Protecting the quality of international VET and English language education

Australian Government

Australian Skills Quality Authority

Letter of transmittal

Senator the Hon Michaelia Cash
Minister for Employment, Skills, Small and Family Business
Parliament House
CANBERRA ACT 2600
By email to: Minister.Cash@employment.gov.au

Dear Minister

I am pleased to provide the report on the Australian Skills Quality Authority's (ASQA's) strategic review of international Vocational Education and Training (VET) and English Language Intensive Courses for Overseas Students (ELICOS), *Protecting the quality of international VET and English language education*.

ASQA initiated this strategic review in response to concerns raised by both stakeholders and through its regulatory intelligence and findings. The strategic review addresses the risks associated with the growing onshore delivery of VET and ELICOS to overseas students, and those related to VET delivery offshore.

This strategic review involved analysing data and intelligence available to ASQA through its own risk intelligence and compliance monitoring work along with intelligence available to other government agencies. ASQA used this analysis to develop risk indicators to select providers of interest for scrutiny and used a variety of regulatory strategies to assess compliance in light of the evident risks.

ASQA undertook research into the international education sector and commissioned research into to the quality of the data available for VET delivery offshore. It also undertook targeted consultation on strategies to recognise and support the quality of VET delivered to international students and ELICOS courses.

This strategic review was guided by a reference committee of key stakeholder organisations representing providers, industry and students, and Australian, state and territory government agencies. The reference committee was chaired by ASQA's Deputy Chief Commissioner and Commissioner for Risk, Intelligence and Regulatory Support. ASQA is grateful for the invaluable contribution of the reference committee—both collectively and individually—and also for the active support and contributions from other stakeholders. In particular, ASQA thanks the National Centre for Vocational Education Research for its assistance.

The recommendations of this review along with ASQA's commitment to undertake a number of actions are designed to address the following key findings.

- While compliance by providers delivering to overseas students is comparable to compliance more broadly in the VET sector, there is an ongoing need to monitor the risk that some providers may act inappropriately in response to incentives and growth opportunities.

- Shared access to reliable, comprehensive and meaningful data that provides an accurate understanding of student numbers, provider activity and sector-wide trends is essential for the effective treatment of risk in international education.

- The regulatory environment for VET providers delivering to overseas students in Australia is complex making it essential that the obligations providers are required to meet are explicit and clearly communicated.

- Overseas students can be vulnerable to exploitation by some providers, education agents and others, including some employers, making improved student information and engagement activities a priority for relevant government agencies.

- The best protection for VET quality, visa integrity and overseas student welfare is active participation in full-time study of a minimum of 20 scheduled course contact hours per week and the National Code should be amended to consistently require this obligation.

- Broader policy settings, including visa arrangements for both student and post-study work visas, can affect the behaviour of some students, providers and education agents, making collaborative arrangements between government agencies essential to protecting the quality of VET and the integrity of Australia's visa program.

- Regulating offshore delivery of VET is challenging due to a range of factors including the lack of timely and reliable data being available to the regulator and there is a need to ensure that offshore students are afforded the same protections as other students.

The implementation of this strategic review's recommendations and actions will better protect VET and ELICOS quality, the integrity of the student visa program, and student participation. This is particularly important not only for the VET and ELICOS sectors but for Australia's reputation more broadly as a world-class destination for high quality education that delivers excellent student outcomes.

I commend this report and its recommendations and actions to you.

Yours sincerely

Mark Paterson AO
Chief Commissioner and
Chief Executive Officer
24 July 2019

Key findings

- There has been strong growth in the delivery of VET to overseas students in Australia in recent years with new source countries and enrolment patterns emerging.

- Compliance by providers delivering to overseas students is comparable to compliance more broadly in the VET sector. There is, however, an ongoing need to address the risk that some providers may act inappropriately in response to incentives and growth opportunities.

- Shared access to reliable, comprehensive and meaningful data that provides an accurate understanding of student numbers, individual provider activity and sector-wide movement is essential in the treatment of risk in international education.

- The regulatory environment for VET providers delivering training and assessment to overseas students in Australia is complex, and it is essential that provider obligations are explicit and clearly communicated.

- Broader policy settings, including visa arrangements for both student and post-study work visas, can affect the behaviour of some overseas students, providers and education agents.

- Overseas students can be vulnerable to exploitation by some providers, education agents and others, including some employers. Improved student information should be a priority for relevant government agencies.

