivate RTOs to improve the quality of their training and support the professional development of their staff. Included in this regulatory framework are professional associations and peak bodies that help ASQA sponsor regulatory conversations about quality training and teaching.

The central idea is that an active and supportive sector lends its hand to being part of regulatory conversations that move willing non-compliers toward compliance. This frees up ASQA's time and resources to concentrate on serious and persistent non-compliance that does the worst harm to students, employers and others in the sector.

¹⁷⁷ For example, TAFE SA publishing ASQA's decisions at "ASQA Report," TAFE SA News, TAFE SA, accessed 24 January, 2018, <https://www.tafesa.edu.au/tafe-sa-news/2018/01/05/asqa-report>.

With real-time data and a better understanding of an RTO's willingness to take action to prevent and repair harm, ASQA will be able to more confidently apply severe sanctions as the tools of last resort to safeguard students. ASQA has opportunity to be on the front foot rather than the back foot in responding to systemic risks.

The conversational process, together with the publication of audit reports, means that others in the sector can come to their own view on ASQA as a decisive, yet fair, regulator. Such measures can strengthen the legitimacy of the regulator and provide accountability around application of deterrence measures. Regulatory conversations and publicly released audit reports provide feedback loops that contribute to laying the foundations for realising a culture of excellence in the provision of VET.

Chapter 6: Consumer protection – wellbeing for students, industry and ASQA

This chapter reviews the legislative framework with a view to asking whether students have had adequate consumer protection in the past and whether changes should be made to ensure that study in the VET sector is a safe investment for both domestic and international students in the future.

In terms of the desirable student outcomes discussed throughout this report, some VET students have had every right to be disappointed. Through no fault of their own they have incurred debt, or otherwise invested financially, without reaping the following expected benefits from their VET experience: (a) confidence and capacity around new skills that they could use in the workplace, (b) a positive attitude to learning, and (c) a positive and capable approach to transferring those skills to a changed work context. While the higher education sector does not have a perfect record on these criteria either, its failures are neither as systemic nor as high profile as those in the VET sector.

The chapter argues for significant changes to strengthen consumer protection provisions, most importantly by creating a Tertiary Sector Ombudsman to span both the VET and the higher education sectors. Issues relating to the referral of powers from the states around consumer protection of VET students are acknowledged as a hurdle that will need to be addressed in implementation.

Identifying the harm

The 2015 Senate Inquiry into the operation, regulation and funding of private VET providers in Australia¹⁷⁸ uncovered a litany of abuse and exploitation of domestic and international students. The issues raised were reminiscent of those documented five years earlier in the 2010 Baird review of the *Education Services for Overseas Students (ESOS) Act 2000* and the 2009 Senate Inquiry into the Welfare of International Students.¹⁷⁹

All of these inquiries have brought degrees of positive change, yet exploitation and abuse persist and undermine public confidence in a vital part of the Australian economy for a better future for the next generations.¹⁸⁰ Part of the current problem is fall-out that continues to make its presence felt after the VET FEE-HELP scandal. ASQA's work to assist in addressing this through its targeted audit program of VET FEE-HELP providers will continue in the revised form of conducting audits of VSL providers into 2018 under a partnership with the Australian Government Department of Education and Training. The newly created VSL Ombudsman will also continue to deal with affected students who come under its remit.

Reparation is important, but prevention and early detection of systemic roting of students and taxpayers is preferable. The harms from the VET FEE-HELP scandal rippled out uncontrollably, showing how one problem can magnify in its impact. Individuals whose names appeared on VET FEE-HELP enrolment forms incurred a debt and an obligation to repay that debt to the Australian Government, should their income exceed a threshold level. Many claimed to have no knowledge of the debt or how and why it was acquired. Cracking down on abuses of the scheme and

¹⁷⁸ Education and Employment References Committee, *Getting our money's worth*.

¹⁷⁹ Education, Employment and Workplace Relations References Committee, *Welfare of International Students*.

¹⁸⁰ See for a recent example, Independent Broad-Based Anti-Corruption Commission, Operation Lansdowne (Victorian Government, 2017). <http://www.ibac.vic.gov.au/docs/default-source/special-reports/operation-lansdowne-special-report-december-2017.pdf?sfvrsn=0>.

then shutting down the scheme itself led to bankruptcy among some providers who had built a business model around these loan payments. Genuine students part way through their course were stranded, without recommendation to an alternative RTO that would continue their training. Some did not even have access to any record of their qualifications or statements of attainment to show a new provider or tuition assurance operator. ASQA requested students' records, as they were entitled to under law, but the records either did not exist because there was no progressive assessment or they were not kept electronically or in a useable form.

These students contacted a tuition assurance operator to either pursue a refund or continue their studies at another training provider or, in some cases, did not approach a tuition assurance operator at all for reasons that have yet to be fully uncovered. Likely reasons why they may not have approached an operator for help include disillusionment with VET, a lack of awareness of their debt or the available mechanisms for redress, the difficult requirements of finding another provider, costs of continuing study, and lack of proof of past learning. Even so, tuition assurance operators have been overwhelmed by the scale of the problem and by the numbers of 'displaced' students whom they have found difficult to place with alternate RTOs.

This may be an unusually dramatic case of how a policy with poor design and implementation¹⁸¹ can impact adversely on students and their families, employers, peak bodies, government, and the Australian community. It is significant, however, as a 'signal event'. The criminologists, Martin Innes and Nigel Fielding, coined the term 'signal crime' to capture how particular types of criminal and disorderly conduct capture public attention and become socially imbued with meaning to the point where they have a disproportionate impact upon fear of crime.¹⁸² It is likely that VET FEE-HELP is the signal event for VET that has aroused public wariness, if not distrust, of the sector. Preventing and redressing any harms perpetrated by RTOs is a regulatory priority, but in the eyes of the community, none is more important than looking after individual students who have been let down by the system.

When the multitude of student complaints aired through public inquiries and media are examined together, it is evident that students have been vulnerable in the current climate at every step of the student journey: recruitment, enrolment, progression and support, training and assessment and completion. The first section of this chapter groups the issues into three types of intertwined regulatory problems, which are misleading advertising, unfair contracts, and inaccessible records.

The second section of the chapter looks to consumer protection factors critical for achieving quality education from the perspective of students, RTOs and ASQA. These factors are student wellbeing and safety, tuition assurance arrangements, and a Tertiary Education Ombudsman.

¹⁸¹ ANAO, *Administration of VET FEE-HELP Scheme*, 8.

¹⁸² Martin Innes and Nigel Fielding, "From Community to Communicative Policing: 'Signal Crimes' and The Problem of Public Reassurance," *Sociological Research Online* 7 (no. 2) (2002) <http://www.socresonline.org.uk/7/2/innes.html>

Part 1: Protecting students early in the student journey

Misleading advertising

Recommendation 16: The legislative framework be amended to require RTOs to publish nationally consistent consumer information that is accessible and meaningful to students and meets the basic needs for decision making (for example, course entry requirements, course length, employment outcomes, and fees, including subsidies and course cancellation fees).

In 2015, the Senate Inquiry into the regulation and funding of private VET providers reported “*a swathe of evidence from students, staff and advocates that high pressure sales pitches aimed at securing students involved practices such as promises of equipment, downplaying the level of debt the students would incur and providing deceptive impressions of the qualifications to be earned or employment opportunities which would follow*”.¹⁸³

In 2013, ASQA conducted a strategic review to identify concerns in relation to the marketing and advertising practices of RTOs. That review found that:

- Up to 45 per cent were marketing and advertising misleading information.
- Some marketing and advertising practices breached the RTO Standards.
- Organisations that were not RTOs were acting as brokers for those that were, which in many cases misled consumers.
- Consumers (including students and employers) were often provided with ambiguous information, or insufficient information to make informed training choices.¹⁸⁴

In addition, ASQA’s recent strategic review¹⁸⁵ into unduly short courses also focused on the marketing practices of RTOs and the gap between marketing claims and reality. Recently, ASQA has continued this work in its informed and refined student-centred audit approach which focuses on marketing and recruitment practices of RTOs as a phase of the student experience for audit. The Consumer Action Law Centre (Consumer Action) submission described examples of misleading information involving costs, employment outcomes, immigration outcomes, and minimum salaries upon graduation.¹⁸⁶

Some industry peak bodies are currently concerned about misleading advertising in their training patch, raising questions about whether there is presently targeting of certain industry groups. The Australian Dental Association reported being “*aware of instances where some RTOs, particularly those operating on a for-profit model, have deliberately targeted disadvantaged people luring their participation in courses by offering free tablets or laptops without providing the quality teaching students expect in return.*”¹⁸⁷

¹⁸³ Education and Employment References Committee, *Getting our money’s worth*, 27.

¹⁸⁴ “Marketing and Advertising, 2013,” Australian Skills Quality Authority, accessed January 17, 2018 <https://www.asqa.gov.au/about/strategic-reviews/marketing-and-advertising-2013>.

¹⁸⁵ “Course duration, 2017,” Australian Skills Quality Authority, accessed January 16, 2018 <https://www.asqa.gov.au/about/strategic-reviews/course-duration-2017>.

¹⁸⁶ Consumer Action Law Centre, “Submission 066,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁸⁷ Australian Dental Association, “Submission 054,” Review of the *NVETR Act*.

The Victorian Automobile Chamber of Commerce submission issued a similar warning, stating that:

*“ASQA should also scrutinise RTOs that deliver inaccurate and misleading information to VET consumers regarding the employment outcomes of the course, as well as the costs and incentives associated with undertaking the course.”*¹⁸⁸

In addition to deceptive marketing, submissions made specific mention of unconscionable conduct including claims of a “100% pass rate guarantee” and qualifications or units offered “in unrealistically short time frames”.¹⁸⁹

The persistence of these problems is arguably the most troubling for the future of VET in Australia. Consumer Action referred to Justice Beach’s view of the state of play that “*the education sector has been infected by the parasitic practices of operators preying upon the vulnerable and the unwary*”.¹⁹⁰

Since the Baird review,¹⁹¹ the dangers of hidden fees have been known, along with students not being equipped with questions that can get to the bottom of the fees they will be charged nor the method of payment. Consumer Action makes the point that “[t]o base VET consumer policy on the notion that a consumer...should have a deep understanding of the market and its cost structures, and be somewhat aware of what a supplier’s competitors are offering”¹⁹² sets an unrealistically high bar which most people should not be expected to reach.”¹⁹³

Work is progressing at a national level that is looking to remedy gaps in the availability of consumer information. Research has been recently undertaken in the area of information for VET consumers by the Australian Government Department of Education and Training, for example. If action progresses against this recommendation, input from the department regarding their ongoing activity in the area of consumer information will inform the approach. Further, this recommendation dovetails with the proposed reform in ASQA’s submission for Product Disclosure Statements to be issued with each training product on an RTO’s scope of registration.¹⁹⁴ The emphasis in the present recommendation is for the information to be public, easily accessible and meaningful to most people.

This recommendation will require RTOs to present information in a format that is readily accessible to consumers, including on their websites; facilitating comparisons across RTOs; and framing consumer decision making in terms of parameters that are known to be important for student protection.

¹⁸⁸ Victorian Automobile Chamber of Commerce, “Submission 063,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁸⁹ Logistics Training Council, “Submission 032,” Review of the *NVETR Act*; Real Estate Institute of Australia, “Submission 041,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017; Consumer Action Law Centre, “Submission 066,” Review of the *NVETR Act*.

¹⁹⁰ Get Qualified Australia ordered to pay \$8 million penalty, Australian Competition & Consumer Commission, accessed January 2018, <https://www.accc.gov.au/media-release/get-qualified-australia-ordered-to-pay-8-million-penalty>

¹⁹¹ Baird, *Stronger, simpler, smarter ESOS*, III.

¹⁹² Brenton Lee Worth, “Are we there yet? A return to the rational for Australian consumer protection”, Australian Journal of Competition and Consumer Law 23, no. 1 (2016): 38, quoted in Consumer Action Law Centre, “Submission 066,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

¹⁹³ Consumer Action Law Centre, “Submission 066,” Review of the *NVETR Act*.

¹⁹⁴ ASQA, “Submission 030,” Review of the *NVETR Act*.

Recommendation 17: The legislative framework be amended to strengthen ASQA’s ability to take action under a general prohibition against misleading or deceptive conduct which reflects Australian Consumer Law requirements.

In providing greater consumer access to information about RTOs, the regulator also needs to be enabled to act to prevent and limit the marketing of information in cases where it can reasonably be seen to mislead consumers.

Protection of students is a straightforward matter in the eyes of the community in that it simply requires action, as seen in one submission’s perspective that “ASQA should attend to all complaints. My experience of my complaint being attended to was poor or was not responded to.”¹⁹⁵

Consumer Action together with the submission from ASQA draw attention to the fact that it is not quite so clear who is responsible for representing the interests of students, or perhaps more accurately, how they protect students’ interests. Consumer Action made the observation in their submission that “[w]hile protection of students and potential students is included in the objects of the NVETR Act, our experience is that the regulator, the Australian Skills Quality Authority (ASQA), can be quite restricted in terms of the regulatory action it can take.”¹⁹⁶

ASQA’s submission to the review clarifies its remit in these terms:

“The NVETR Act, the RTO Standards, and Regulator Standards taken as a whole make clear that ASQA is not established nor given powers to be a consumer protection body like a specific ombudsman service e.g. the VSL Ombudsman. This in turn reflects the scope of the constitutional power referred to the Commonwealth by the referring states which is limited to the regulation of RTOs. Rather, ASQA’s mandate in terms of VET student protection is at the highest level summarised in the objectives of the NVETR Act section 2A(e) – to protect students undertaking, or proposing to undertake, Australian VET by ensuring the provision of quality VET.”¹⁹⁷ (emphasis added in original)

ASQA expands on this in providing information on its website for students and interested parties to explain its use of complaints and to refer them to appropriate authorities, including that “ASQA is not a consumer protection agency and cannot act as an advocate for individual students. However, ASQA highly values complaints about training providers—all complaints are used as intelligence to inform regulatory activities.”¹⁹⁸ In its submission to the review, ASQA stated that “[i]n short, ASQA should remain focused upon VET quality and not assume a consumer protection role.”¹⁹⁹

The organisation’s position is understandable given its resources and the enormity of its challenges. Past experience in VET has demonstrated that regulatory resources spread thinly across the whole gamut of VET activity tends to be ineffective in controlling unscrupulous providers. ASQA has invested considerable effort in tailoring its resources toward dealing with provider risk and systemic risk and there is an argument for continuous improvement along this path rather than disrupt this in favour of a new path with its own set of teething problems to be overcome.

That said, ASQA has not shied away from taking regulatory action against RTOs that breach Standards designed to protect students. Ensuring accurate information for consumers is part of

¹⁹⁵ J&S Learningwork, “Submission 055,” Review of the NVETR Act.

¹⁹⁶ Consumer Action Law Centre, “Submission 066,” Review of the NVETR Act.

¹⁹⁷ ASQA, “Submission 030,” Review of the NVETR Act.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

ASQA's marketing phase of its current student-centred audit model. Its abilities to take action through the NVETR Act and the Standards for Registered Training Organisations (RTOs) 2015 are, however, limited by language that qualifies the types of information that must be accurate. This recommendation will support ASQA to instruct RTOs to remediate any materials that may be perceived as misleading for consumers.

Given the persistence of misleading and deceptive conduct this recommended change to the legislation, as proposed by Consumer Action²⁰⁰, can help ASQA prevent harm or contain harm early through informing the sector of expected behaviours in areas such as marketing, and signalling deterrence measures should those behaviours be breached. This potentially will provide the sought-after leadership from ASQA to help ensure the market is fair and the regulatory system is working to safeguard quality. The practical implementation of this recommendation, however, rests on meaningful regulatory conversations involving ASQA and the consumer protection agencies.

Unfair contracts

Recommendation 18: The legislative framework be amended to require RTOs to strengthen consumer protection in student enrolment agreements through the adoption of contracts that avoid unfair terms as defined in Australian Consumer Law.

The form and content of contracts with students has been another longstanding problem that, according to the Consumer Action submission, is not abating.²⁰¹

Providing more information than is necessary in contracts in highly technical language, has been a ploy used in many other markets to disempower consumers and overwhelm human cognitive processes so that it is almost impossible to extract relevant information and understand its implications. In the case of VET, students often enter arrangements with an unclear and inadequate understanding of their obligations and the obligations of the provider. It is widely accepted that contracts should be written in plain language and should be easy for students to compare between providers. There should not be a need for lawyers to interpret conditions of contracts for students undertaking vocational training.

The review heard, for example, that Consumer Action receives “a significant number of complaints where a student has attempted to cancel or defer an enrolment without success”²⁰² and that “a non-VSL VET provider has relied on a contract weighted heavily in favour of the provider to compel the student to pay the entire course fee, even if the student has not commenced the course”.²⁰³ Consumer Action provided the following case study as an example of this practice:

“Heidi is a single mother of four, working full time. Heidi enrolled in a course with ABC College* in April 2016. Prior to the course commencing, Heidi emailed the course advisor to postpone the course. She had recently come out of a long-term relationship with a history of family violence, and could no longer afford the course repayments. She also informed ABC College that she was “trying to stay hidden from an abusive ex-partner”. Heidi sent this email to two separate ABC College staff seeking help and both times, according to Heidi, she was ignored. Not at any time did she ‘log-on’ to the ABC College’s portal or use any of the materials. ABC College initially refused to process termination request, and engaged a debt collector who sent Heidi a letter of demand for ten thousand dollars. It was only when*

²⁰⁰ Consumer Action Law Centre, “Submission 066,” Review of the NVETR Act.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

Consumer Action became involved that the ten thousand dollar course cost was waived..."
(Asterisk as in original to denote change of names for de-identification).²⁰⁴

Consumer Action acknowledges in its submission that court decisions have strengthened student rights. It is unfair for an RTO to insist that a student who cancels before a course starts pay the full cost of a course. Yet this is of limited comfort to the many students caught in this situation for reasons explained by Consumer Action below:

"...it can be difficult for individuals to enforce this law, given that if the college insists on its contract, they [students] will be required to obtain legal assistance to enforce their rights in a court or tribunal.

*There are commonly fees associated with making such applications. Students who have to cancel enrolments often do so at times of significant upheaval, for example, illness or mental health issues. They are not in a position to enforce their rights."*²⁰⁵

The submission elaborates that students may also be subject to the concerning use of debt collectors and credit providers by RTOs, which presumably places these individuals under even greater personal and financial pressures.

To protect students against unfair contracts, Consumer Action presented a set of specific recommendations to the review:

"Standards be made under the NVETR Act to ensure that course cancellations, refunds and contractual terminations are fair and aligned with the principles of the unfair contract term regime.