- Collaborative arrangements between government agencies are necessary to ensure a coordinated approach to detect and respond to emerging risks to VET quality and the integrity of Australia's visa program.

- The best protection for VET quality, visa integrity and overseas student welfare is for providers to ensure training and assessment requires active student participation in full-time study of a minimum of 20 scheduled course contact hours per week, with at least two-thirds being delivered face-to-face.

- Education agents play a prominent role in the recruitment of overseas students. Current reforms to enable greater transparency of education agent performance should assist students and providers to choose reputable education agents.

- Regulating offshore delivery is challenging due to a range of factors, including the distance and spread of delivery sites and the lack of timely and reliable data being available to the regulator and there is a need to ensure offshore students are afforded the same protections as other students.

- Agencies administering programs that rely on provider registration by ASQA as the basis of approval to undertake additional activities should ensure there are appropriate arrangements with ASQA to verify provider compliance.

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Executive summary

About this review

In recent years there has been strong demand from international students to undertake Australian qualifications in Vocational Education and Training (VET) and English Language Intensive Courses for Overseas Students (ELICOS) either in Australia or, in the case of VET, their home country. This demand has led to an expansion of delivery by existing, and a rise in new, VET and ELICOS providers.

Australia has a well-earned reputation for providing VET and ELICOS courses with quality outcomes for students that are relevant to the needs of employers and industry. Students studying in Australia on a student visa (overseas students) are also assured of significant protection by a legislative and regulatory framework, which is administered by a range of agencies to ensure there is support available.

In general, overseas students rate the quality of the educational experience in Australia highly with high levels of student satisfaction expressed for VET and ELICOS courses. Student feedback gathered through the regulatory activities conducted as part of this review, show that when providers offer a hands-on and supportive environment that encourages active participation in the classroom, students gain the support and experiences to meet their individual needs.

However, there are ongoing concerns expressed by some stakeholders and commentators about the quality and integrity of VET and ELICOS courses, especially where students are not properly engaged and participating in their study.

Many of these concerns centre on the potential for collusive activity between some providers, education agents and those students who seek to enter Australia for paid employment, rather than to engage in study. These practices can be difficult for regulators to detect, given that the parties involved are unlikely to make complaints to the Australian Skills Quality Authority (ASQA) or other government agencies.

Under the Australian regulatory framework, providers are fully responsible for the delivery of training and assessment to students, including when undertaking marketing, recruitment and enrolment activities before course commencement. This responsibility also includes all actions taken on behalf of a provider by third parties, such as education agents. Providers must ensure their education agents act ethically and honestly, and in the best interests of students.

Many education agents operate from foreign countries. There is no government regulatory oversight of education agents, and the quality of the services provided by agents is reliant on individual providers systematically monitoring the practices of their agents. This lack of oversight can make overseas students vulnerable to poor practices, including misleading marketing and advertising, by providers and agents that deliberately evade their obligations.

Some overseas students may also come under financial pressure once they are in Australia and find themselves in situations where they work more hours than they are entitled to under their student visa conditions. All overseas students who breach their student visa conditions, regardless of their intentions or motivations, can find themselves open to exploitation by unscrupulous providers, agents and employers.

Australian Registered Training Organisations (RTOs) have been active in exploring opportunities to deliver VET courses to offshore students in their home countries. Previous research and regulatory work by ASQA have identified a range of challenges in ensuring these arrangements comply with the VET Quality Framework. Regulating this delivery can be difficult for ASQA due to the logistical arrangements necessary to support offshore site visits and the availability of reliable and timely data and information.

It is these persistent concerns that led ASQA to identify delivery of VET and ELICOS courses to international students as a systemic risk. To respond to this risk, ASQA conducted this strategic review.

ASQA established the strategic review process to:

- work with stakeholders to better understand the drivers contributing to the identified risks and collaborate to develop effective responses reflecting the shared responsibility for VET and ELICOS quality across a range of government, industry and provider organisations

- advise on findings, actions and recommendations aimed at protecting the quality of international VET and ELICOS delivered by ASQA-regulated providers.

The review has involved:

- analysing data and intelligence available to ASQA through its risk intelligence work and the compliance history of its regulated providers, along with the data and intelligence held by other government agencies

- developing risk indicators to select providers of interest to test provider compliance, ASQA's data sources and risk indicators

- conducting a program of regulatory activities of providers of interest, using a variety of regulatory strategies designed to respond to the risk factors identified for each provider

- reviewing various Australian and international research and reports

- undertaking targeted consultation on strategies to recognise and support VET and ELICOS quality

- assessing the risk factors arising from offshore VET delivery

- commissioning research into the quality of the data available concerning the offshore delivery of VET.

The review makes recommendations aimed at improving the regulatory framework that require action from other agencies. It also documents the actions that ASQA is committed to undertaking to address the risks within its jurisdiction. Responding to these recommendations and taking these actions in a coordinated manner presents the most effective way to protect the quality of international VET and English language education.

The review was informed by a reference committee comprising key industry and government stakeholders. While the views of these stakeholders were an important consideration, the recommendations made in this report are made solely by ASQA.

What the review found

Provider compliance

Of the almost 4000 providers that ASQA regulates, 685 providers are registered to deliver courses to students studying in Australia on a student visa (overseas students). ASQA's regulatory activities have not established a pattern of widespread and systemic non-compliance by providers delivering to overseas students. The number of sanctions applied to these providers is commensurate with their overall share of the provider population.

Overseas student surveys conducted by ASQA as part of the strategic review show that students feel they are receiving quality training and assessment from most providers. Survey responses indicate that:

- 86 per cent reported that the provider delivered all of the learning resources and equipment needed to complete the course

- 85 per cent said they had access to good quality learning resources

- 84 per cent said they had access to good quality facilities

- 88 per cent reported the trainers and assessors were professional and knowledgeable

- 85 per cent confirmed they had been supported to complete their course within the expected duration

- 82 per cent were satisfied with the training provided.

In particular, ASQA-regulated providers that deliver ELICOS courses demonstrated higher levels of compliance. This is thought to be due to the explicit requirements in the *English Language Intensive Courses for Overseas Students Standards 2018* (ELICOS Standards) relating to course attendance, training and assessment provisions, and staffing arrangements. These requirements encourage a culture of engagement leading to the quality outcomes demonstrated within the audit findings and student survey responses.

There are risk factors specific to the overseas student sector, particularly in the VET sector, that can lead to poor provider behaviour. While many providers may display these risk factors and still operate effectively and reputably, ASQA did find that some providers deliberately avoid compliance and adopt poor practices.

ASQA found that providers delivering VET offshore are generally compliant, although there are distinct challenges in relation to meeting Australian industry specifications in training packages and maintaining effective oversight of third-party arrangements.

International education data

The VET and ELICOS international education sector has the benefit of many sources of data collection, including:

- overseas students' course enrolments and commencements, held by the Australian Government Department of Education

- student visa data, held by the Australian Government Department of Home Affairs

- total VET activity data for international students (both overseas and offshore students), held by the National Centre for Vocational Education Research (NCVER).

Despite available data, the exact number of overseas students actively studying in both VET and ELICOS sectors can be hard to calculate in comparison to the number of student enrolments, commencements and visa holders. Part of the reason for this is a lack of consistent definitions and terminology between the agencies collecting this data. Use of agreed definitions and an agreed methodology to enable the consistent interpretation of data sets would assist all stakeholders across a range of policy and regulatory functions.

The Australian Government Department of Education occupies a central leadership position in data collection, oversight and publication through its role as administrator of the ESOS Register (the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)) under the *Education Services for Overseas Students Act 2000* (ESOS Act), and owner of the Provider Registration and International Student Management System (PRISMS).

Recommendation 1

That the Australian Government Department of Education, as the lead agency for international education, the ESOS Register administrator and the PRISMS owner, collect and publish quarterly overseas student numbers using an agreed methodology that enables consistent interpretation of the other data sources held by the Australian Government Department of Home Affairs and NCVER.

Regulatory risk is a shared responsibility

The regulatory framework governing the delivery of VET and ELICOS to overseas students is complex, involving various agencies and legislative instruments. While each agency is responsible for the administration of their own frameworks, as the risks are shared, there is value in adopting a collaborative approach to systemic risk management.

Productive relationships have been established between the relevant regulatory and policy agencies and through the establishment of the Education Regulators and Immigration Committee (ERIC). ERIC includes the Australian Government Department of Home Affairs, the Australian Government Department of Education, the Tertiary Education Quality Standards Agency (TEQSA) and ASQA.