*Students should not be penalised for the entire cost of a course if an enrolment is cancelled. This could be achieved by: (a) Introduction of a census date at least twenty percent of the way through a course; (b) Introduction of unitary pricing to charge students per unit of study; [and] (c) Introduction of a "cancellation fee" payable when a student cancels an enrolment. This cancellation fee should total a maximum of 5% of unpaid course costs."*²⁰⁶

An important consideration around the form that VET contracts for enrolment should take is to seek a better alignment with requirements in the National Code Part D, Standard 3 of the *Education Services for Overseas Students (ESOS) Act 2000*. Standard 3 specifies that written agreements between RTOs and students set out the services to be provided, fees payable and information in relation to refunds of course money so that the obligations and rights of both the provider and the student are clear. Inquiring into the adequacy of these arrangements for international students should inform any response to the present recommendation for simpler, contracts in VET aligned with the fairness requirements of Australian Consumer Law.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

Inaccessible records

Recommendation 19: The legislative framework be amended to require RTOs to keep electronic records showing a minimum of student completions of units, courses and qualifications over the life of the RTO, preferably using an AVETMISS-compliant student management system.

A further area in which ASQA has been deeply involved is in the unconscionable conduct of RTOs that, upon closure, have failed to deliver student records to either students or ASQA as required by law. Record keeping requirements under the legislation do not require records to be kept in an electronic form. This has resulted in unmanageable numbers of hardcopy records being collected by ASQA in the case of provider closures.²⁰⁷ Apart from exceeding both ASQA's storage and processing capacities,²⁰⁸ this has a profoundly serious impact on students.

Where records of student progress cannot be obtained easily or in a timely manner, the placement of a student in a course with a different provider to continue their training is delayed. Needless to say, the problem has been exacerbated in courses where the provider does not conduct progressive assessment and students have nothing to show for the study they have undertaken.

In the context of provider closures and failure to deliver records of student attainment, it is important to acknowledge the cooperation of some RTOs who have independently assessed the skills of displaced students and offered them credit for skill attainment and an opportunity to continue their studies. This is hardly an ideal solution, however, for either students or cooperating RTOs.

This recommendation will support students in times of provider closure, as well as increasing their mobility in the sector. The recommendation indicates AVETMISS-compliant software is optimal, as proposed in ASQA's submission²⁰⁹, which is listed in the AVETMISS Compliant Software Register approved by NCVET and designed to help RTOs choose an appropriate system.²¹⁰

The reason for supporting this more restrictive aspect of the recommendation is that during consultations it was revealed that the costs associated with retrieving data from some software packages that are not NCVET approved have been prohibitive. The restriction is justified assuming acceptance of the goal that student records need to be accessed quickly and easily so that affected students can resume training with another provider as soon as possible.

Recommendation 20: The Australian Government investigates ways in which, in cases of administration and liquidation, priority is given to the timely provision of student records to ASQA and the protection of students' investment in their education.

Apart from improving access to records by having them stored electronically, the fundamental problem of student rights being abused once an RTO goes into administration and liquidation, and closure in general, warrants further consideration. At present, no special consideration is given to the costs to students of losing their provider, their student records and having their studies and lives disrupted. ASQA's submission further proposes placing an explicit obligation on RTOs whose

²⁰⁷ ASQA, "Submission 030," Review of the *NVET Act*.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ "AVETMISS Compliant Software Register" National Centre for Vocational Education Research, accessed January 24, 2018, <https://www.ncver.edu.au/support/topics/avetmiss/avetmiss-compliant-software-register>.

registration is cancelled, or effectively ceases to operate, to provide statements of attainment to their current and recently completed students before this event occurs.²¹¹

A further reform in this recommendation is consideration of how to prioritise the rights of students above commercial interests in the processes of administration and liquidation. The timely provision of student records (a minimum of student completions of units, courses and qualifications) will support eligible students' tuition assurance and protection arrangements to come into effect promptly. It is in cases where these arrangements do not apply to students that general prioritisation of students as creditors for payment is required. Progressing this further reform will require broad consultation, in acknowledgement of its complex implications with insolvency law.

Ultimately, this recommendation will enable ASQA, students, tuition assurance operators and other actors to access student records when students need them most and enable them to continue their education. Students' prior completions will be able to be recognised in a timely fashion and they will be protected from having to repeat training or having no provider for extended periods of time.

Part 2: Consumer protection against future risks

Submissions and consultations primarily addressed unconscionable conduct by RTOs involving unfair contracts, misleading advertising and inaccessible records. Consumer protection issues centred on injustices in the current system. As Consumer Action put it: "*the VET sector has a significant access to justice problem*".²¹² Sensitivity to these issues has been heightened by their persistence since the international student reviews of 2009 and 2010.^{213, 214}

Other consumer issues, however, are also important to canvas in the context of this review, because of their likely importance in the future and because of the role they are expected to play in lifting quality standards in the VET sector. They are student wellbeing and safety, tuition assurance, and a Tertiary Education Ombudsman.

Student wellbeing and safety

Recommendation 21: The legislative framework be amended to explicitly address student safety and wellbeing in alignment with the Higher Education Standards Framework (Threshold Standards) 2015.

There is little attention given to the responsibility of RTOs to ensure the safety and wellbeing of students within any of the standards affecting VET, especially when compared to standards for schools, international students, and higher education providers. Schools have legal responsibilities around duty of care to staff and students; the National Code of Practice for Providers of Education and Training to Overseas Students 2018 Standard 5 canvasses protection of international students under 18 years of age and Standard 6 explicitly addresses wellbeing and safety for all international students; as does the Higher Education Standards Framework (Threshold Standards) 2015 for students in higher education. The essence of TEQSA's regulatory activity on wellbeing and safety is captured by this information on its website:

²¹¹ ASQA, "Submission 030," Review of the *NVETR Act*.

²¹² Consumer Action Law Centre, "Submission 066," Review of the *NVETR Act*.

²¹³ Baird, *Stronger, simpler, smarter ESOS*, III.

²¹⁴ Education, Employment and Workplace Relations References Committee, *Welfare of International Students*.

“The HES Framework broadly contemplates a provider recognising that it has a range of responsibilities to students and, in so doing, taking active responsibility for fostering an environment of wellbeing and safety for its students. This includes:

- *Conducting effective risk assessments and implementing preventative controls for the risks identified.*
- *Providing advice about actions to take, staff to contact and support services that are accessible (whether directly or through another party) if students’ personal circumstances are having an adverse effect on their education.*
- *Conducting evidence-based sexual violence, drug and alcohol abuse prevention education programs.*
- *Providing support for affected students where needed (whether directly or through another party).*
- *Having systems and processes to respond to incidents and prevent recurrences.”²¹⁵*

ASQA has argued that these issues are the responsibility of other dispute bodies.²¹⁶ Just as students can take complaints about their training to the Australian Consumer and Competition Commission under Australian Consumer Law or to state and territory Fair Trading bodies, they can take a complaint raising matters of sexual harassment or sexual discrimination in the provision of a VET service to the Commonwealth Human Rights Commission or a state or territory anti-discrimination body, and they can take concerns about the adequacy or safety of the premises of a VET provider to an Occupational Health and Safety Regulator.

The position that ASQA has adopted on this issue does not sit comfortably with the premise of the current review of the legislation and is inconsistent with the TEQSA approach in totally comparable circumstances on this issue. In this review, the relevance of the legislative and regulatory framework has been assessed against delivery of desirable student outcomes. Desirable student outcomes were defined in Chapter 1 as the experience of quality training and rigorous assessment, both of which equip students with confidence and capacity to use their skills in the workplace; a positive attitude to learning; and a positive and capable approach to transferring those skills to a changed work context.

Desirable student outcomes cannot be achieved in hostile or threatening learning environments. TEQSA explicitly recognises that safety is a critical part of a supportive learning environment. The review commissioned by Universities Australia into sexual harassment and assault among university students revealed the seriousness of this particular problem and the damage it inflicted on students.²¹⁷ Bullying also emerged as an issue of concern in its review.

There is no reason to believe that such problems do not exist in the VET sector, with an equally deleterious effect on a student’s capacity to learn and succeed. If there are no rules mandated for RTOs to provide safety and promote wellbeing, the basic regulatory infrastructure fails students and fails the VET sector overall. Students will drop out, discontinue their studies or move to higher education providers that place importance on providing for their students’ safety and wellbeing.

²¹⁵ Tertiary Education Quality and Standards Agency, Guidance Note: Wellbeing and Safety, (Australian Government, 2018). <https://www.teqsa.gov.au/latest-news/publications/guidance-note-wellbeing-and-safety>.

²¹⁶ ASQA, “Submission 030,” Review of the NVETR Act.

²¹⁷ Australian Human Rights Commission, *Change the course: National report on sexual assault and sexual harassment at Australian universities* (Sydney: Australian Human Rights Commission, 2017), 34.

Tuition assurance

Recommendation 22: The Australian Government considers strengthening tuition assurance by assuming responsibility for the operation of all tuition assurance and protection arrangements and ensuring that the scope of these arrangements protects all VET students.

The Australian Government announced in November 2017 that it will implement interim tuition assurance arrangements for the 2018 calendar year, for VSL, FEE-HELP and remaining grandfathered VET FEE-HELP students, while it considers tuition assurance arrangements beyond 2018.

In its submission to the review, the Commonwealth Ombudsman, on the basis of experience with 987 displaced students, gave voice to 10 concerns on behalf of students, seven of which related to tuition assurance per se:

- *“the complexity of the tuition assurance arrangement process*
- *the lack of clear, consistent and accurate information regarding tuition assurance*
- *delays in receiving information from tuition assurance operators*
- *the record keeping practices of RTOs*
- *the assessment practices of RTOs, particularly unmarked assessment items and the failure to record assessment outcomes*
- *delays in obtaining student records from ASQA*
- *delays in receiving offers from tuition assurance operators*
- *the lack of transparency around tuition assurance placements*
- *the apparent lack of oversight of tuition assurance operators*
- *an apparent lack of recourse for students who are dissatisfied with their tuition assurance offer.”*²¹⁸

The review heard concerns that tuition assurance arrangements were fragmented across the sector with differing mechanisms such as those for international students, those entitled to access Commonwealth loans schemes and full-fee paying students. These variables not only make it difficult for students to navigate the system but also create inequities where international students, for example, have simpler arrangements in place to seek recourse. Of importance from this equity perspective is that full-fee paying domestic students are not covered by the Government’s interim tuition assurance arrangements.

Given the magnitude of the problems experienced recently and given the churn in the VET system reported by ASQA as RTOs open and close operations,²¹⁹ and the ensuing impact on ASQA’s time and resources,²²⁰ there is merit in the Government maintaining control of tuition assurance, though some operational aspects may be undertaken by non-government operators. A levy paid by providers for a new scheme would create the fund for a government-managed scheme. Such a fund could emulate the Overseas Students Tuition Fund²²¹ which provides the money for refunds or placement in another course to international students.

²¹⁸ Commonwealth Ombudsman, “Submission 036,” submission to this review of the *National Vocational Education and Training Regulator Act 2011*, 2017.

²¹⁹ ASQA, *Annual Report 2016-17*, 16.

²²⁰ ASQA’s most recent annual report shows that 43.7 per cent of its 2016–17 audit activities were application-based, which includes initial registration applications: ASQA, *Annual Report 2016-17*, 38.

²²¹ Established by the *Education Services for Overseas Students Act 2000*.

The review heard that strengthening the system by creating a centralised tuition assurance mechanism operated by the Australian Government would provide clarity to students and ensure they are appropriately protected. This system will capture all students of VET, including those not currently captured by tuition assurance and protection arrangements. Such a system will require the ongoing collaboration and cooperation between federal and state governments in the area of consumer protection in order to achieve an equitable system for all students.

Tertiary Education Ombudsman

Recommendation 23: The Australian Government establishes a national Tertiary Sector Ombudsman.

A number of submissions recommended the establishment of a Vocational Student Ombudsman, as well as extending and incorporating the functions of both the current Overseas Students Ombudsman and the VSL Ombudsman.²²² For the most part, advocates for a Vocational Student Ombudsman were continuing in the policy directions recommended in the 2010 and 2009 reviews of Baird and the Senate Committee.^{223, 224} Given that the treatment now experienced by domestic VET students is every bit as egregious as that experienced by international students in 2009, these recommendations for an Ombudsman carry weight.

In describing the consumer protection environment, ASQA's submission presented the strongest case for the establishment of such an office, though it did not make such a recommendation:

"Similar to other aspects of the VET system, the provision of consumer protection mechanisms is quite complex and involves obligations placed upon training providers and rights available to VET consumers sourced from a wide amalgam of Commonwealth, state, and territory laws. As a result, the position of an individual VET student and the available pathways for that student to raise a consumer complaint, and have the complaint examined and potentially resolved, depends on a number of variables ...

*Depending on the answer to these variables, the student might have access to the Commonwealth Ombudsman, a state or territory ombudsman, or a VET specific state-based government dispute resolution service. A domestic VET student enrolled in a private RTO and not in receipt of government assistance, i.e. a private fee-for-service paying student, will not have access to a government ombudsman service in most parts of Australia."*²²⁵

ASQA provides a comprehensive review of the options and the problem. Students who are in conflict with their provider, presumably with a host of competing uncertainties and demands in their lives, are likely to be overwhelmed by both the instructions and the practicalities of taking action, to say nothing of the slim chance that they will gain some form of reparation (unless supported by a lawyer, as explained earlier).

Dealing with the problem of fragmentation, that is, with different protections in place depending on variables including the course, jurisdiction, and whether the student is domestic or international, is not an easy problem to resolve politically. Under the Intergovernmental Agreement for referral of

²²² ACPET, "Submission 043," Review of the NVETR Act; J&S Learningwork, "Submission 055," Review of the NVETR Act; Consumer Action Law Centre, "Submission 066," Review of the NVETR Act.

²²³ Baird, *Stronger, simpler, smarter ESOS*, III.

²²⁴ Education and Employment References Committee, *Getting our money's worth*, 78-80.

²²⁵ ASQA, "Submission 030," Review of the NVETR Act.

powers for VET regulation,²²⁶ referral for consumer protection was not made. It may be timely to revisit this with the states in the context of considering the establishment of a Tertiary Education Ombudsman. As the higher education and VET sectors come closer together in meeting Australia's tertiary education needs, the problems that students are likely to have will increasingly lie at their interface. Rather than requiring some patchwork of dispute resolution, this review recommends a leap forward to have the institutional infrastructure in place to meet future student demands.

Conclusion

This chapter has proposed a number of recommendations to strengthen the consumer protection of students and potential students in VET. These recommendations enable ASQA to more readily take action against RTOs that are engaged in misleading or deceptive conduct and identify RTOs offering unfair contract terms on enrolment to students. The recommendations will assist ASQA in its regulatory conversations with the sector to more clearly articulate what is acceptable conduct and what is not. Furthermore, the intention of the recommendations is to pave the way for a better alignment between Australian Consumer Law and ASQA guidance.

Further consumer protection recommendations proposed in this chapter concern the protection of student rights upon the closure of their RTO. A specific recommendation has been made on the storage of student data to prevent repetition of debacles over inaccessible records upon RTO closures. More broadly, a recommendation has been made to look into how student rights can be protected in administration and liquidation circumstances where they are likely to be trumped by commercial interests.

The final set of recommendations around consumer protection are proposed with a view to managing future risks to consumers. The neglect of safety and wellbeing standards for VET students (compared to international, higher education and secondary school students) requires correction. The inadequacy of tuition assurance for students when their providers close, both in terms of the complexity of accessing help and patchiness of the coverage, should not be allowed to recur, and yet remains a risk given the size of the VET sector and its unsettled nature. Finally, all students in the VET and higher education sectors deserve access to an Ombudsman who will consider their complaints of harm or injustice and provide an impartial hearing and mediation where required.

²²⁶ Council of Australian Governments (COAG), *Intergovernmental Agreement for Regulatory Reform in Vocational Education and Training* (COAG, 2011).

Conclusion

The legislative and regulatory framework that underpins the work of ASQA provides a suite of options and supports for the national VET regulator to steer the flow of events in the sector toward desirable student outcomes. The essence of desirable outcomes is well trained graduates with capacity to extend their skills into new areas and with an appetite to learn and develop new capabilities as new technologies and industries unfold.

The review was undertaken with data and other information that privileged the present. The analytic frame went beyond the present: What legislative and regulatory framework will allow Australian VET to be the envy of other education providers nationally and internationally? Future prosperity lies in Australia's top RTOs being the equal of the best universities, with their own identity and pride in their contribution to society. The frame asked: Does ASQA have a suitable legislative and regulatory framework to lead the sector along a pathway to this future?

This review concludes that ASQA has such a framework, providing that notions of risk and responsive regulation referred to in the legislation are interpreted in a more socially connected and assurance based way. A responsive regulatory approach places responsibility on a regulator not to punish high risk providers, but rather to motivate them to build a supportive infrastructure for reducing their risks. If they are unable or unwilling to respond to the potential harm and havoc they may cause, a responsive regulatory approach brings the full force of law to bear to protect those who are likely to suffer the brunt of damage. ASQA has developed technologies for identifying both systemic risk and provider risk and has moved to the peak of its regulatory pyramid in recent years, cancelling the registration of relatively high numbers of VET providers. This has been a good start to the tough end of regulatory enforcement that has sadly been required, and will still be required to deal with recalcitrant providers who are dragging down the reputation of VET in Australia. However, while this work continues, there are advantages in simultaneously building partnerships to improve quality training and education across the sector.

Regulating involves leadership that requires social intelligence, technical proficiency and legal nous. Regulating responsively involves motivating and encouraging compliance, acknowledging and praising high performance, and using formal legal mechanisms when providers who are doing harm cannot be turned around and are intent on continuing down a destructive path.

ASQA is well positioned for its next journey of regulating responsively and working with the sector to lift quality. Its new audit model recognises the interests of the sector in prioritising the five stages of the student journey (1) marketing and recruitment; (2) enrolment; (3) support and progression; (4) training and assessment; and (5) completion. These five areas are core functions in an RTO's business plan. Doing them well attests to an RTO's integrity and reputational capital. On these matters, important regulatory conversations can occur between ASQA and the sector, with ASQA supporting industry leaders and peak bodies in setting up best practice guidelines and enculturating practices among principled providers to lift quality. Evidence of these processes being set in place, promoted and beginning to grow was presented to the review.

What is more problematic for ASQA and the sector is ensuring that these conversations are not crowded out or derailed by the necessary crackdowns on providers who abuse the system. As VET FEE-HELP attests, finding providers who are abusing the system within the population of over 4,000 providers that ASQA regulates is not an easy task. As those who have no intent to deliver quality outcomes are pursued, those who are failing through lack of resources and know-how must not be forgotten. Support and encouragement is what is needed to salvage the future contribution

that such challenged providers can make to Australia's educational future. Likewise, innovators who break out of the boundaries of regulatory templates in potentially productive ways must not be discouraged. Crackdowns, as necessary as they are, leave in their wake occasional injustice. Social media has been rife with such injustice claims. The regulatory system needs to listen to these grievances in a spirit of reflective regulatory professionalism.

On the basis of these recent experiences which demoralise the sector and undermine ASQA, cautiously escalated regulatory constraints can be justified. In response to requests from ASQA and the sector, this review recommends setting a higher standard for entry into the RTO market. Given past abuses of the system, it is recommended that those applying for registration provide an educational case with their application attesting to vision and capability for providing quality training, and how they will achieve their objectives and continuously improve outcomes for students. The philosophy is that there is no right to enter the Australian education market; only providers who have proven capability for delivering quality training and commitment to continuous improvement will earn the ability to join. For the first 12 months, it is recommended to be mandatory for RTOs to consolidate their operations and prove their credentials before venturing into new areas of training not included in their business model at registration. It is also recommended that the fit and proper person requirements be lifted to match those for higher education and ESOS providers.

Data from ASQA on registrations and closures reveal high levels of churn in the sector. This suggests that many registrants are not prepared for the RTO role. The exceptionally high number of requests for change of scope, when occurring early on in the life of the RTO and involving quite different areas of training, suggests premature searching every which way for funding opportunities. Some experience and consolidation is considered necessary if the purpose of change of scope is to deepen engagement with industry or to innovate in meeting new training needs. Systemically, the philosophy behind these recommendations is that the sector can and will earn its redemption and the government will no longer hand unearned opportunities to it.

The recommendations for more regulatory controls around entry are designed to ensure RTOs are more qualified and better prepared to make a positive contribution to the sector. A sector that is more settled around the basic requirement of sustainability is better placed to refocus attention on quality. It will be also more amenable to regulatory conversations with industry leaders, peak bodies and ASQA when issues are raised on testing for quality training and on experimenting with innovations, while controlling risks.

As ASQA realigns with the sector to build a culture in which the majority of RTOs can be rightly proud of the quality of their training, trust needs to be re-built across the sector, broadly between government and the public, and more particularly between ASQA, RTOs, employers and students. Student trust is the most important key for Australia's education future. If students do not trust our VET system, they will drop out of its opportunities for educational achievement. This seems to be already happening as students choose university over VET.

The process of rebuilding trust can begin with government and ASQA leading with greater transparency on activities in the VET sector and greater protections for students. At the same time, the review recommends that greater transparency also be required of RTOs in the interests of delivering desirable student outcomes.

In general, ASQA is satisfied with the powers it has to regulate in the sector. It would like greater flexibility in how some sanctions and appeals mechanisms can be used. If sanctions are to deter RTOs from being non-compliant, RTOs need a clear understanding of what the suite of sanctions are,

which are the most serious, and why they are being used. The review considers changing available powers as premature when an understanding of how ASQA deters, and why, is lacking across the sector. Transparency of the principles that guide ASQA's use of deterrence is needed. Moreover, this review presents an opportunity for ASQA to sophisticate its use of strengths-based regulation, in particular praise for RTOs that have done things well, while also improving the use of a more iterative and educational approach with those at risk, when it is within the capacity of the RTO to mitigate those risks. Plans for motivating RTOs to move from non-compliance to compliance, and from compliance to excellence, could be articulated more clearly by ASQA, such as its communication on its risk matrix and student-centred audit approach.

The VET landscape is inherently complex but this is no reason for not drawing back the curtains and allowing the public to see inside. The review recommends that audit reports from ASQA be made public. This practice is not uncommon in other areas of regulation and allows for a maturing of what regulation can and cannot do for a sector. It also gives industry and peak bodies opportunity to gain an independent assessment of risks and problems in areas that are most relevant to them. They then have sound knowledge (rather than hearsay) on which to base regulatory conversations with RTOs and ASQA to prevent systemic problems emerging further down the track. Publication of an RTO's remediation actions that the RTO could post on its website should also be strongly encouraged in the interests of transparency and better understanding of good and bad practice.

Transparency of audit reports, while at times painful for those issuing them, in the long term provides more opportunity than cost. Regulators require timely feedback on their strengths and weaknesses to refine their auditing skills and reset priorities. Six years into the life of ASQA, such feedback would be timely.

Transparency and timely release of RTO aggregated data collected by NCVER is a further way of boosting the quality of data for risk regulation by ASQA, as well as of providing feedback to RTOs on their quality performance relative to other RTOs. In order to be useful, data need to be collected not only more regularly, but also to be released for use so that they are as close to real-time data as possible. If both ASQA and RTOs have timely data on risk factors and student outcomes, regulatory conversations can take place around compliance issues before serious non-compliance occurs. This could reduce the costs of and need for compliance audits for both regulator and provider.

As part of greater transparency around VET data, the review recommends that RTOs be required to keep electronic records of student progress in a manner that is compatible with NCVER and ASQA data management and to transfer that data for safe storage and student use in the event of RTO closure. The review also recommends more regular entry of AVETMISS data with NCVER to improve its interface so that RTOs enter their data in real time and streamline AVETMISS and USI reporting. Through giving RTOs freedom to enter AVETMISS and USI data routinely, and have access to these data at an RTO level for strategic planning and self-evaluation, the compliance burden on RTOs moves closer to being a useful practice for the organisation as opposed to an imposition.

Student protection is critically lacking according to review submissions with closest ties to students. There appear to be many unresolved complaints of being cheated through unfair contracts, deceptive marketing ploys and not being provided with personal training records. In ASQA's use of complaints for risk intelligence, it receives a number of complaints that do not pass the threshold of evidence that the provider is a likely compliance risk, leaving the complaint seemingly unaddressed. Student confusion over whether they should make their complaint to ASQA, the ombudsmen for overseas students and VSL, the Australian Competition and Consumer Commission (ACCC) or the counterpart state fair trading offices is rife. This will continue to be a problem as those hurt through the VET FEE-HELP scheme seek reparation. Confusion over tuition assurance schemes is just as great

and disheartening to students who expect someone to help them retrieve what they can from the studies that have had to be abandoned through no fault of their own.

With regard to tuition assurance, inequity was of particular concern. Minimal help is available to domestic full-fee paying students. Given the incomplete and inconsistent coverage provided by tuition assurance arrangements, this review recommends a government-operated scheme that covers all VET students, not just international students and those with a VET Student Loan.

As Consumer Action reminded us in its submission to the review, VET FEE-HELP is just the tip of the iceberg. Injustices to VET students continue with past bad practices spreading beyond international students to affect domestic students as well.

A number of measures are recommended in this review to strengthen student protection. To underline the responsibility that RTOs have to their students from the moment they consider enrolling to the time they complete their study, this review strongly recommends that first, the Standards for Registered Training Organisations (RTOs) 2015 be expanded to explicitly recognise a responsibility for the safety and wellbeing of students. Second, this basic educational obligation should have practical meaning in the context of the administration and liquidation of an RTO. From a justice perspective, the prime obligation of an RTO, and indeed a former RTO, should be to prioritise student wellbeing and ensure students have all the information they need about their past performance to continue their studies at no cost to themselves.

When tuition assurance fails to meet needs, as has occurred recently, the student complaints system comes under close scrutiny. The review found it to be highly fragmented, and not particularly user friendly. One obvious answer to this problem is having a “no wrong door” policy. This means that whichever the point of contact made by a student, procedures will be in place to ensure that complaints reach the right destination. Whatever the government chooses to do with this review’s recommendations, it is imperative that all relevant regulators engage in a strategic ongoing conversation to secure a workable “no wrong door” protocol in response to complaints.

That said, the problem with VET complaints seems to reflect a problem that is more fundamental. Complaints become a low priority and tend to fall under everyone’s radar. ASQA may believe it is the job of the ACCC or state fair trading regulators, and they in turn may say it is the job of ASQA. Given that many of these consumer organisations are dealing with complaints from the financial sector and many other sectors of deep concern to the broader public, it is not difficult to understand why the problem might be flicked back to ASQA to resolve.

Whether ASQA addresses student complaints or not depends on whether the complaint lends weight to the file of an RTO that is likely to face a compliance audit. These other indicators together with complaints paint a picture of how compliant the RTO is likely to be. The student complaint alone cannot effect change in an RTO. From the student perspective, ASQA’s actions appear unfair. Their experience as a student and how they were treated is secondary to how the RTO fares on ASQA’s internal risk matrix and, in all cases, its goal is addressing broader provider risk and not individual complaint resolution. As such, another entity in the consumer protection system appears to be more suitable to giving students their fair hearings and complaint resolution.

Looking to the future, post VET FEE-HELP, one might reasonably predict a rise in complaints from students navigating their learning at the VET and higher education interface. In particular, this is likely to involve recognition of qualifications awarded from the ‘other’ sector, credits for completed study, and more generally treatment of students engaging in cross-sector educational endeavours. For this reason, a national tertiary sector ombudsman is recommended so that there is a one-stop

shop in the tertiary sector for student complaints. The Tertiary Ombudsman would be well positioned to monitor cases and to detect, at an early stage, systemic risks in the education and training interface that has regulatory implications for TEQSA and ASQA. This review suggests changes to ASQA's quality assessments of RTOs that might better align with the meta regulatory approach that TEQSA adopts. On the ground, however, decision making around a particular student's course of study at the higher education and VET intersection remains largely uncharted regulatory territory for TEQSA and ASQA.

Prevention can be the most cost effective means of consumer protection, and this review endorses submissions that have recommended action to prevent deceptive or misleading marketing and unfair contracts. This review recommends that consumer protection relating to marketing and student enrolment agreements be aligned with Australian Consumer Law, while giving ASQA the capacity to enforce these standards.

The recommendations of this review aim to use more prescriptive measures to clarify and improve compliance at what ASQA refers to as the bookends of its operations: registering and cancelling the registration of RTOs; and, by extension of the metaphor, the bookends of the student experience, choosing and enrolling with an RTO, and obtaining certification of one's qualifications and achievements. This leaves both ASQA and RTOs to focus on the heartland of VET, the middle stages of the journey involving support and progression, and training and assessment. The recommendation to include student safety and wellbeing in the Standards for Registered Training Organisations (RTOs) 2015 is an essential part of backing students in their journey, ensuring that they are prepared for their studies and have assurance that there is genuine support for them as they progress through their course of study. Aligning supports for progression with those of the higher education sector is an important step in bridging and preparing for one seamless tertiary sector.

One regulatory principle that runs throughout this review is that quality cannot be mandated. Quality means excellence on many dimensions for an RTO, combined with a hunger for improvement and a curiosity about how improvement might be achieved. Different dimensions of quality mean that some RTOs will be stronger on some dimensions, other RTOs will be stronger on other dimensions, and an RTO's strengths will be clear within an RTO's business plan. Being responsive and respectful of the quality that an RTO is aiming for means regulating contextually. It means nurturing innovation. It does not mean regulating against standardised questions, checklists, and percentile ranks.

Indeed, if mandating standards of quality creates fear that leads to blind following of others' behaviour and conforming to a mandated standard, the chances of lifting quality drops significantly. One does not become better by being told the exact degree to which you are falling below an arbitrary minimum standard. Regulators can bring quality to their craft through inspiring with stories of success, they can pair RTOs that can learn from each other, or they can recommend RTOs join networks for quality improvement. Ultimately, the way they regulate quality (as opposed to sufficiency) is to look at how well an RTO goes about setting higher standards for itself, checking if such standards are met, motivating through praise and encouragement, and supporting when they have achieved improvement and advising on options when they have not.

In other words, what can be and is somewhat mandated in the Standards for Registered Training Organisations (RTOs) 2015 in the name of quality is continuous improvement, and RTOs having processes in place that produce evidence to answer the question: How do you know that you are a quality provider with respect to training and teaching, student support, teacher expertise, industry engagement, and assessment? Having teachers who are knowledgeable, skilled and connected to

their industry, who have high standard teaching qualifications, and are offered professional development by their RTOs are necessary ingredients, as recognised widely in the sector, for running a sustainable quality training program. This review recommends raising standards of teacher quality, as expressed in the wishes of many in the sector.

At the same time, the review notes the absence of a vibrant labour market in VET teaching at this time. A VET teacher has to be master of teaching pedagogy, training package and accredited course requirements, have current industry knowledge, and be well networked so their expertise does not become dated. They need to inspire their students to enjoy and be confident in their learning, bearing in mind that many may not have happy memories of the academic demands of earlier schooling. They may also need to be expert assessors, able to assess students for their readiness for the workplace and finesse students' skills where required so that they can make the transition to work with confidence and to the satisfaction of employers. In short, VET teachers need to cover a broad range of bases of excellence. It is extraordinary that they do not have a career path where increasing levels of skill and excellence are recognised and rewarded, as they are in other educational settings. This review recommends that as a first step to valuing the teaching role, the pinnacle position of Master Assessor be introduced.

Reserved only for those teachers who have achieved the highest standards on all dimensions of quality teaching in VET, a Master Assessor furthers the sector's regulatory agenda for higher standards in two respects. First, Master Assessors are the go-to persons for professional development of teaching staff. Second, Master Assessors are the educational experts that ASQA can use to inform decisions about whether an RTO is producing satisfactory, if not desirable, student outcomes.

The thrust of this review is that ASQA leads regulatory activity in the sector but that it does not, nor should it, lead alone. The VET sector is large and diverse, the connections among government, industry, RTOs, and students are complex, and there are many regulatory forces at work frequently pulling in different directions. ASQA unavoidably is in the thick of it. Regulatory conversations that allow ASQA to prove itself to be nimble, authoritative, firm, fair, imaginative, and commanding of sector support are necessarily part of ASQA's future. The recommendations of this review, embedded in ASQA's legislative and regulatory framework, are proposed as paving stones to this future.

Appendix A - Terms of reference

Review of the *National Vocational Education and Training Regulator Act 2011*

Background

In 2011, the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) established the Australian Skills Quality Authority (ASQA) as Australia's national vocational education and training (VET) regulator.

Since this time the VET regulatory landscape has changed significantly with the introduction of new Standards for Registered Training Organisations (RTOs) 2015, an evolving approach towards risk by the regulator, and the introduction of the new VET Student Loans program.

In this context, it is timely and appropriate to review the extent to which the NVETR Act supports a responsive, effective and efficient approach to regulation to ensure the quality of the national VET sector.

The reviewer will develop a deep understanding of how ASQA's operational environment has evolved in order to make any necessary recommendations about further reforms to assist ASQA's operations.

Scope of the review

The reviewer will make recommendations regarding the NVETR Act and its subordinate legislation to ensure its capacity to:

- a) provide the regulator with functions and powers that are relevant and suitable to the current and future VET environment
- b) enable the regulator to use its existing powers in a timely, effective and transparent manner
- c) enable the regulator to apply a responsive, risk-based regulatory approach and effectively detect non-compliance
- d) enable the regulator to consider student outcomes in making regulatory decisions
- e) provide appropriate student protection mechanisms
- f) ensure only an appropriate level of regulatory burden is imposed on RTOs
- g) ensure VET consumers have access to appropriate information
- h) ensure regulators can effectively manage qualification types which may be delivered in both the higher education and VET sectors
- i) facilitate an outcomes based approach.

The reviewer will also advise on any other administrative improvements to the NVETR Act.

The reviewer will also advise on the implications of their findings and recommendations for the operations of ASQA.

Conduct and timing of review

The review will seek the views of major stakeholders, invite submissions from the public, and draw on available information and data about the VET sector. The reviewer will report to the Assistant Minister for Vocational Education and Skills at the end of January 2018.

Appendix B - Expert Advisory Panel

The conduct and direction of the review of the NVETR Act was guided by an Expert Advisory Panel (the Panel) appointed by the Hon Karen Andrews MP, Assistant Minister for Vocational Education and Skills. The Panel advised the reviewer, Professor Valerie Braithwaite, on the scope of consultations and served as a sounding board for the review's analysis, findings and preliminary recommendations. Members of the Panel were:

- Dr Subho Banerjee, Department of Education and Training (Chair)
- Mr Rod Camm, Australian Council for Private Education and Training
- Mr Bill Galvin OAM, Tourism Training Australia (Australian Industry and Skills Committee representative)
- Ms Patricia Neden, Innovation and Business Skills Australia (Skills Service Organisation representative)
- Professor Peter Noonan, Tertiary Education Policy (Mitchell Institute)
- Mr Craig Robertson, TAFE Directors Australia
- Professor Nick Saunders AO, Tertiary Education Quality and Standards Agency
- Ms Jodi Schmidt, former CEO of TAFE Queensland
- Mr Simon Walker, Western Australia Department of Training and Workforce Development (Skills Senior Officials' Network representative)

Professor Braithwaite is grateful to Panel members for providing their time, expertise, and the benefit of their extensive experience in support of the review.

Appendix C - Stakeholder consultations

Consultations with key stakeholders were conducted from July to October 2017, with some follow up contact in November. Meetings were held in the Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria, Western Australia, and via telephone. An Expert Advisory Panel (Appendix B) provided advice and comments on the development and key ideas of the review.

Table 5: Stakeholder organisations met with during consultations

Government bodies
Australian Industry and Skills Committee
Australian Skills Quality Authority
Department of Education and Training (Commonwealth)
Department of Education and Training (Queensland)
Department of Education and Training (Victoria)
Department of Industry, Skills and Economic Development (New South Wales)
Department of State Development (South Australia)
Department of Training and Workforce Development (Western Australia)
Industry Training Councils (Western Australia)
National Centre for Vocational Education Research
Overseas Students Ombudsman
Skills Canberra (Australian Capital Territory)
Skills Senior Officials' Network
Skills Tasmania (Tasmania)
Tertiary Education Quality and Standards Agency
Training Accreditation Council (Western Australia)
VET Student Loans Ombudsman
Victorian Registration and Qualifications Authority
Workforce NT (Northern Territory)
Registered training organisations
Abode Academy
Academia International
Academy of Interactive Entertainment
Box Hill Institute
Charles Darwin University
Dubbo TAFE
Dubbo Western College
French Beauty Academy
Gold Coast School of Construction
Quality Training and Hospitality College
TAFE New South Wales
Other stakeholders
Administrative Appeals Tribunal
Adult Learning Australia
Apprenticeships Employment Network Victoria
Apprenticeships Support Australia
Australian Business Apprenticeships Centre

Other stakeholders

Australian Chamber of Commerce and Industry

Australian Council for Private Education and Training

Australian Education Union

Australian Industry Group

Australian Nursing and Midwifery Accreditation Council

aXcelerate

Business Council Australia

Community Colleges Australia

Enterprise Registered Training Organisation Association

Group of Eight

National Australian Apprenticeship Association

National Tertiary Education Union

Nous Group

TAFE Directors Australia

Tourism, Hospitality and Catering Industry Association

Universities Australia

Appendix D - Submissions

The call for public submissions was opened by the Hon Karen Andrews MP, Assistant Minister for Vocational Education and Skills, in an announcement on her ministerial website on 7 July 2017. For a period of six weeks, public submissions were received via an online portal on the Australian Government Department of Education and Training's website or, upon request, via email.

The department received 68 submissions in total. All submissions have been made public and identifiable unless the author requested that their submission be published anonymously or remain confidential. Fifteen authors requested that their submission remain confidential. The 53 publicly available submissions can be found on the department's website.