It is essential that all agencies remain committed to engaging collaboratively at the strategic level as well as maintaining effective information-sharing arrangements to manage operational risk. Since the Australian Government recently established the Department of Employment, Skills, Small and Family Business, which has portfolio responsibility for ASQA, the composition of ERIC should be expanded to include this department.

Recommendation 2

That the Education Regulators and Immigration Committee be expanded to include the Australian Government Department of Employment, Skills, Small and Family Business and the work of this Committee be prioritised by the Australian Government Department of Home Affairs, the Australian Government Department of Education, the Tertiary Education Quality Standards Agency and ASQA to ensure shared risks are identified and addressed in a coordinated and collaborative manner.

Detecting risk—access to data

As a risk-based regulator, ASQA relies on access to reliable and timely data and information to enable it to detect and treat risks effectively. In addition to assessing the compliance of individual providers, ASQA's risk focus has increasingly involved detecting and responding to systemic risk. Over recent years, ASQA has built its data analytics capacity to detect more complex trends and patterns of provider behaviour.

With its current level of access, ASQA can use PRISMS data to effectively monitor the activity of individual providers but is constrained in its ability to interrogate larger data sets. ASQA has been working with the Australian Government Department of Education, in its capacity as the PRISMS system owner, to enhance its ability to access a greater range of PRISMS data and improve the interoperability between each agency's provider registration system, to also allow for greater sharing of risk and regulatory data.

Addressing these issues is a priority for ASQA so it can more effectively detect and treat the systemic risks in the overseas education sector.

Recommendation 3

That the Australian Government Department of Education prioritises the work underway to provide ASQA with access to a greater range of VET and ELICOS-related data held on the PRISMS database.

ASQA has also been working with the Department of Education to improve the interoperability between each agency's provider registration systems. Currently, ASQA uses its provider information system, asqanet, to record certain information about CRICOS providers and then separately enters the same provider information on PRISMS. This is not an efficient way of recording this provider information and introduces unnecessary risk in relation to data entry errors.

The business rules and governance arrangements to support the information system upgrades needed to facilitate interoperability are currently under development and should be prioritised by both agencies. ASQA is committed to ensuring that the resources and effort required to upgrade its IT functionality are applied to achieve this outcome.

ASQA Action 1

That the Australian Skills Quality Authority prioritises the enhancement of asqanet to enable interoperability with PRISMS.

The National Code requires amendment

The *National Code of Practice for Providers of Education and Training for Overseas Students 2018* (National Code) is explicit in relation to the student attendance requirements related to ELICOS courses. All ELICOS providers are required to have and implement documented policies and processes for monitoring and recording attendance of overseas students.

The National Code specifies that VET courses require a minimum of 20 scheduled course contact hours per week unless specified by an accrediting authority, that is, ASQA. As a rule, ASQA does not grant approval on CRICOS for VET courses with less than 20 scheduled course contact hours per week, nor do providers seek it.

The National Code also states that registered providers of VET courses must have and implement a documented policy and process for:

- assessing course progress

- monitoring the attendance of overseas students if the requirement to implement and maintain minimum attendance requirements for overseas students is set as a condition of the provider's registration by an ESOS agency.

In applying the requirements of the National Code, VET providers must also comply with the VET Quality Framework, including the *Standards for Registered Training Organisations (RTOs) 2015* (Standards for RTOs). In assessing compliance, ASQA makes a determination on whether the provider's training and assessment strategies, as applied in practice, adhere to the course specifications registered by ASQA. As a course must be structured to deliver a minimum of 20 course contact hours per week, VET providers must be able to demonstrate during regulatory activities that the course actually delivered to students adheres to this commitment.

Many VET providers do monitor attendance for their overseas students to ensure students are participating in classes, as described in the training and assessment strategy, and are able to produce evidence of attendance when audited by ASQA. ASQA has found evidence, however, that other VET providers have not been requiring their overseas students to attend scheduled classes.

Between 1 January 2018 and 31 May 2019, ASQA imposed conditions on 13 providers where it had evidence to suggest that they were not requiring students to attend classes. In addition, the Administrative Appeals Tribunal (AAT) imposed attendance monitoring conditions on a further 23 providers as part of ongoing and completed matters. Many of these providers sought reviews of ASQA's decisions in the AAT or made complaints to ASQA and others, based on the contention that these conditions are unfair and place them at a competitive disadvantage in the sector.