Table 6: Publicly available submissions received

No.	Author
001	Anonymous
004	aXcelerate
006	Anonymous
007	Anonymous
008	Mr Victor Bennett
011	Anonymous
012	Mrs Lynne McWilliam
014	Anonymous
015	Dr Chris Ho
016	Australian College of Applied Animal Studies
017	Anonymous
018	Anonymous
019	Anonymous
020	Box Hill Institute
021	HealthStar Training
022	Anonymous
024	National Australian Apprenticeships Association
025	Independent Education Union of Australia - Qld & NT Branch
026	Australian Council of Trade Unions
027	Australian Emergency Care Providers
029	Universities Australia
030	Australian Skills Quality Authority
031	Academia Australia Academia International
032	Logistics Training Council
036	Commonwealth Ombudsman
037	The Australian Hairdressing Council
038	Australian Manufacturing Workers' Union
039	Victoria University
040	Ms Nerida Lithgow
041	Real Estate Institute of Australia
042	Industry Reference Committees of SkillsIQ LTD
043	Australian Council for Private Education and Training (ACPET)
044	SkillsIQ Ltd
045	Australian Education Union

No.	Author
046	Australian Children's Education and Care Quality Authority (ACECQA)
047	Isolated Children's Parents' Association of Australia, ICPA (Aust)
048	Victorian TAFE Association
049	Electrical Trades Union of Australia
051	Federation University Australia
052	Australian Services Union
053	Anonymous
054	Australian Dental Association
055	J&S Learningwork
056	National Centre for Vocational Education Research
057	Anonymous
058	Navitas Limited
059	Community Colleges Australia
060	Master Builders Australia
061	La Trobe University
063	Victorian Automobile Chamber of Commerce
064	United Voice
065	TAFE SA
066	Consumer Action Law Centre

Figure 3: VET background of the total received 68 submissions

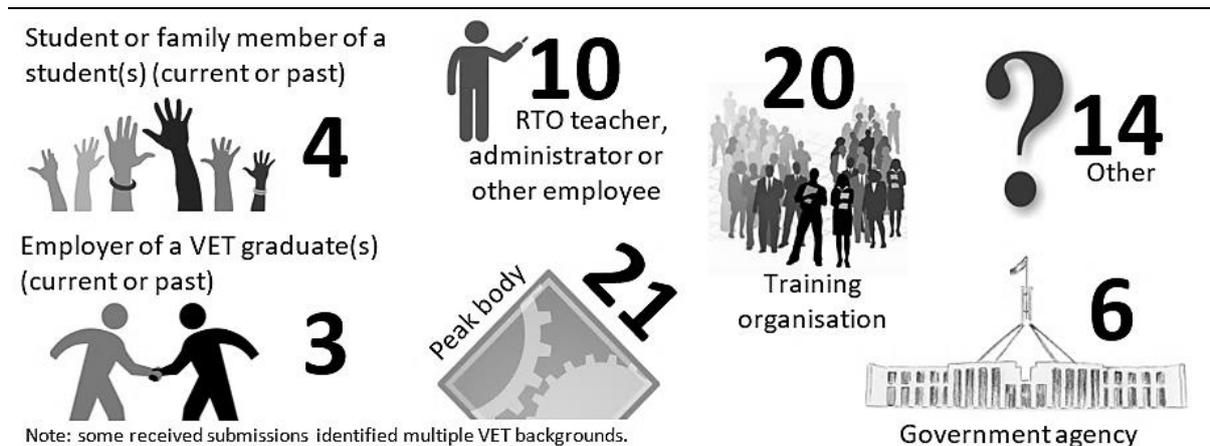


Figure 4: Geographical dispersion of the total received 68 submissions



Extracts from submissions grouped into thematic areas

The following tables are a thematic grouping of recurring views directly drawn from the publicly available submissions. While not a definitive list, the extracts illustrate the prevalent thoughts and concerns expressed through the submissions, along with suggestions for quality improvement. As the views are presented as direct quotations, typographical errors in the material may exist. The submission extracts have been grouped into the following themes:

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QUALITY

Table 7: What is quality and how can it be measured?

Submission	Content
VET delivery and assessment	032 Logistics Training Council Providing courses/training that respond to the needs of the local industry, employers and students. Having industry standard facilities and equipment or access ... Lack of suitability of online delivery as a method of assessing particular qualifications or training components ie complex/practical aspects such as high risk licences, driving licences.
	049 Electrical Trades Union of Australia VET regulator must concentrate their resources on: ... Training providers without adequate resources to deliver training that is held on scope.
	054 Australian Dental Association RTOs who are not providing students with access to quality education and training, minimum number of practicum or those who do not have appropriately qualified teachers and clinical supervisors should be subject to immediate sanctions.
	055 J&S Learningwork Provision of quality training that meets unit of competency requirements – while the Standards for RTOs 2015 brought a stronger focus on the provision of training (1.3 learning resources), there is insufficient focus to ensure that RTOs are providing training that directly relate to the unit of competency requirements. There is a strong focus on this for assessment but not for training. RTOs do not necessarily focus on ensuring all learning is directly related to unit requirements and there are no gaps.
	057 Anonymous Adequacy and appropriateness of facilities and resources used to assess and deliver training. Quality framework and continuous improvement. Is there a system in place? Does the RTO have any ISO approvals?
	058 Navitas Limited [W]e support closer scrutiny of the implementation of Standard 1, which focuses on the delivery of training and assessment that meets the requirements of industry and the training packages/accredited courses.
Industry engagement and satisfaction	
016 Australian College of Applied Animal Studies Scrutiny should include [c]ontact with the industry that has employed graduate students to ensure that the training was relevant to the workforce requirements. The contact should be verbal so the Auditor can ensure that the employer understands the relevance of the questions as they relate to continuing training reforms.	
037 The Australian Hairdressing Council Genuine industry engagement and where possible industry endorsement of the outcomes through employment of graduates or the use of the training provider for training of staff.	
043 Australian Council for Private Education and Training (ACPET) Sustainability demonstrated by the certification of ethics and support of industry.	
054 Australian Dental Association A commitment to the provision of education and training that results in quality student outcomes that meet employer needs should therefore be a key feature and measurable outcome of any programme of study offered by registered training organisations (RTOs).	
057 Anonymous Contextualisation of training and assessment to industry requirements.	
063 Victorian Automobile Chamber of Commerce VET providers must have extensive industry engagement that is quantifiable and easily measured. As industry engagement is not currently quantifiable, VACC argues that this enables RTOs to conduct the bare minimum with regards to industry engagement.	
065 TAFE SA Consideration could be given to measuring repeat business of an RTO. For example, if an employer continues to direct all training to a particular RTO, this could be some indication of satisfaction with training received previously.	
Student satisfaction	
016 Australian College of Applied Animal Studies Scrutiny should include [c]ontact with graduated students, employed in the workforce (in first 12 months of employment) to discuss how pertinent and appropriate training was to job requirements. This contact should be verbal, ensuring the graduate understands the aim of the question.	
057 Anonymous The end to end student experience.	
Student competency	
026 Australian Council of Trade Unions The Regulator needs to concentrate on the capability of the graduate against the standards as reflected in training packages, not whether the paperwork produced by providers 'should' deliver confidence and sound outcomes.	
031 Academia Australia Academia International Any regulatory / licensing body must begin at the end by assessing the outcome and working backwards. This is the only way to untangle the spaghetti legislation, remove legal challenges and empower a regulator to act without fear of favour. Lessons need to be gained from world leaders in Quality VET delivery such as Germany and other countries that have implemented independent industry standardized capstone assessments. With such, the argument of volume of learning, inconsistencies in outcomes, on line versus face to face are put to rest once and for all. Detractors of this position will argue complexities of implementing such a solution. This is not difficult as infrastructure already exists. Government can license best in class Institutes to carry out capstone assessment of students from other colleges, whereas other institutes are licensed to deliver training only. Such	

Submission	Content
	Independent Assessment licensing needs to be open to aspiring training only institutes to become Training and Assessing Institutes which will drive a race towards quality.
Quality of trainers and assessors	
012 Mrs Lynne McWilliam	A quality VET provider should focus on a learner-centered approach, with the organization's business plan directed towards employing competent and capable staff, trainer's and assessors who understand the regulations and legislation under which they operate.
018 Anonymous	[The principles that should drive the business plan of a quality VET provider are] quality of teaching/training ability to develop rapport with student cohort to best maximise learning ...
032 Logistics Training Council	The qualifications and experience of trainers and assessors to ensure vocational competence and particularly industry currency is being met. Employing adequately skilled staff with the necessary skills, experience and industry currency to enable a high level of training delivery.
039 Victoria University	Quality of trainers and assessors including initial qualifications and ongoing involvement in professional development based on a points system as the annual responsibility of trainers and assessors.
045 Australian Education Union	[Q]uality is assured by the professional capability of educators, built through entry-level qualifications and professional development; robust educational qualifications and internal (and, on occasions, external) moderation of educational approaches generally, not just on assessment, or a narrowly defined "outcome".
051 Federation University Australia	[T]he focus of regulation should shift decisively in the direction of measuring and assessing quality teaching and the achievement of high level student outcomes.
056 National Centre for Vocational Education Research	[T]here should be a focus on teacher quality. This could be measured by way of an administrative data collection or survey using a nationally consistent VET workforce data standard (which NCVET has developed and would be prepared to implement).
057 Anonymous	Vocational credentials of trainers & assessors, including currency, experience, qualifications, licenses, etc.
Student support available	
006 Anonymous	<ol style="list-style-type: none"> 1. Improve Customer service response times 2. Fairer class scheduling 3. Well equipped RTO facility, resources, student services ie student union, legal support, financial support, student wellbeing, jobs centres, LL&N support: sick of RTO's not having additional support for students which will improve completions (shop front providers).
007 Anonymous	Our principles are: trust, transparency in feedback, verbal and written, creating a training experience, not just delivering content. Support (not feeding the answers) but genuine 'coachig " support for students to achieve.
039 Victoria University	Genuine student support services e.g. LLN support, counselling, library.
045 Australian Education Union	As a bare minimum, the AEU believes that the quality framework should include the following requirements: <ul style="list-style-type: none"> • that vocational education RTOs have as a main or proper or primary or significant purpose the provision of vocational education; • that vocational education RTOs operate in the interests of students and be required to provide ancillary support services for students; • that vocational education RTOs demonstrate appropriate quality standards for teaching and learning.
Student completions (*see in the Data Issues table the concern with reliance on student completions data as outcomes data)	
037 The Australian Hairdressing Council	The employment or further study outcomes of students – both are valid outcomes. There should be, through the use of the USI, and linking with the ATO, a way to track the employment outcomes of each graduate.
043 Australian Council for Private Education and Training (ACPET)	[There needs to be] [t]ransparency of performance and student outcomes.
065 TAFE SA	Current legislation subordinate to the National Vocational Education and Training Regulator Act 2011 (NVETR Act) does not allow for true consideration of graduate outcomes to be included in monitoring and audit activities. Within the Standards for VET Regulators and Standards for RTOs, there is a focus on record keeping. Ultimately student outcomes based on industry feedback should be the primary source of intelligence regarding RTO behaviours. Any measure of quality must consider whether, or how, a student has achieved the overall outcome or intent of the qualification in which they have been trained rather than focus on record keeping.
The purpose of the RTO	
016 Australian College of Applied Animal Studies	To develop a training environment that can inspire learners to achieve and succeed in their chosen field.

Submission	Content
	Vision An RTO must manifest the Higher Vision upon which it was seeded, the vision it was meant to exemplify, the mission it was intended to fulfil.
025 Independent Education Union of Australia - Qld & NT Branch	[M]any of the smaller providers, who focus on a narrower range of industries, are among the most stable, high quality RTOs with long histories of quality work in a particular area.
045 Australian Education Union	As a bare minimum, the AEU believes that the quality framework should include the ... requirements [sic]: that vocational education RTOs have as a main or proper or primary or significant purpose the provision of vocational education.
Financial structures	
004 aXcelerate	Unless the training provider has any significant degree of scale, the first key principle should be business focus: 'What niche market is the RTO going to specialise in?'. Second principle is multiple funding sources, not all eggs in the 'government-funded' basket. Third principle is, if the RTO is a really competent educator/trainer, that's good but they need to become even better at marketing, sales and client service to generate crucial repeat business.
039 Victoria University	[RTOs should demonstrate in their business plan] [s]eparation of government funding and fee for service.
042 Industry Reference Committees of SkillsIQ LTD	RTOs must be able to demonstrate that they have strong governance and sound financial management systems in place and that these be subject to regular scrutiny by the regulator.

Table 8: How to promote high quality RTOs

Submission	Content
042 Industry Reference Committees of SkillsIQ LTD	[M]inimum quality standards should be a beginning point for new RTOs rather than an ongoing level, with RTOs being required to demonstrate continuous improvement through regular audits.
044 SkillsIQ Ltd	Monitor quality and incentivise 'best practice' - To date the VET system has promoted a compliance culture which has led to a focus on RTOs simply doing what is required to be compliant and there are no incentives for them to develop and implement 'best practice' approaches.
053 Anonymous	Most [RTOs] are already looking for ways to go beyond meeting minimum quality standards, yet if the burden of added regulatory requirements were imposed on them, the danger is that RTOs focus more on how to be able demonstrate compliance, rather than on improving quality.
054 Australian Dental Association	Legislatively speaking, there are no major changes that the ADA recommends. However, ASQA's compliance processes can be better applied which will encourage continuous quality improvement of RTOs.
057 Anonymous	Focus on attributes of successful quality RTOs (if able to assess this) and determine how best to embed that.
Excellence rating system	
032 Logistics Training Council	Introduction of industry certification/support/ticks of approval for providers who meet certain criteria/industry standards by going over and above minimum requirements.
055 J&S Learningwork	Consider implementation of excellence standards as discussed some years ago.

ASQA'S APPROACH

Table 9: Alignment with the Tertiary Education Quality and Standards Agency (TEQSA)

Submission	Content
039 Victoria University	As a dual sector university with a significant VET component, we believe it is essential to have increased commonality and terminology in the regulatory standards and implications of Australian Skills Quality Authority (ASQA), the Tertiary Education Quality Standards Agency (TEQSA) and the Australian Qualification Framework (AQF). This should result in better streamlining of the regulation of multisector institutions as far as possible.
040 Ms Nerida Lithgow	[B]etter alignment between ASQA and TEQSA standards and the risk management framework. Review the TEQSA powers - ASQA should be similar.
058 Navitas Limited	ASQA's regulation of the Australian VET sector should be risk-based and reflective of the Tertiary Education Quality and Standards Agency (TEQSA) approach in higher education. The application of the same principles that underpin TEQSA's regulatory framework – risk, necessity and proportionality – contextualised to vocational education, should form the basis of ASQA's regulatory regime.

Table 10: ASQA audits

Submission	Content
001 Anonymous	Regulator auditors to sit in on funded VET courses and talk to students and employers rather than do desk top audits of compliance standards administrative minutiae.
004 aXcelerate	What I think is crucial is 'auditor validation/moderation' to ensure greater consistency. Is there an opportunity for RTOs who are subjects of audits to provide feedback about their ASQA Auditor after every single audit? Does ASQA then gather that feedback consistently and use it in moderation processes as well as performance development? If so, that's great. If not, I would have thought that is a point of leverage.

Submission	Content
007 Anonymous	It is hard not to have a very clear 'way' of doing things - biggest concern is auditor interpretation on how things should be done - this causes a lot of anxiety when we are not doing 'what the auditor" believes is best practice and yet we are meeting the guidelines. The more support we get the better!
011 Anonymous	Too much emphasis is on ticking boxes, quality outcomes and teaching has diminished considerably due to compliance.
012 Mrs Lynne McWilliam	[D]iscrepancies between individual auditor interpretations are confusing and often less than fair.
016 Australian College of Applied Animal Studies	An Audit should be seen as a support process, rather than a disciplinary requirement. TAFE/RTO should see the Audit process as a support to its organisation and a validation of the Organisations application of the "Standards." It should be seen as a process where areas of risk are identified and worked on by both parties to improve the outcomes for students, and the professionalism of the Organisation.
020 Box Hill Institute	Standard 1 of the SRTs and particular Clause 1.8 should be reviewed to ensure that auditors' have the ability to note minor non-compliances or recommend areas for improvement rather than deeming an RTO non-compliant for the whole Standard. This would ensure RTO changes without the need for a rectification notice of follow up audit. RTOs with an acknowledged compliant history, reputation and culture of an RTO should be taken into consideration during or at the audit report review stage.
021 HealthStar Training	ASQA audit reports are, to a large extent, confusing and poorly designed. During an audit, there is a significant emphasis on the subjective opinions of, in my opinion, poorly trained auditors. Many of the auditors do not have the vocational competencies for the qualifications they are auditing, particularly in technical subject areas. RTOs are, to a large extent, small businesses, working with a few specialised staff. The regulatory burden, the lack of clarity in the interpretation of the regulations by ASQA and the subjective opinions of auditors, is crippling many of these small RTOs.
041 Real Estate Institute of Australia	There is a feeling that with a focus on compliance audits that processes are created to meet the compliance requirements but the delivery and assessment of training are not evaluated. Would be preferable to follow the system in place in WA where a list of learning resources and the amount of time a student needs to commit to this is identified. This then the RTO to provide evidence to the auditor that the amount of training required for each student has been identified. Further, one can see how training has been adjusted in response to feedback and how the student has been informed.
042 Industry Reference Committees of SkillsIQ LTD	[N]eed for more regular and rigorous monitoring and auditing of RTO performance to ensure ongoing compliance with regulatory and funding obligations. To be effective this [a more robust and rigorous audit system] may involve developing common audit standards to guide a more rigorous audit approach throughout Australia. Generally, stakeholders indicated that there needs to be greater consistency across Australia in relation to any additional compliance requirements which are beyond the scope of the standards.
051 Federation University Australia	The focus in current ASQA audits is very much on compliance with the RTO standards including the processes used internally to ensure compliance and the paperwork such as student files that contain the evidence for compliance etc. There is little focus on assessing what the students are learning, the effectiveness of the pedagogies used by teachers and the quality of the learning experiences which students have. Until ASQA changes its focus from compliance with standards – many of which do not relate to student outcomes or experience – the regulation of VET will not improve student outcomes.
054 Australian Dental Association	[O]ne RTO reported that the ASQA auditor wanted evidence of student's participation in the class and that organisation provided a photo. The auditor then asked whether or not the students gave written consent for that photo to be provided. The RTO confirmed this was the case. Then, upon showing the register of consents, the auditor observed that there was no version control recorded in the register. Understandably, the RTO's teacher that was subject to audit questioned whether such scrutiny was actually measuring students' experience of their course study. Other RTO feedback to the ADA acknowledged that audits that found minor issues were fed back to the RTO for rectification and this response was supported. When that RTO was subject to an audit, they were not informed how many teachers were needed for the audit and so ultimately the RTO had to bear the cost of having them be physically present when in the end only one teacher was chosen to be audited. This also applies to procuring students to participate in audits as well.
055 J&S Learningwork	[T]here is far too much variation in auditor views. This is frustrating for RTOs and damaging for the industry. There needs to be greater focus on auditor inconsistency so the personal opinions of auditors do not appear in audit report.
057 Anonymous	There also needs to be consistency of audit decisions – ensure adequate training & PD for audit staff. We have experienced over the years many examples of inconsistent application of the NVR Standards by the regulator during audit. There appears to be no improvement on this front, despite assurances that more PD is occurring. There needs to be greater transparency around this, and that if an RTO is not happy with an auditors' ruling on the day, that there is an avenue to raise the issue without fear of reprisal. Many during an audit will just do what the auditor says, despite knowing they're being asked to do something which isn't required under the NVR Standards.
058 Navitas Limited	The legislation should require ASQA to ensure that their auditors are properly qualified as auditors, experienced in the sector in which the provider operates and able to comply with the AS/NZS ISO90011:2014 guidelines for auditing management systems. The quality of ASQA audits should be evaluated against these guidelines and ASQA should monitor the conduct of audits to ensure consistency, transparency and fairness. RTOs should have the right to appeal the outcome of an audit on the grounds that it was not carried out in accordance with the Australian and international standards for auditing.

Submission	Content
059 Community Colleges Australia	Compliance is also costly, particularly for small organisations without staffing flexibility. When audits are likely or scheduled, the cost of servicing compliance requirements can be doubled for a period of several months.
065 TAFE SA	[T]here is no scope for providers to be formally provided advice on opportunities for improvement, which could be better used to provide quality providers an opportunity to correct any technical non-compliances that do not have a significant student impact. This would allow ASQA to better address the requirements of section 157 of the current Act.
Engage industry / subject matter expert on audits	
021 HealthStar Training	ASQA audits should be conducted by well trained, experienced auditors, assisted by technical subject matter experts. Sufficient time must be allocated for audits.
032 Logistics Training Council	Greater use of 'industry experts' or 'subject matter experts' in the audit process to provide an industry opinion (or give context to) how things should/not be delivered or assessed and to what level or standard.
037 The Australian Hairdressing Council	The area for improvement is the addition of industry experts as auditors/advisors to the audit process.
039 Victoria University	Involve industry experts in audits of particular high risk qualifications. This is achieved successfully in the licensing qualifications and could be extended to other areas.
044 SkillsIQ Ltd	Board members indicated that there would be benefit in creating greater consistency across Australia in relation to compliance requirements. Specific technical expertise in industry sectors rather than compliance skills may be worth considering.
063 Victorian Automobile Chamber of Commerce	[T]here must be greater transparency in the outcomes of ASQA's investigations and the utilisation of industry subject matter experts during audits.

Table 11: ASQA as a supportive regulator

Submission	Content
017 Anonymous	I get so many emails for "consultant" services it is ridiculous. The standards and compliance have created a monster. If ASQA had a branch that did this support it would be consistent and we would know it was compliant, unlike the risk many RTO's take with "consultants".
021 HealthStar Training	ASQA should work with RTOs to develop appropriate systems and assessments, rather than using the "big stick" legalistic approach. Who is responsible for providing RTOs with clear instructions, with worked examples, on what ASQA believes is compliant assessment evidence?
025 Independent Education Union of Australia - Qld & NT Branch	At present, much of the material available to those looking to establish, or administer, an RTO is informative rather than instructional. Development of more comprehensive guidelines and checklists would provide much needed support and help to circumvent further non-compliance. [R]ather than changes to the legislation governing the operations of ASQA, targeted support for both RTO's and VET practitioners would do more to counteract poor quality education and training.
041 Real Estate Institute of Australia	ASQA appears to be process rather than outcomes focused and it is not responsive to the RTOs seeking advice/input. There is no follow up or indication on progress and outcomes.
048 Victorian TAFE Association	[T]he Victorian TAFE Association recommends that ASQA provide advice on how to apply or interpret the standards. This would overcome issues when encountered with differences in interpretations from individual ASQA auditors. As the regulator, ASQA should provide exemplars of quality and provide clarity on how the standards should be interpreted.
051 Federation University Australia	We consider the enforcement powers of ASQA to be sufficient. However, aspects of ASQA's operation could be improved. There is often ambiguity and a lack of timely advice from ASQA on how to achieve some of the requirements. Communication from ASQA to individual RTO questions and requests for support or advice could be improved and be more timely.
054 Australian Dental Association	ASQA's compliance processes must continue to be buttressed by a clear, simple engagement and education process whereby expectations are clearly provided to RTOs on an ongoing basis, not just around the time of audits. Accordingly, ASQA should be proactive in providing support and guidance to ensure that RTOs can perform well and continue to do so. [G]eneral briefing materials should be developed to guide teachers as to expectations of ASQA's audit and review activities. In providing more guidance materials, ASQA can not only make the auditing process more efficient, but more importantly facilitate the confirmation and communication by the majority of RTOs that they are meeting expectations – as well as furthering the educational process.
058 Navitas Limited	[R]egulatory regime guidance or best practices case studies should be provided to RTOs wishing to 'go beyond' minimum standards.
059 Community Colleges Australia	Would like to see ASQA partnering more for improvement with the low risk and not-for-profit providers, while policing and punishing the rogues.
060 Master Builders Australia	That ASQA develop guidance for RTOs on high performance in relation to common delivery models which would support the development effective business plans to promote quality training service provision.

Table 12: ASQA powers

Submission	Content
Consumer protection powers	

Submission	Content
019 Anonymous	They [ASQA] need a lot more catch a lot more people for fraudulent activity. Small fast busts, with punitive action that is not fatal (in business terms) that force the receiver and the team sitting next door to think I might be next and change behaviour. Obvious intentions to defraud especially the most vulnerable need to put out of business. Letting it get so bad the Government and the regulator need to understand they must carry some of the blame. Corruption is infectious. It must be turned around.
048 Victorian TAFE Association	<p>Consideration should be given to providing ASQA with the power to conduct 'spot' or random checks on those listed as part of industry consultation during course registrations. This would enable greater scrutiny and testing of the claims made by providers with respect to claimed industry connections and links. ASQA could be given authority to penalise (financially or otherwise, such as through suspended enrolments) providers found to be misleading students via false or unfair marketing practices, student loan rorts, short duration training, or poor or unqualified teachers.</p> <p>The Victorian TAFE Association recommends ... [T]hat ASQA be given powers to respond in a manner that is proportionate to risk and takes into account systems issues versus one-off grievances.</p>
054 Australian Dental Association	ASQA should be empowered to investigate and sanction those RTOs that engage in unscrupulous marketing to attract students. The ADA is aware of instances where, some RTOs, particularly those operating on a for-profit model, have deliberately targeted disadvantaged people luring their participation in courses by offering free tablets or laptops without providing the quality teaching students expect in return. ASQA should promptly investigate such activities in response to complaints raised.
056 National Centre for Vocational Education Research	ASQA's enforcement powers could be improved by addressing the completeness and accuracy of information submitted to the national VET collections.
066 Consumer Action Law Centre	<p>While protection of students and potential students is included in the objects of the NVETR Act, our experience is that the regulator, the Australian Skills Quality Authority (ASQA), can be quite restricted in terms of the regulatory action it can take. This appears to be driven by an absence of substantive protections within the Act itself, for example, covering areas like marketing, contracts and dispute resolution. While the Standards for RTOs 2015, made under the NVETR Act, provide some protection, these has been insufficient to ensure good student outcomes.</p> <p>We submit that a term which requires a student who cancels their course before beginning it, (or in the early stages), to pay out the whole course cost is unfair. The NSW Consumer, Trader and Tenancy Tribunal came to a similar conclusion in <i>Ncube v Open Colleges Pty Ltd</i>.</p> <p>Recommendation 1: That Standards be made under the NVETR Act to ensure that course cancellations, refunds and contractual terminations are fair and aligned with the principles of the unfair contract term regime.</p> <p>We recommend that ASQA:</p> <ol style="list-style-type: none"> a. be given enhanced enforcement powers, including appropriate administrative powers to impose penalties for non-compliance with relevant standards; b. increase the frequency of compliance audits of private VET providers and education brokers; and c. increase enforcement action against VET providers and education brokers that contravene the relevant standards, based on a clear strategic compliance and enforcement policy. <p>We recommend that ASQA's jurisdiction be extended:</p> <ol style="list-style-type: none"> a. to ensure that appropriate policies exist in relation to selling techniques, unfair prices and quality. These factors should be taken into account when accrediting a provider, and determining whether accreditation should continue; b. to regulate education brokers and unregistered subcontracted providers.
More effective use of powers	
025 Independent Education Union of Australia - Qld & NT Branch	<p>[T]he regulator has sufficient powers, under Parts 4, 5 and 6 of the current legislation, to enforce compliance with both the legislation and the standards.</p> <p>[T]here is scope for government to develop policies and best-practice examples to guide RTOs.</p>
027 Australian Emergency Care Providers	AECPP believes that ASQA's enforcement powers are sufficient. Problems have arisen due to the earlier failure to adopt a risk-based approach and the serious underestimation of the risks in the VET sector. ASQA has been hamstrung by trying to do too much across too many RTOs and the constant increase in reporting has been detrimental to the entire RTO sector.
042 Industry Reference Committees of SkillsIQ LTD	Some stakeholders indicated that ASQA had adequate enforcement powers but the key to their effectiveness was the willingness and ability of ASQA to use these powers in a consistent and concerted manner.
043 Australian Council for Private Education and Training (ACPET)	ASQA needs to be able to use a broader range of intervention strategies to address any shortcomings in training and assessment and student outcomes including greater use of conditional registration, financial penalties and enforceable undertakings.
044 SkillsIQ Ltd	ASQA needs to effectively utilise its current enforcement powers and adopt a more proactive, consistent and rigorous approach to auditing training providers to ensure compliance, mitigate against potential financial risks and ensure quality student outcomes.
046 Australian Children's Education and Care Quality Authority (ACECQA)	An ability to address known issues quickly is desirable. Timeframes for enforcement are currently impeded by natural justice and review provisions in the NVETR Act which are potentially overly weighted in favour of RTOs and against students, employers and a sector's consumers.

Submission	Content
	While procedural fairness in administrative decision making is important, the ability of the regulator to cancel a category of qualifications is desirable where there is evidence the category was improperly issued.
053 Anonymous	If we use the evidence of the number of RTOs who have had their registration status altered, ASQA's auditing powers appear to have been effective however it is unknown how many others 'fly under the radar'.
054 Australian Dental Association	The ADA notes that s62 NVETR Act enables ASQA to make requests for information from an RTO to be provided within 14 or earlier days if 'reasonably necessary'. Depending on what information is requested, ASQA should ensure it provide an avenue for the RTO to accordingly outline its view of the amount of time it needs to comply with the request. This is particularly important because s62 considers a breach of that request to be an offence giving rise to 30 penalty units.
057 Anonymous	More focus should be placed on quick response to identified issues within RTOs.
061 La Trobe University	La Trobe recommends that <i>in the short-term</i> , existing powers within NVETR Act be utilised to improve the quality of provision in the VET sector, using a targeted, risk-based approach to enforcement.
064 United Voice	Our members strongly support reforms that allow the swift enforcement of sanctions when poor quality training is detected and that ensure the future ECEC workforce can make informed choices about their education and training, in good faith.
065 TAFE SA	A stronger focus on student and employment outcomes, and student complaints, could be used to build more detailed provider profiles that allow current, or future regulators, to scale regulatory scrutiny based on the impact to students and industry rather than strict adherence to the detail of Standards for RTOs 2015.

Table 13: Risk-based approach to regulation

Submission	Content
032 Logistics Training Council	Continue with the closer monitoring of RTOs assessed as being higher risk (and vice-versa those RTOs at a low risk of non-compliance receive minimal regulatory scrutiny).
046 Australian Children's Education and Care Quality Authority (ACECQA)	ASQA should apply the closest scrutiny to qualifications and RTOs operating in sectors with the most risk to beneficiaries if the training does not deliver quality outcomes. Factors to consider when assessing risk include vulnerable consumers, isolated workers, and regulatory obligations for workers and their employers.
053 Anonymous	The highest level of scrutiny by the regulator on vocational education and training (VET) should be on aspects of the system that present the highest risk. These are not only the outcomes of training, but also the way organisations treat students, the quality of the teachers and assessments, plus reports from students and other stakeholders pertaining to quality of training and assessment.

Table 14: Strategic reviews

Submission	Content
032 Logistics Training Council	Need for quicker responses to industry concerns when they are identified or first come to light in regards to non-compliance across industry sectors ie Strategic Reviews.

COMPLIANCE BURDENS

Table 15: High level of compliance burden (and cost) on quality providers

Submission	Content
011 Anonymous	Too much emphasis is on ticking boxes, quality outcomes and teaching has diminished considerably due to compliance.
021 HealthStar Training	RTOs are, to a large extent, small businesses, working with a few specialised staff. The regulatory burden, the lack of clarity in the interpretation of the regulations by ASQA and the subjective opinions of auditors, is crippling many of these small RTOs.
043 Australian Council for Private Education and Training (ACPET)	ASQA's move to a student-centred audit model is strongly supported but must be accompanied by a reduced compliance burden for quality, low risk providers. There needs to be a greater focus on providers demonstrating sound training and assessment and outcomes governance - not just from a procedural or documentary perspective - but from a systemic, strategic perspective.
053 Anonymous	Most [RTOs] are already looking for ways to go beyond meeting minimum quality standards, yet if the burden of added regulatory requirements were imposed on them, the danger is that RTOs focus more on how to be able demonstrate compliance, rather than on improving quality.
057 Anonymous	Often the regulatory requirement for an [omitted] to 'fit' the one size fits all specification comes at significant cost, where the outcome is purely one of compliance as opposed to quality of training, the INTENT (presumably) of the regulatory standards.
059 Community Colleges Australia	The size of the organisation and the scope of qualifications offered impacts the resources required to manage compliance. Compliance work is linked and often reinforced by reporting requirements under state training delivery contracts. Most community education providers are quality RTOs considered "low risk" both by ASQA and state government departments. The survey of CCA member RTOs indicates that compliance staff constitutes a minimum of 1.5 – 2 days a week (0.3 - 0.4 full time employee equivalent – FTE) for small RTOs through to 5 - 6 people for RTOs with larger operations. It is common for compliance to represent 1 – 1.5 FTE. All RTOs consider compliance to be a necessary and important part of

Submission	Content
	<p>their operation, although many comment that there is a large amount of unnecessary process work required that could be minimised if more holistic forms of quality oversight were employed.</p> <p>[S]maller organisations tend to employ a smaller number of people in specific compliance roles, often as subset of their primary role as VET Manager/CEO (for example), and they carry the compliance “burden” largely as result of the size of the organisation and the large proportion of part time trainers and staff employed.</p>
060 Master Builders Australia	<p>Continuous improvement or going beyond the minimum standards remains optional for RTOs.</p> <p>RTOs ... [should not be] penalised for not going beyond the minimum standards.</p>

Table 16: Burdens through States and Territories, CRICOS and VSL requirements etc.

Submission	Content
027 Australian Emergency Care Providers	ASQA should not be promoting the idea that an RTO must be CRICOS registered to deliver a first aid course to an overseas student. No CRICOS-registered provider has stand-alone first aid on scope. No specialist provider of first aid training can afford the extremely high fees associated with CRICOS registration.
043 Australian Council for Private Education and Training (ACPET)	States and Territories are likewise adding to the regulatory burden through provider contracts. Those elements that are considered worthwhile and applicable to all providers should be migrated to the NVETR Act with the VSL Act and Rules and various State and Territory requirements limited to program specific matters. Members have also commented on the ‘same but slightly different’ regulatory requirements of the ESOS Act that necessitate repetition of compliance activities.
053 Anonymous	<p>[T]here are significant issues of cross over in the regulation of the VET Sector and adhering to all of these requirements can prove problematic. These include:</p> <ul style="list-style-type: none"> • CRICOS requirements/ Skills First requirements and NVR act requirements: <ul style="list-style-type: none"> ○ Students are required to attend at least 80% of classes (CRICOS), up until the end of delivery of each unit. ○ Class delivery must be specific to a unit (Skills first). ○ Units need to be resulted within 21 days of a unit being assessed and feedback provided to students (SRTO) ○ Students must be given opportunity to re-submit assessments which are not satisfactory. • VET Student Loans requirements. <ul style="list-style-type: none"> ○ Courses must be designed so that there are at least three units of study with census dates spread out over the duration of the course and no earlier than 20% into the unit of study. ○ Course fees connected with the units of study are proportioned evenly across the course duration. ○ Courses are often designed in such a way as to have students build on skills on knowledge over the whole duration of the course. ○ Many of these units can’t be deemed competent until the course is completed. ○ VET student loans requirements are driving course structure, rather than the best way for students to learn. • Retention of Assessments - different requirements between ASQA and HESG.

DATA ISSUES

Table 17: Data reporting requirements and use

Submission	Content
Burden of data collection and reporting	
004 aXcelerate	[W]hy doesn't the USI Agency do the grunt work (on behalf of the education sector) to collect the huge amount of AVETMISS data that flows through to the State Training Authority, then to NCVER, then onto the ABS? Imagine if a student only needed to provide their USI name, date of birth and email address to an RTO without having to complete four pages of an enrolment form? This one change would massively simplify life for an RTO, whether they are a domestic-only provider or a CRICOS/ELICOS provider.
011 Anonymous	[!]t is ridiculous the amount of paperwork needed.
024 National Australian Apprenticeships Association	[M]ost of the 5,000 RTOs are small organisations that are even more vulnerable to changes in funding. This often results in the loss of key personnel which makes consistent regulatory compliance challenging. Small RTOs in particular find the task of compliance complex and opaque with multiple opportunities for failure. When a key compliance staff member moves on these risks are amplified.
026 Australian Council of Trade Unions	The Regulator needs to concentrate on the capability of the graduate against the standards as reflected in training packages, not whether the paperwork produced by providers ‘should’ deliver confidence and sound outcomes.
039 Victoria University	Presenting increased data on student outcomes or pathways could place increased burden on providers.
058 Navitas Limited	In its submission on the Higher Education Red Tape Reduction Action Plan in 2013 Navitas outlined the high administrative burden and inefficient data collection processes for dual sector providers. While there have been some improvements the establishment single data collection process per year through a single national provider database would realise efficiencies of scale and significantly reduce duplication of workload for providers and government.

Submission	Content
059 Community Colleges Australia	<p>The duplication of paperwork makes compliance for the sake of compliance rather than being of value.</p> <p>It would be extremely valuable for RTOs to submit one lot of data that services multiple departments and programs. The constant re-work of reporting of the same information to different bodies at different times can be both onerous and can cause confusion: for instance, financials, fit and proper persons, NCVET data to both State and Commonwealth bodies with different requirements. NSW has just moved to financial year reporting, so is not compatible with the NCVET system for validation without rework.</p> <p>Is the data collected viewed critically by anyone? It appears to have been reduced to a tool of compliance.</p>
Using other programs / systems to track and report data	
021 HealthStar Training	ASQA should regularly and directly survey a sample of students who have completed a qualification from each RTO. Since every student now must have a USI, the student details are available for such a direct survey. This could easily be an electronic survey with today's technology.
032 Logistics Training Council	Greater collaborative use and unpacking of data obtained from USI figures and data.
037 The Australian Hairdressing Council	<p>There should be, through the use of the USI, and linking with the ATO, a way to track the employment outcomes of each graduate.</p> <p>Genuine Industry engagement and where possible industry endorsement of the outcomes through employment of graduates or the use of the training provider for training of staff.</p>
046 Australian Children's Education and Care Quality Authority (ACECQA)	<p>The NVET Act could be designed to respond to each of these scenarios. Improved avenues for collaboration and information exchange between regulators would also assist in addressing fraudulent behaviours.</p> <p>Further, if a cancelled RTO or RTO that has ceased operating fails to transfer student records to ASQA, ASQA and regulatory authorities have been unable to determine the authenticity of a qualification. These issues may be somewhat overcome by better use of the Unique Student Identifier.</p>
056 National Centre for Vocational Education Research	<p>In 2015, the unique student identifier (USI) scheme was introduced to capture nationally recognised training activity undertaken by students. ... There should be greater scrutiny on the data elements supplied as part of the national VET collections that appear on the transcript due to the increased transparency and access of these data.</p> <p>A centralised system gives control and robustness because it is managed independently rather than by RTOs. This approach requires a centralised place to store all student contact details (not just government-funded students). RTOs, regulators and STAs could then log into a centralised system and, depending on their access rights, view reports and access confidentialised data relevant to each.</p>
059 Community Colleges Australia	With the USI system now well in place, ASQA/NCVER could go direct to students to get a more representative view of the value of the training. Other, more efficient and useful methods for seeking employer data could be used.
061 La Trobe University	<p>La Trobe recommends linking the VET Unique Student Identifier (USI) and the Commonwealth Higher Education Student Support Number (CHESSN) to improve the evidence base for study outcomes in both the VET and higher education sectors.</p> <p>La Trobe recommends linking the USI with ATO data to improve knowledge of graduate outcomes for VET students.</p>
Better communication for greater exchange of data and information	
046 Australian Children's Education and Care Quality Authority (ACECQA)	The legislation does currently allow for the exchange of information between regulators. For example, section 205 of the National Vocational Education and Training Regulator Act 2011 (the Act) allows ASQA to share information with another regulator if it is of assistance. Section 210 of the Act allows ASQA to request information, which could be used if another regulator flags something informally.
066 Consumer Action Law Centre	[I]ntroduce policies and procedures that encourage and enable regulators and government departments to work together more closely to improve compliance. This should include appropriate information sharing arrangements.
Better use and publication of data	
016 Australian College of Applied Animal Studies	Ensuring that learners are adequately informed of the consequences of making poor and un-informed choices related to education and training. A VET provider must consult with the Regulator as to how the Training is explained to the learner in a method that can be fully understood. This is paramount to the success of the VET program.
029 Universities Australia	QILT makes available in a convenient and uniform format a range of relevant data on student satisfaction and graduate outcomes. While consumers need to be informed about providers' performance against relevant regulatory benchmarks, further information on providers' performance and graduates' outcomes is necessary to ensure an informed market.
031 Academia Australia Academia International	The best way to empower students, parents etc. in having a stronger voice in the regulation of VET is to publish a list of independently assessed graduation rates by RTO so that they can be fully informed in choosing an RTO and they vote with their feet.
032 Logistics Training Council	Introduction of greater transparency to make it easier to compare RTO products ie duration of delivery, total course costs (e.g marketing material/websites must include delivery time, costs).
043 Australian Council for Private Education and Training (ACPET)	The current review of the national data policies must lead to changes that enable the timely availability, publication and sharing of these outcome data - with prospective students and all jurisdictions and regulators. This would enable ASQA, for example, to more effectively monitor enrolment data and trends and identify the need for regulatory or other action.

Submission	Content
044 SkillsIQ Ltd	<p>Student protections – The Board indicated it was critical to have mechanisms in place to protect students from unconscionable conduct from fee-for-service providers. They indicated the need for information to be readily available to students so they can make informed decisions about the qualification they should be enrolled in and the quality and range of training providers offering this qualification.</p> <p>Board members generally agreed that students, parents and communities needed better access to clear and accurate information about the VET sector including courses, training providers, course enrolment and completion rates, industry profiles and career pathways.</p>
055 J&S Learningwork	Currently My Skills shows completion rates, which is one measure of quality but of course just one measure. If the quality indicator surveys were improved and mandatory reporting was implemented more information on quality could be shown on a site such as My Skills e.g. quality of training and assessment, student support services, graduate outcomes, etc.
056 National Centre for Vocational Education Research	<p>Improve and convert Quality Indicator surveys (Learner and Employer Questionnaires) in the short-term to suitable online platforms. Survey results should be stored centrally and provided to regulators under current registration requirements.</p> <p>We respectfully recommend this review consider the merits of extending the Data Provision Requirements to requiring RTOs to not only collect and send data, but be extended to also require these data to be released publicly at an 'identified' RTO level (unless RTOs are granted an exemption). This would provide, as a default, the release of provider identified data.</p>
Publishing audits	
060 Master Builders Australia	ASQA [should] require RTOs to participate in and publish the results of service quality assessments based on the application of the positive quality framework.

Table 18: Surveys

Submission	Content
Too many surveys and survey questions	
004 aXcelerate	Employer Satisfaction survey but including the NPS and a small number of other quantitative and qualitative questions, not the 50 or so that are currently required.
027 Australian Emergency Care Providers	For first aid students, ASQA's survey questions relating to marketing and sign-up appear very silly. They are not relevant to short fee-for-service training.
032 Logistics Training Council	RTOs have reported onerous numbers of surveys from ASQA to former students, and ASQA is reliant on the RTO to follow up students if the response rate received is low. This creates an additional workload for the RTO.
054 Australian Dental Association	ADA urges ASQA to ensure that it addresses the risk of students experiencing 'survey fatigue'; which has been reported by RTOs. More broadly, the ADA urges ASQA to work in close consultation with RTOs in refining their overall methodology for obtaining student feedback of their educational experience.
056 National Centre for Vocational Education Research	Develop a longer-term data provision strategy, including improvements to survey design, methodology and instruments to integrate the Learner Survey with the National Student Outcomes Survey. This approach could allow other organisations (e.g. STAs, ASQA, RTOs) to include some additional questions on a cost recovery basis. Implementation of any or all of the above suggestions would require endorsement from the appropriate agencies.
057 Anonymous	Many of the current questions on the 'Employer Questionnaire' used for QI returns are not able to be answered by our employers - they simply do not know the answers. Additionally, the "Learner Survey" is close to useless in an [omitted] environment. Unless there is change to these questions, to ensure they are something meaningful, they will continue to be completed only because it's a regulatory requirement, but not provide any actual useful or accurate data to the regulator or the RTO. Many RTOs conduct the QI surveys and their own, so that they can get some useful data from their own surveys. Consideration of a separate survey applicable to both learners and employers (often the RTO itself) in an [omitted] environment may prove worthwhile.
059 Community Colleges Australia	Find new ways of dealing with the annual learner questionnaire and employer survey system. The forms are of little interest to students. Most students have no connection with what they are being asked to do and return rate is often very, very low, especially for those doing FSK courses.
Areas that surveys could focus on	
004 aXcelerate	[T]he NPS [Net Promoter Score] could be adopted as the new VET benchmarking standard for the student or client/employer to rate the RTO. Everyone understands the NPS question (how likely is it that you'll recommend this RTO to a friend or colleague?) and it's supported by empirical research. Competency completions is a must. Competency application in the workplace should be mandatory for those students undertaking traineeships, apprenticeships or other work-based qualifications or non-work-based qualifications that at least incorporate a 'work placement' component.
014 Anonymous	Is the student happy with their training? Did they receive what was sold to them? Jobs as an outcome is not a good indicator. It is one but not THE one.
032 Logistics Training Council	<ul style="list-style-type: none"> • % of past students now in employment • % of past students now in employment in a related industry as a direct result of the course undertaken • % of past students now in further training (or awaiting enrolment in further training) • Student satisfaction levels (ie course met the expectations of why it was studied – e.g personal development)

Submission	Content
	<ul style="list-style-type: none"> Employers or industry approval/support of the training delivery
038 Australian Manufacturing Workers' Union	[A]ny measures of quality in relation to training and assessment must be based on fitness for that purpose, rather than simplistic notions of qualification completion, student or employer satisfaction, or comparisons with OECD statistics for post school qualification attainment.
048 Victorian TAFE Association	The kinds of outcomes that could be included would be those that enable the regulator to gain an understanding of the provider's activities and effectively manage its risk. For example, student outcomes could be measure through (inter alia) student feedback, student retention figures, employment outcomes, and employer/industry feedback on the quality of the graduate.
053 Anonymous	Measuring student outcomes is dependent on knowing what it was that they came to an RTO to get and here are so many different layers to consider: ... Referral rate – who is referring what and why?

Table 19: Concerns with reliance on student completions data as outcomes data

Submission	Content
011 Anonymous	Completing a course should not be the measure of student outcomes.
012 Mrs Lynne McWilliam	[S]ome organisations focus on completion rates, rather than a genuine assessment of competence as expected by the relevant industry.
016 Australian College of Applied Animal Studies	Students of different socio-economic backgrounds, sex and age prepare for vocational training with different outcomes as their aim, so the individual success is not necessarily employment or the completion of the training. For some students, just becoming part of a group, or gaining a basic ability to communicate in a recognised format may be the reason for enrolling in training.
017 Anonymous	Outcomes based is difficult for RTO's working with disadvantaged groups. It may take three or four times longer to achieve an outcome with students with disabilities, refugees or remote Indigenous people. Some sort of weighting system may help so you are not comparing apples and oranges.
018 Anonymous	The student cohort we get tends to comprise people who have difficulties with mental health issues, social issues, lower levels of education, from varied cultural background and so on. Even though some of these people may not gain employment directly as a consequence of their study, they have gained valuable life skills and confidence and an understanding of the requirements of the work place in Australia. These are skills and knowledge areas can be applied generally to life situations.
037 The Australian Hairdressing Council	Measuring the number of students who were successful and those who were not successful. A system that expects success for every student, and only pays upon successful completion is set up to ensure everyone 'succeeds', yet this is not valid. Not everyone can succeed, for many reasons – relevance to interest; relevance to ability; other personal factors in a student's life; maturity of students; motivation of students; etc.
045 Australian Education Union	The AEU is concerned that a narrow focus on the outcomes of vocational education is driven in part by an inability of governments to adequately define what is meant by "quality" in vocational education ...
053 Anonymous	Measuring student outcomes is dependent on knowing what it was that they came to an RTO to get and here are so many different layers to consider: Completion rates (did the student drop out for something related to the student? or was the teaching quality was poor? or were the Training Package requirements over taxing? Or did the student move interstate or get a full time job? Or the course wasn't what they thought it would be? So many factors – how to analyse?
058 Navitas Limited	Quantitative metrics are largely ineffectual when considered in isolation or without consideration of qualitative factors, such as the effectiveness of an RTO's management and governance structures. Many of the current and proposed quantitative metrics are easily manipulated and do not measure quality of outcomes.
063 Victorian Automobile Chamber of Commerce	VACC again argues that there must be greater industry involvement in order to have a truly outcomes-based approach to regulation where quality can be measured and reported.

IMPROVING TEACHING QUALITY AND ASSESSMENT

Table 20: Professional development

Submission	Content
014 Anonymous	Employers should be made to support quality, professional development that leads to at least Diploma level adult education qualifications for their staff within 12 months of commencing duties. Employer funded Professional Development for trainer/assessors.
025 Independent Education Union of Australia - Qld & NT Branch	[G]reater engagement of VET practitioners is the only viable means of ensuring the quality of educational experiences offered to VET students. It is not that VET practitioners are not capable of delivering quality learning experiences, but rather that the nature of their employment is not conducive to professional practice. Our union also supports a program of voluntary registration of VET practitioners, using schemata similar to the VET Practitioner Capability Framework and recently developed Queensland Professional Standards for VET Practitioners. Development and application of such a scheme has the potential to encourage employers to provide secure,

Submission	Content
	professional environments for their trainers and assessors, which would, in turn, increase quality of teaching and learning.
047 Isolated Children's Parents' Association of Australia, ICPA (Aust)	VET teachers require access to regular upskilling opportunities to ensure their skills and knowledge remain relevant to emerging trends and demands of business/industry.
048 Victorian TAFE Association	Teaching quality should be developed, which would enable teaching quality to be gauged and compared. Currently, there is no national benchmark for teaching practice and quality. [T]he Victorian Curriculum and Assessment Authority provides professional development support during the roll-out of new or reformed curriculum, while in the higher education sector, funding models support a greater balance for academics to undertake research, educate, benchmark and support their communities of practice. The Victorian TAFE Association considers that similar initiatives could be framed for and adopted in the VET sector.
049 Electrical Trades Union of Australia	Ensure teaching staff in private VET providers are well resourced and equipped to enhance quality learning.
051 Federation University Australia	Standards for teaching quality could be developed and then measured. There is no national benchmark for teaching practice therefore no measure of poor or excellent teaching practice. It is all subjective. A key area for future regulation is teacher quality and the qualifications and training of VET teachers. The Cert IV TAE is a widely derided qualification and rightly so. Recent research in Victoria and nationally has shown that teachers with higher level VET teaching qualifications such as the Diploma of VET or a degree in adult or vocational education make far better teachers. The Diploma level must be adopted as a base line teaching qualification and the Cert IV discarded. Beyond this, there should be a national commitment to the progression of VET teachers to a vocational teaching degree, delivered by a University, in order to bring VET teachers to the same level of skills and knowledge as school teachers. There is a role for ASQA in moving into the area of the better regulation of VET teaching quality and qualifications.
055 J&S Learningwork	CPD for trainers – implement a nationally regulated system where trainers have to gain a certain number of CPD points. Also raise the bar for trainer/assessors in terms of qualifications, Certificate IV in Training and Assessment is too low and this impact on the quality of training and assessment.

Table 21: Short courses

Submission	Content
006 Anonymous	Adequate class scheduling [should be under the closest scrutiny by the regulator] to give students the opportunity to become competent: some RTO's schedule units with less than a month worth of activity from start to completion: unfair on students.
032 Logistics Training Council	The duration period for the training delivery of certain qualifications should be placed under further scrutiny to prevent the inappropriate delivery of qualifications in unrealistic timeframes. Duration of training should be appropriate for the qualification being delivered. Possibility of mandating/regulating course durations to improve perceived quality issues due to wide variances across training providers.
041 Real Estate Institute of Australia	There is a feeling that with a focus on compliance audits that processes are created to meet the compliance requirements but the delivery and assessment of training are not evaluated. Would be preferable to follow the system in place in WA where a list of learning resources and the amount of time a student needs to commit to this is identified. This then the RTO to provide evidence to the auditor that the amount of training required for each student has been identified. Further, one can see how training has been adjusted in response to feedback and how the student has been informed.

Table 22: Standardised assessment/capstone

Submission	Content
031 Academia Australia Academia International	[I]f every student needs to undertake an independent capstone assessment, then this becomes the singular focus for that VET provider to ensure they, at a minimum can graduate, their students. To ensure that the student will graduate, the RTO will need to screen, consult and guide prospective students towards courses that are in reach of the students' capability, develop Language, Literacy and Numeracy support to increase the students' chance of completion and so on. Quality can only be effectively measured through Independent capstone assessments carried out by Training and Assessment RTOs in conjunction with Industry and or Regulator representation where required. Models from leading VET countries such as Germany need to be reviewed and learning take from these. Independently assessed hence verified completions can then be published for prospective student applicants.
049 Electrical Trades Union of Australia	Capstone testing has proven to be a successful way to maintain quality electrical graduates. The ETU encourages other sectors to consider a similar test model.

Table 23: Increased focus on industry engagement

Submission	Content
024 National Australian Apprenticeships Association	The Australian Industry and Skills Committee could be tasked with determining how best to regulate the trainers for each industry. Have the industry determine what currency means for trainers for different qualifications and have trainers “mapped” centrally rather than by multiple providers.
026 Australian Council of Trade Unions	[T]he VET regulator must address ... [T]he need for a direct and demanding role for the industrial parties in driving higher levels of engagement in quality.
038 Australian Manufacturing Workers’ Union	The industrial parties must be informed and demanding participants in the system. Employers and trade unions have a long and impressive track record of collaborating effectively over skills, training and apprenticeship matters, which unsurprisingly are central to the success of their industries.
042 Industry Reference Committees of SkillsIQ LTD	There is a need for greater engagement between RTOs and industry to ensure they are delivering the qualifications required by industry and that students are work-ready upon completion of their training.
043 Australian Council for Private Education and Training (ACPET)	Peak bodies, like ACPET, can also play a role in educating and developing providers and the sector to lift performance and student outcomes.
049 Electrical Trades Union of Australia	Increase collaborative engagement between VET providers, employers and industry groups to ensure apprentices are trained appropriately.
051 Federation University Australia	Industry provides input into the development of Training Packages however it is often removed from the regulation of training. There is ongoing debate and confusion amongst employers around the amount of training, assessment requirements, teaching expertise, content and currency of training and confirmation of competency. There is room for improvement around employer/industry expectations and their lack of understanding around the obligations and reporting requirements of RTOs.
053 Anonymous	it may be possible for ASQA to delegate more of its functions/powers to larger organisations to enable a more strategic approach to ensuring quality outcomes rather than await an ASQA audit to ‘prove’ that standards are being met. For example, organisations using government funding already measure and report a raft of measures to funding bodies – how can these be incorporated into a regulator body’s view of organisations rather than repeating the reviews or vice versa?
054 Australian Dental Association	The ADA also supports s157(4) NVETR Act which requires ASQA to apply the Risk Assessment Framework (RAF) when performing its functions (s157(4)) and making the RAF publicly available document. ADA urges ASQA to involve RTOs, students, industry and other interested stakeholders to participate in future reviews of the Risk Assessment Framework. ASQA should consult with employer groups and professional bodies to obtain feedback on what would constitute quality graduates from VET training; as well as explore avenues to feedback employer view of graduates’ performance to RTOs and ASQA.
060 Master Builders Australia	That ASQA work with industry to identify and implement a positive quality framework which may be applied to the training services provided by RTOs.
063 Victorian Automobile Chamber of Commerce	ASQA should focus more on the relationship between VET and industry to ensure quality student outcomes. Currently, many VET providers have VET trainers with limited industry currency delivering outdated learning practices that do not meet current industry requirements. This is also seen in VET assessment practices due to insufficient industry involvement in validating assessment outcomes. Indeed, assessment is continually pushed back on to the employer, driven by the need to save costs by reducing the amount of volume of learning allocated to a student under apprenticeship/traineeship conditions. [I]ndustry groups should also have a greater role in assisting in validating an RTO’s ability to deliver a qualification that meets industry standards. This can be done via the auditing process by confirming whether assessment has been properly carried out and whether relevant training equipment is available. One proposal is to have industry validate student outcomes. [I]ndustry continues to feel shunned by ASQA who counter argue that employers can switch RTOs if they are unsatisfied with the quality delivered by their RTO. This notion that employers can switch RTOs is a myth as it is based on an assumption that there is an element of choice in the RTO market. VACC contends that such a choice does not exist as poor quality in training and assessment standards is prevalent across the whole RTO sector.
064 United Voice	If ASQA works with ACECQA, a preventative as opposed to punitive regulatory approach could be developed to ensure high quality training for a high quality ECEC workforce and system.

INTERACTIONS WITH STATES AND TERRITORIES

Table 24: State and territory funding arrangements / compliance inconsistencies

Submission	Content
001 Anonymous	NSW and Qld departments of roads refuse to recognise other State issued VET qualifications eg. traffic control. Other State Government departments have added a third tier of VET regulation by insisting that only their approved training providers can issue VET credentials ...

Submission	Content
004 aXcelerate	The most transformative change that could happen to the VET sector in Australia is to have a single compliance framework with all states adopting that one framework. This would reduce the cost of compliance for ALL RTOs but particularly those that operate in multiple states of Australia.
006 Anonymous	[Q]uite often get confused what our state government audits vs ASQA achieve when it seems one is focussed on out doing the other, maybe too many regulators.
014 Anonymous	It [the NVETR Act] appears to overlap Queensland State legislation in a number of areas. Perhaps it's time for the Feds to take over VET? The inconsistencies between states makes a mockery of "National" qualifications. How can the qualifications all be the same when they are valued differently state to state. Operating as a national RTO must be a nightmare..
039 Victoria University	There is ... audit duplication with SRTOs2015, VET Student Loans and Victorian Skills First Funding Contract.
040 Ms Nerida Lithgow	Within NSW the Smart and Skilled contracts create another administrative challenge (and associated administrative costs) for not improvement in student experience or ROI for government agencies.
042 Industry Reference Committees of SkillsIQ LTD	Different state funding arrangements have compliance requirements which go beyond the 2015 Standards for Registered Training Organisations; and [s]ome units of competency and qualifications also have other government departments who issue licences based on outcomes. The involvement of additional government departments usually creates additional compliance requirements and in some cases (for example, in construction) these additional requirements differ in each state and territory. This overlay of compliance requirements causes confusion for students and industry and limits the portability of skills across jurisdictions.
048 Victorian TAFE Association	[D]ifferences exist with identification requirements: a Medicare Card is sufficient to obtain a Unique Student Identifier, but for the purposes of Skills First eligibility in Victoria one must use a Medicare Card and Drivers Licence, while for VET Student Loans, one is required to produce an Australian Passport or Birth certificate of student and parents and grandparents or a Citizenship confirmation certificate. These kinds of inconsistencies are costly and create uncertainty. Such inconsistencies create transition and funding problems due to differences between state and Commonwealth legislative requirements for trainees, apprentices and VET in Schools students.
051 Federation University Australia	<p>There is an unfair difference between other regulator expectations and standards e.g. VRQA and ASQA making it unequal playing field. Communication from ASQA to individual RTO questions and requests for support or advice could be improved and be more timely.</p> <p>In Victoria Federation University is caught between ASQA, the Higher Education and Skills group regulation of the State Government and the VRQA. Furthermore, as a dual sector University, we also have to respond to TEQSA. More effort could be made to clarify and simplify the jurisdictions of each body and ease the crushing regulatory and compliance burden experienced by dual sector Universities. RTOs are often caught in the middle trying to do the best with an unclear situation. The issues are different from state to state and sector to sector. The administrative burden and reporting requirements are a distraction from enhancing quality teaching. The time, energy, cost spent on reporting to multiple overlapping regulatory bodies could be better invested in improving teaching quality, resources etc.</p>
053 Anonymous	State government funding and VET Student Loans requirements affect the amount of delivery hours offered for a unit. State government funding sets hourly rates of funding which changes for different courses. VET student loans dictates the way units are distributed across the course duration.
057 Anonymous	<p>There are clear inconsistencies between the state based legislation related to funding within RTOs, and the NVR Standards. Some states want higher levels of reporting, all audit independently, many requirements differ between states, which makes life very difficult when an RTO trades across borders. We have many members who face this problem on a daily basis.</p> <p>Having a national system with nationally similar supporting structures (funding etc) would make the whole thing much easier and cost effective for everyone. One of our members who operates across Australia stated: We constantly struggle with trying to fit the square peg in the round hole so to speak and the time spent managing each state and territory's requirements and interpreting state contracts/fee policies etc is extensive. In most states, there are multiple policy documents that we must interpret and adhere to and often there is minimal timely communication to note a change or update to a policy version. We have specialist trained administration staff dedicated to each state to ensure that we can meet these requirements.</p>
061 La Trobe University	La Trobe recommends that the <i>long-term aim</i> of tertiary education reform in Australia should include moves towards a better integrated tertiary education sector.
063 Victorian Automobile Chamber of Commerce	[T]here is inconsistency around the responsibilities over VET between ASQA and state bodies, thus resulting in significant confusion among industry stakeholders.
065 TAFE SA	There should be a single regulator for the VET Sector. E.g. based on the current NVETR Act VET Student Loans regulation should sit within ASQA rather than the Department of Education and Training.

STUDENT PROTECTIONS

Table 25: ASQA's role in student protections

Submission	Content
008 Mr Victor Bennett	ASQA need to follow up on student complaints about RTOs and if an RTO closes provide a outcome for student that have been fee payed students.
036 Commonwealth Ombudsman	<p>Students have expressed concern at:</p> <ul style="list-style-type: none"> • the complexity of the tuition assurance arrangement process • the lack of clear, consistent and accurate information regarding tuition assurance • delays in receiving information from tuition assurance operators • the record keeping practices of RTOs • the assessment practices of RTOs, particularly unmarked assessment items and the failure to record assessment outcomes • delays in obtaining student records from the Australian Skills Quality Authority (ASQA) • delays in receiving offers from tuition assurance operators • the lack of transparency around tuition assurance placements • the apparent lack of oversight of tuition assurance operators • an apparent lack of recourse for students who are dissatisfied with their tuition assurance offer.
038 Australian Manufacturing Workers' Union	Student protections must be front of mind in the establishment of regulatory responses to the developments that have been experienced in the training system.
053 Anonymous	RTOs are merely informed that a complaint has been made [to ASQA] and details that would enable an RTO to make further enquiries of its own operations are not able to be released. Knowing that a complaint has been made but not the specifics is almost useless knowledge for RTOS and Holmesglen suggests that enforcement powers may not need to be improved if other parts of the legislation are improved that enable ASQA to share specifics of complaints with RTOS so that investigations can occur and improvements made if required. Using complaints such as the above to create a 'dossier' on an organisation is not useful to the efforts of continuous improvement within an RTO, and may leave a somewhat negative feel about RTO's relationships with ASQA.
054 Australian Dental Association	ASQA should be empowered to investigate and sanction those RTOs that engage in unscrupulous marketing to attract students. The ADA is aware of instances where, some RTOs, particularly those operating on a for-profit model, have deliberately targeted disadvantaged people luring their participation in courses by offering free tablets or laptops without providing the quality teaching students expect in return. ASQA should promptly investigate such activities in response to complaints raised.
063 Victorian Automobile Chamber of Commerce	ASQA should also scrutinise RTOs that deliver inaccurate and misleading information to VET consumers regarding the employment outcomes of the course, as well as the costs and incentives associated with undertaking the course.
066 Consumer Action Law Centre	<p>Students should not be penalised for the entire cost of a course if an enrolment is cancelled. This could be achieved by:</p> <ol style="list-style-type: none"> a. Introduction of a census date at least twenty percent of the way through a course b. Introduction of unitary pricing to charge students per unit of study c. Introduction of a "cancelation fee" payable when a student cancels an enrolment. This cancellation fee should total a maximum of 5% of unpaid course costs. <p>We recommend that:</p> <ol style="list-style-type: none"> a. Marketing standards be strengthened and clarified, including the introduction of a general prohibition against misleading or deceptive conduct which reflects the ACL requirements; b. ASQA makes the scrutinising of private VET providers marketing and advertising a high regulatory priority; c. ASQA be given jurisdiction to investigate misleading and deceptive conduct by private VET providers and brokers, without the need to first refer these matters to the ACCC; d. Providers be explicitly prohibited from guaranteeing: <ol style="list-style-type: none"> i. an assessment outcome in their marketing such as '100% pass rates guarantee'; ii. the completion of a qualification or unit in unrealistically short time frames; iii. employment or immigration outcomes from training; and iv. minimum salaries <p>Prohibit providers from paying commissions to their employees or contracted staff which is linked to VET enrolments.</p> <p>Students should be given independent course advice prior to enrolment, and students be independently assessed for suitability.</p>

Table 26: Establishment of a VET ombudsman

Submission	Content
055 J&S Learningwork	ASQA should attend to all complaints. My experience of my complaint being attended to was poor or was not responded to. Consider an independent body for domestic students similar to OSO for international students.
066 Consumer Action Law Centre	Establish a national VET Student Ombudsman to resolve disputes between students and VET providers. This could build on the VET Student Loans Ombudsman, a body that only has jurisdiction over training providers that are part of the VET Student Loans program.

REGISTRATION REQUIREMENTS

Table 27: Initial registration requirements

Submission	Content
055 J&S Learningwork	Consider a probationary period for new RTOs.

Table 28: Period of registration

Submission	Content
039 Victoria University	The current auditing regime is under resourced and the change from 5 to 7 years for reregistration audits does not inspire confidence in identifying poor performing providers. confidence in identifying poor performing providers.
054 Australian Dental Association	The ADA supports ASQA's ability to register or renew RTOs registration for a period of up to seven years (s17(5) of the National Vocational Education and Training Regulator Act 2011 – NVETR Act). This provides sufficient certainty of registration whereby the risk-based approach ensures that RTOs continue to meet their quality and registration requirements without being overly burdened by having to regularly renew their registration.

OTHER AREAS

Table 29: Commissioner recruitment

Submission	Content
054 Australian Dental Association	In terms of potential conflicts of interest in relation to having worked for an RTO, s162(3) NVETR Act states that those who were an executive officer of RTO in the last two years before their appointment as a commissioner to ASQA are ineligible for that position. While direct RTO experience would be valuable in providing guidance to ASQA's operations, the ADA suggests this time limit be four years.

Table 30: International good case practices

Submission	Content
031 Academia Australia Academia International	Lessons need to be gained from world leaders in Quality VET delivery such as Germany and other countries that have implemented independent industry standardized capstone assessments. With such, the argument of volume of learning, inconsistencies in outcomes, on line versus face to face are put to rest once and for all. Detractors of this position will argue complexities of implementing such a solution. This is not difficult as infrastructure already exists.
040 Ms Nerida Lithgow	We need to look to the UK system for quality http://www.qaa.ac.uk/en with a strong voice for students (and community) to provide feedback.

Table 31: Size of the sector

Submission	Content
056 National Centre for Vocational Education Research	ASQA has a far greater number of registered providers to regulate compared with TEQSA in higher education (roughly 30 times as many), with both regulators serving the interests of the same size labour market and national geography. NCVET research, VET provider market structures: history, growth and change (2016) found the top 100 VET providers (in terms of size) represent around 50% of the total VET student population. At the other end of the scale, about 40% (almost 2000) of all registered training providers are small, with 100 or fewer students. In Uptake and utility of VET qualifications (2016), TVA data revealed that enrolments in VET qualifications are heavily concentrated in relatively few qualifications, with 85% of enrolments spread across 200 qualifications and the remaining 15% spread across 1444 qualifications. This number of VET providers and skewed dispersion in size and activity appears a particular challenge in risk-based regulation of the sector. These ultimately are important questions of national VET policy, not the Act itself nor ASQA.

Table 32: VET in schools

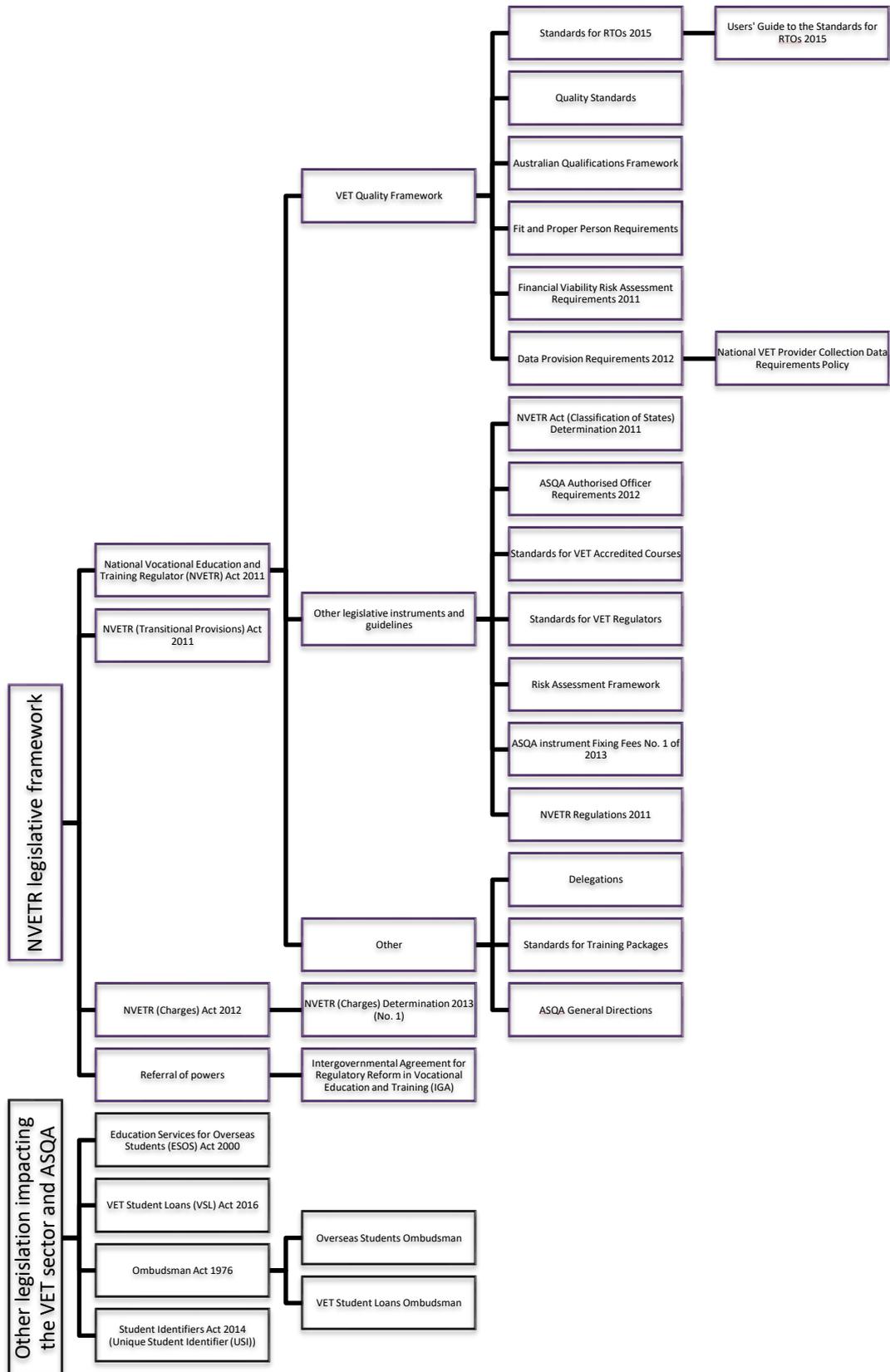
Submission	Content
011 Anonymous	<p>Stronger connections between RTO's and VET Coordinators - meaningful and rich professional relationships that align with purposeful outcomes applicable to excellent communications, adding end of year results to meet state dates re end of year 12 resulting, MOU agreements that align with school outcomes, not just that of the RTO and constant support regarding quality resources available (learning guides), meeting timelines according to school commitments - not just that of RTO commitments and less paperwork, it is ridiculous the amount of paperwork needed. More so than teacher requirements.</p> <p>Understanding different state/territory school demands and capabilities and requirements to complete all courses that align with end of year resulting for yr 11/12 students. Working with VET Coordinators to ensure that course outcomes are practical in the sense of time constraints that burden school timetables, in addition to being doable.</p> <p>VET is not considered a quality training product due to the large ramifications associated with legislation changing at a federal level, without communications at a school level. Impacting greatly on quality outcomes for VETiS.</p> <p>VET Coordinators are not involved in big decision making, which needs to be addressed as it is our role to ensure that VET works in schools in so many ways - quality trainers, compliance, meeting industry and school outcomes, meeting parent demands. A stronger voice is needed by Coordinators so that they can make a difference to legislative changes that do impact outcomes for students at a school, state and national level.</p>

Appendix E - Nine principles of responsive regulation theory

The following is a simple reformulation of responsive regulation theory as nine principles from John Braithwaite "The Essence of Responsive Regulation" UBC Law Review 44 no, 3 (2011): 475-520.

1. Think in context; don't impose a preconceived theory.
2. Listen actively; structure dialogue that:
 - gives voice to stakeholders
 - settles agreed outcomes and how to monitor them
 - builds commitment by helping actors find their own motivation to improve
 - communicates firm resolve to stick with a problem until it is fixed.
3. Engage those who resist with fairness; show them respect by construing their resistance as an opportunity to learn how to improve regulatory design.
4. Praise those who show commitment:
 - support their innovation
 - nurture motivation to continuously improve
 - help leaders pull laggards up through new ceilings of excellence.
5. Signal that you prefer to achieve outcomes by support and education to build capacity.
6. Signal, but do not threaten, a range of sanctions to which you can escalate; signal that the ultimate sanctions are formidable and are used when necessary, though only as a last resort.
7. Network pyramidal governance by engaging wider networks of partners as you move up a pyramid.
8. Elicit active responsibility (responsibility for making outcomes better in the future), resorting to passive responsibility (holding actors responsible for past actions) when active responsibility fails.
9. Learn; evaluate how well and at what cost outcomes have been achieved; communicate lessons learned.

Appendix F - VET legislative environment diagram



Appendix G - Standards for Registered Training Organisations (RTOs) 2015

The following is an extract from the Standards for Registered Training Organisations (RTOs) 2015. Table numbers in this appendix are as in the original Standards.

Standard 1. The RTO's training and assessment strategies and practices are responsive to industry and learner needs and meet the requirements of training packages and VET accredited courses.

1.1. The RTO's training and assessment strategies and practices, including the amount of training they provide, are consistent with the requirements of training packages and VET accredited courses and enable each learner to meet the requirements for each unit of competency or module in which they are enrolled.

1.2. For the purposes of Clause 1.1, the RTO determines the amount of training they provide to each learner with regard to:

- a) the existing skills, knowledge and the experience of the learner;
- b) the mode of delivery; and
- c) where a full qualification is not being delivered, the number of units and/or modules being delivered as a proportion of the full qualification.

1.3. The RTO has, for all of its scope of registration, and consistent with its training and assessment strategies, sufficient:

- a) trainers and assessors to deliver the training and assessment;
- b) educational and support services to meet the needs of the learner cohort/s undertaking the training and assessment;
- c) learning resources to enable learners to meet the requirements for each unit of competency, and which are accessible to the learner regardless of location or mode of delivery; and
- d) facilities, whether physical or virtual, and equipment to accommodate and support the number of learners undertaking the training and assessment.

1.4. The RTO meets all requirements specified in the relevant training package or VET accredited course.

Industry relevance

1.5. The RTO's training and assessment practices are relevant to the needs of industry and informed by industry engagement.

1.6. The RTO implements a range of strategies for industry engagement and systematically uses the outcome of that industry engagement to ensure the industry relevance of:

- a) its training and assessment strategies, practices and resources; and
- b) the current industry skills of its trainers and assessors.

Learner support

1.7. The RTO determines the support needs of individual learners and provides access to the educational and support services necessary for the individual learner to meet the requirements of the training product as specified in training packages or VET accredited courses.

Assessment

1.8. The RTO implements an assessment system that ensures that assessment (including recognition of prior learning):

- a) complies with the assessment requirements of the relevant training package or VET accredited course; and
- b) is conducted in accordance with the Principles of Assessment contained in Table 1.8-1 and the Rules of Evidence contained in Table 1.8-2.

Table 1.8-1: Principles of Assessment

Fairness	The individual learner's needs are considered in the assessment process. Where appropriate, reasonable adjustments are applied by the RTO to take into account the individual learner's needs. The RTO informs the learner about the assessment process, and provides the learner with the opportunity to challenge the result of the assessment and be reassessed if necessary.
Flexibility	Assessment is flexible to the individual learner by: <ul style="list-style-type: none">• reflecting the learner's needs;• assessing competencies held by the learner no matter how or where they have been acquired; and• drawing from a range of assessment methods and using those that are appropriate to the context, the unit of competency and associated assessment requirements, and the individual.
Validity	Any assessment decision of the RTO is justified, based on the evidence of performance of the individual learner. Validity requires: <ul style="list-style-type: none">• assessment against the unit/s of competency and the associated assessment requirements covers the broad range of skills and knowledge that are essential to competent performance;• assessment of knowledge and skills is integrated with their practical application;• assessment to be based on evidence that demonstrates that a learner could demonstrate these skills and knowledge in other similar situations; and• judgement of competence is based on evidence of learner performance that is aligned to the unit/s of competency and associated assessment requirements.
Reliability	Evidence presented for assessment is consistently interpreted and assessment results are comparable irrespective of the assessor conducting the assessment.

Table 1.8-2: Rules of Evidence

Validity	The assessor is assured that the learner has the skills, knowledge and attributes as described in the module or unit of competency and associated assessment requirements.
Sufficiency	The assessor is assured that the quality, quantity and relevance of the assessment evidence enables a judgement to be made of a learner's competency.
Authenticity	The assessor is assured that the evidence presented for assessment is the learner's own work.
Currency	The assessor is assured that the assessment evidence demonstrates current competency. This requires the assessment evidence to be from the present or the very recent past.

1.9. The RTO implements a plan for ongoing systematic validation of assessment practices and judgements that includes for each training product on the RTO's scope of registration:

- a) when assessment validation will occur;
- b) which training products will be the focus of the validation;
- c) who will lead and participate in validation activities; and
- d) how the outcomes of these activities will be documented and acted upon.

1.10. For the purposes of Clause 1.9, each training product is validated at least once every five years, with at least 50% of products validated within the first three years of each five year cycle, taking into account the relative risks of all of the training products on the RTO's scope of registration, including those risks identified by the VET Regulator.

1.11. For the purposes of Clause 1.9, systematic validation of an RTO's assessment practices and judgements is undertaken by one or more persons who are not directly involved in the particular instance of delivery and assessment of the training product being validated, and who collectively have:

- a) on or prior to 31 March 2019:
 - (i) vocational competencies and current industry skills relevant to the assessment being validated;
 - (ii) current knowledge and skills in vocational teaching and learning; and
 - (iii) the training and assessment credential specified in Item 1, or Item 2, or Item 4, or Item 5 of Schedule 1.
- b) on or after 1 April 2019:
 - (i) vocational competencies and current industry skills relevant to the assessment being validated;
 - (ii) current knowledge and skills in vocational teaching and learning; and
 - (iii) the training and assessment credential specified in Item 2 or Item 5 of Schedule 1.

Industry experts may be involved in validation to ensure there is the combination of expertise set out in a) or b) above.

1.12. The RTO offers recognition of prior learning to individual learners.

Trainers and assessors

1.13. In addition to the requirements specified in Clause 1.14 and Clause 1.15, the RTO's training and assessment is delivered only by persons who have:

- a) vocational competencies at least to the level being delivered and assessed;
- b) current industry skills directly relevant to the training and assessment being provided; and
- c) current knowledge and skills in vocational training and learning that informs their training and assessment.

Industry experts may also be involved in the assessment judgement, working alongside the trainer and/or assessor to conduct the assessment.

1.14. The RTO's training and assessment:

- a) if delivered on or prior to 31 March 2019, is delivered only by persons who have the training and assessment credential specified in Item 1 or Item 2 or Item 3 of Schedule 1.
- b) if delivered on or after 1 April 2019, is delivered only by persons who have the training and assessment credential specified in Item 2 or Item 3 of Schedule 1.

1.15. Where a person conducts assessments only, the RTO ensures that:

- a) on or prior to 31 March 2019, the person has the training and assessment credential specified in Item 1, or Item 2, or Item 3, or Item 4, or Item 5 of Schedule 1; or
- b) on or after 1 April 2019, the person has the training and assessment credential specified in Item 2, or Item 3, or Item 5 of Schedule 1.

1.16. The RTO ensures that all trainers and assessors undertake professional development in the fields of the knowledge and practice of vocational training, learning and assessment including competency based training and assessment.

Individuals working under the supervision of a trainer

1.17. Where the RTO, in delivering training and assessment, engages an individual who is not a trainer or assessor, the individual works under the supervision of a trainer and does not determine assessment outcomes.

1.18. The RTO ensures that any individual working under the supervision of a trainer under Clause 1.17:

- a) holds the training and assessment credential specified in Item 6 of Schedule 1.
- b) has vocational competencies at least to the level being delivered and assessed; and
- c) has current industry skills directly relevant to the training and assessment being provided.

1.19. Where the RTO engages an individual under Clause 1.17, it ensures that the training and assessment complies with Standard 1.

1.20. Without limiting Clauses 1.17 - 1.19, the RTO:

- a) determines and puts in place:
 - (i) the level of the supervision required; and
 - (ii) any requirements, conditions or restrictions considered necessary on the individual's involvement in the provision of training and collection of assessment evidence; and
- b) ensures that trainers providing supervision monitor and are accountable for all training provision and collection of assessment evidence by the individual under their supervision.

Delivery of the training and assessment qualifications for trainers and assessors

1.21. Deleted. *[as written in the Standards]*

1.22. To deliver any AQF qualification or skill set from the Training and Education Training Package (or its successor) the RTO must ensure all trainers and assessors delivering the training and assessment hold the training and assessment qualification at least to the level being delivered.

1.23. To deliver the training and assessment credential specified in Item 1 or Item 2 of Schedule 1, or any assessor skill set from the Training and Education Training Package (or its successor), the RTO must ensure all trainers and assessors delivering the training and assessment:

- a) hold the training and assessment credential specified in Item 7 of Schedule 1; or
- b) work under the supervision of a trainer that meets the requirement set out in a) above.

1.24. The RTO must ensure that any person working under supervision for the purposes of Standard 1.23 b):

- a) does not determine assessment outcomes; and
- b) holds the following:
 - (i) on or prior to 31 March 2019, the training and assessment credential specified in Item 1 or Item 2 of Schedule 1; or
 - (ii) on or after 1 April 2019, the training and assessment credential specified in Item 2 of Schedule 1.

Independent validation of training and assessment qualifications

1.25. To deliver any AQF qualification or assessor skill set from the Training and Education Training Package (or its successor), the RTO must have undergone an independent validation of its assessment system, tools, processes and outcomes in accordance with the requirements contained in Schedule 2 (and the definitions of independent validation and validation).

Transition of training products

1.26. Subject to Clause 1.27 and unless otherwise approved by the VET Regulator, the RTO ensures that:

- a) where a training product on its scope of registration is superseded, all learners' training and assessment is completed and the relevant AQF certification documentation is issued or learners are transferred into its replacement, within a period of one year from the date the replacement training product was released on the National Register;
- b) where an AQF qualification is no longer current and has not been superseded, all learners' training and assessment is completed and the relevant AQF certification documentation issued within a period of two years from the date the AQF qualification was removed or deleted from the National Register;
- c) where a skill set, unit of competency, accredited short course or module is no longer current and has not been superseded, all learners' training and assessment is completed and the relevant AQF certification documentation issued within a period of one year from the date the skill set, unit of competency, accredited short course or module was removed or deleted from the National Register; and
- d) a new learner does not commence training and assessment in a training product that has been removed or deleted from the National Register.

1.27. The requirements specified in Clause 1.26 (a) do not apply where a training package requires the delivery of a superseded unit of competency.

Standard 2. The operations of the RTO are quality assured.

2.1. The RTO ensures it complies with these Standards at all times, including where services are being delivered on its behalf. This applies to all operations of an RTO within its scope of registration.

2.2. The RTO:

- a) systematically monitors the RTO's training and assessment strategies and practices to ensure ongoing compliance with Standard 1; and
- b) systematically evaluates and uses the outcomes of the evaluations to continually improve the RTO's training and assessment strategies and practices. Evaluation information includes but is not limited to quality/performance indicator data collected under Clause 7.5, validation outcomes, client, trainer and assessor feedback and complaints and appeals.

2.3. The RTO ensures that where services are provided on its behalf by a third party the provision of those services is the subject of a written agreement.

2.4. The RTO has sufficient strategies and resources to systematically monitor any services delivered on its behalf, and uses these to ensure that the services delivered comply with these Standards at all times.

2.5. *[intentionally left blank, as written in the Standards]*

Standard 3. The RTO issues, maintains and accepts AQF certification documentation in accordance with these Standards and provides access to learner records.

3.1. The RTO issues AQF certification documentation only to a learner whom it has assessed as meeting the requirements of the training product as specified in the relevant training package or VET accredited course.

3.2. All AQF certification documentation issued by an RTO meets the requirements of Schedule 5.

3.3. AQF certification documentation is issued to a learner within 30 calendar days of the learner being assessed as meeting the requirements of the training product if the training program in which the learner is enrolled is complete, and providing all agreed fees the learner owes to the RTO have been paid.

3.4. Records of learner AQF certification documentation are maintained by the RTO in accordance with the requirements of Schedule 5 and are accessible to current and past learners.

3.5. The RTO accepts and provides credit to learners for units of competency and/or modules (unless licensing or regulatory requirements prevent this) where these are evidenced by:

- a) AQF certification documentation issued by any other RTO or AQF authorised issuing organisation; or
- b) authenticated VET transcripts issued by the Registrar.

3.6. The RTO meets the requirements of the Student Identifier scheme, including:

- a) verifying with the Registrar, a Student Identifier provided to it by an individual before using that Student Identifier for any purpose;
- b) ensuring that it will not issue AQF certification documentation to an individual without being in receipt of a verified Student Identifier for that individual, unless an exemption applies under the Student Identifiers Act 2014;
- c) ensuring that where an exemption described in Clause 3.6 (b) applies, it will inform the student prior to either the completion of the enrolment or commencement of training and assessment, whichever occurs first, that the results of the training will not be accessible through the Commonwealth and will not appear on any authenticated VET transcript prepared by the Registrar; and
- d) ensuring the security of Student Identifiers and all related documentation under its control, including information stored in its student management systems.

Standard 4. Accurate and accessible information about an RTO, its services and performance is available to inform prospective and current learners and clients.

4.1. Information, whether disseminated directly by the RTO or on its behalf, is both accurate and factual, and:

- a) accurately represents the services it provides and the training products on its scope of registration;
- b) includes its RTO Code;
- c) refers to another person or organisation in its marketing material only if the consent of that person or organisation has been obtained;
- d) uses the NRT Logo only in accordance with the conditions of use specified in Schedule 4;
- e) makes clear where a third party is recruiting prospective learners for the RTO on its behalf;
- f) distinguishes where it is delivering training and assessment on behalf of another RTO or where training and assessment is being delivered on its behalf by a third party;
- g) distinguishes between nationally recognised training and assessment leading to the issuance of AQF certification documentation from any other training or assessment delivered by the RTO;
- h) includes the code and title of any training product, as published on the National Register, referred to in that information;
- i) only advertises or markets a non-current training product while it remains on the RTO's scope of registration;
- j) only advertises or markets that a training product it delivers will enable learners to obtain a licensed or regulated outcome where this has been confirmed by the industry regulator in the jurisdiction in which it is being advertised;
- k) includes details about any VET FEE-HELP, government funded subsidy or other financial support arrangements associated with the RTO's provision of training and assessment; and
- l) does not guarantee that:
 - (i) a learner will successfully complete a training product on its scope of registration; or
 - (ii) a training product can be completed in a manner which does not meet the requirements of Clause 1.1 and 1.2; or
 - (iii) a learner will obtain a particular employment outcome where this is outside the control of the RTO.

Standard 5. Each learner is properly informed and protected.

5.1. Prior to enrolment or the commencement of training and assessment, whichever comes first, the RTO provides advice to the prospective learner about the training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies.

5.2. Prior to enrolment or the commencement of training and assessment, whichever comes first, the RTO provides, in print or through referral to an electronic copy, current and accurate information that enables the learner to make informed decisions about undertaking training with the RTO and at a minimum includes the following content:

- a) the code, title and currency of the training product to which the learner is to be enrolled, as published on the National Register;
- b) the training and assessment, and related educational and support services the RTO will provide to the learner including the:
 - (i) estimated duration;
 - (ii) expected locations at which it will be provided;
 - (iii) expected modes of delivery;
 - (iv) name and contact details of any third party that will provide training and/or assessment, and related educational and support services to the learner on the RTO's behalf; and
 - (v) any work placement arrangements.
- c) the RTO's obligations to the learner, including that the RTO is responsible for the quality of the training and assessment in compliance with these Standards, and for the issuance of the AQF certification documentation.
- d) the learner's rights, including:
 - (i) details of the RTO's complaints and appeals process required by Standard 6; and
 - (ii) if the RTO, or a third party delivering training and assessment on its behalf, closes or ceases to deliver any part of the training product that the learner is enrolled in;
- e) the learner's obligations:
 - (i) in relation to the repayment of any debt to be incurred under the VET FEE-HELP scheme arising from the provision of services;
 - (ii) any requirements the RTO requires the learner to meet to enter and successfully complete their chosen training product; and
 - (iii) any materials and equipment that the learner must provide; and
- f) information on the implications for the learner of government training entitlements and subsidy arrangements in relation to the delivery of the services.

5.3. Where the RTO collects fees from the individual learner, either directly or through a third party, the RTO provides or directs the learner to information prior to enrolment or the commencement of training and assessment, whichever comes first, specifying:

- a) relevant fee information including:
 - (i) fees that must be paid to the RTO; and
 - (ii) payment terms and conditions including deposits and refunds;
- b) the learner's rights as a consumer, including but not limited to any statutory cooling-off period, if one applies;
- c) the learner's right to obtain a refund for services not provided by the RTO in the event the:
 - (i) arrangement is terminated early; or
 - (ii) the RTO fails to provide the agreed services.

5.4. Where there are any changes to agreed services, the RTO advises the learner as soon as practicable, including in relation to any new third party arrangements or a change in ownership or changes to existing third party arrangements.

Standard 6. Complaints and appeals are recorded, acknowledged and dealt with fairly, efficiently and effectively.

6.1. The RTO has a complaints policy to manage and respond to allegations involving the conduct of:

- a) the RTO, its trainers, assessors or other staff;
- b) a third party providing services on the RTO's behalf, its trainers, assessors or other staff; or
- c) a learner of the RTO.

6.2. The RTO has an appeals policy to manage requests for a review of decisions, including assessment decisions, made by the RTO or a third party providing services on the RTO's behalf.

6.3. The RTO's complaints policy and appeals policy:

- a) ensure the principles of natural justice and procedural fairness are adopted at every stage of the complaint and appeal process;
- b) are publicly available;
- c) set out the procedure for making a complaint or requesting an appeal;
- d) ensure complaints and requests for an appeal are acknowledged in writing and finalised as soon as practicable; and
- e) provide for review by an appropriate party independent of the RTO and the complainant or appellant, at the request of the individual making the complaint or appeal, if the processes fail to resolve the complaint or appeal.

6.4. Where the RTO considers more than 60 calendar days are required to process and finalise the complaint or appeal, the RTO:

- a) informs the complainant or appellant in writing, including reasons why more than 60 calendar days are required; and
- b) regularly updates the complainant or appellant on the progress of the matter.

6.5. The RTO:

- a) securely maintains records of all complaints and appeals and their outcomes; and
- b) identifies potential causes of complaints and appeals and takes appropriate corrective action to eliminate or mitigate the likelihood of reoccurrence.

6.6. Where the RTO is an employer or a volunteer organisation whose learners solely consist of its employees or members, does not charge fees for the training and/or assessment, and does not have in place a specific complaints and appeals policy in accordance with Clauses 6.1 & 6.2, the organisation has a complaints and appeals policy which is sufficiently broad to cover the services provided by the RTO.

Standard 7. The RTO has effective governance and administration arrangements in place.

7.1. The RTO ensures that its executive officers or high managerial agent:

- a) are vested with sufficient authority to ensure the RTO complies with the RTO Standards at all times; and
- b) meet each of the relevant criteria specified in the Fit and Proper Person Requirements in Schedule 3.

7.2. The RTO satisfies the Financial Viability Risk Assessment Requirements.

7.3. Where the RTO requires, either directly or through a third party, a prospective or current learner to prepay fees in excess of a total of \$1500 (being the threshold prepaid fee amount), the RTO must meet the requirements set out in the Requirements for Fee Protection in Schedule 6.

7.4. The RTO holds public liability insurance that covers the scope of its operations throughout its registration period.

7.5. The RTO provides accurate and current information as required by the Data Provision Requirements as updated from time to time.

Standard 8. The RTO cooperates with the VET Regulator and is legally compliant at all times.

8.1. The RTO cooperates with the VET Regulator:

- a) by providing accurate and truthful responses to information requests from the VET Regulator relevant to the RTO's registration;
- b) in the conduct of audits and the monitoring of its operations;
- c) by providing quality/performance indicator data;
- d) by providing information about substantial changes to its operations or any event that would significantly affect the RTO's ability to comply with these standards within 90 calendar days of the change occurring;
- e) by providing information about significant changes to its ownership within 90 calendar days of the change occurring; and
- f) in the retention, archiving, retrieval and transfer of records.

8.2. The RTO ensures that any third party delivering services on its behalf is required under written agreement to cooperate with the VET Regulator:

- a) by providing accurate and factual responses to information requests from the VET Regulator relevant to the delivery of services; and
- b) in the conduct of audits and the monitoring of its operations.

8.3. The RTO notifies the Regulator:

- a) of any written agreement entered into under Clause 2.3 for the delivery of services on its behalf within 30 calendar days of that agreement being entered into or prior to the obligations under the agreement taking effect, whichever occurs first; and
- b) within 30 calendar days of the agreement coming to an end.

8.4. The RTO provides an annual declaration on compliance with these Standards to the VET Regulator and in particular whether it:

- a) currently meets the requirements of the Standards across all its scope of registration and has met the requirements of the Standards for all AQF certification documentation it has issued in the previous 12 months; and
- b) has training and assessment strategies and practices in place that ensure that all current and prospective learners will be trained and assessed in accordance with the requirements of the Standards.

8.5. The RTO complies with Commonwealth, State and Territory legislation and regulatory requirements relevant to its operations.

8.6. The RTO ensures its staff and clients are informed of any changes to legislative and regulatory requirements that affect the services delivered.

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