It is clear from these arguments that some VET providers hold a genuine belief that the National Code does not impose a requirement that overseas students attend classes unless the requirement of course attendance has been imposed. There is anecdotal evidence that some participants in the sector refer to providers as either being a 'progress monitoring provider' or an 'attendance monitoring provider' with the clear inference that the former do not require class attendance.

VET providers that do not require overseas students to attend their courses can unfairly reduce the operational costs associated with the provision of classes, compared to those providers that ensure classroom attendance and participation of overseas students. Overseas students who are not encouraged to attend are unlikely to receive the training required or be judged to hold the required competencies using a valid assessment. Overseas students who assume that attendance is not mandatory may be likely to work more hours than are allowed under their visa conditions. Overseas students who do the wrong thing can be at risk of exploitation and, without a real and genuine connection to their VET provider, their welfare can be at risk.

Mandatory student attendance in full-time classes offers the best protection for the quality of the training and assessment, and student experience and outcomes. It helps ensure that overseas students meet their student visa conditions by not breaching the work limit of 40 hours a fortnight and offers the best chance of ensuring students do not become victims of exploitative work practices. It ensures that overseas students have the opportunity to receive the support they need with their training and with any welfare concerns more generally.

Recommendation 4

That the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* be amended to remove the distinction between course progress and attendance requirements in Standard 8 to clarify that all VET courses require student attendance in a full-time program of study of a minimum of 20 scheduled course contact hours per week, with up to one-third of the units being delivered by online or distance delivery at any time, unless specified by an accrediting authority.

CRICOS regulatory priorities

The primary VET risk for ASQA to manage, across all providers, is a provider certifying that a person has competencies that do not reflect his/her skills, knowledge and attitudes. This risk applies equally to domestic and overseas students, and ASQA's general regulatory work is aimed at safeguarding all students in relation to this risk.

Given the ongoing rate of growth in overseas students and delivery activity, ASQA has determined further regulatory scrutiny on CRICOS providers is warranted, especially given the vulnerability of these students. Taking a risk-based approach means ASQA cannot mitigate all risks in overseas education, but must focus effort on the most significant risks identified. While the provision of quality training and assessment remains at the forefront, there are other risk areas which can negatively influence how providers deliver courses to overseas students.

Through its program of strategic regulatory activities, ASQA has established seven additional key risk factors in the overseas VET and ELICOS sectors, including:

1. **Student growth:** A rapid increase in student enrolments, either as a total, at a specific location, or in a specific course could indicate a risk as to a provider's preparedness to deliver to the number of overseas students enrolled.

2. **Student English language capabilities:** This risk relates to VET delivery to overseas student where students are required to have minimum English language proficiencies to enrol, rather than in the

ELICOS sector where the purpose of learning is to develop English language skills. While there are minimum English language proficiency requirements to enrol into a VET course, risks in English language capabilities extend to a provider ensuring prospective students have the capacity to understand information provided prior to enrolment, that students are supported adequately through learning, and that students are provided with quality training and assessment that meets their individual needs.

3. **Student non-attendance:** This risk relates to student's participation in their scheduled course contact hours. When delivering to overseas students, providers that apply to deliver VET courses must ensure the course is delivered on a full-time basis of a minimum of 20 scheduled course contact hours per week.   A VET provider's training and assessment practices must align to its training and assessment strategies.

4. **Education agents:** The risk relates to providers ensuring that, where education agents are used, the information given by the agent to a prospective student is comprehensive, accurate and factual.

5. **Student onshore enrolments:** While it is recognised that overseas students enrol onshore for various reasons, providers that focus on recruiting students who are already onshore may indicate a risk of poor-quality marketing practices and training and assessment. The risk relates to concerns as to the accuracy of information provided to students about study requirements and attendance, or offering other incentives which may mislead students into seeking enrolment with an alternative provider.

6. **Providers with multiple operations (ownership/using shared resources):** The risk relates to a student's understanding of which provider they are enrolled with and of who they can seek out for assistance with training, assessment and support services. Providers that operate under these models must ensure there are sufficient facilities, resources and staff for each registered provider to deliver on a full-time basis for their approved student capacity.

7. **Provider data issues:** This risk relates to regulatory compliance and governance matters. It is a requirement of providers to ensure information relating to an overseas student's enrolment and education agents used by the provider are entered and maintained on PRISMS, in accordance with the requirements of the National Code. The information entered must be accurate, reported within set timeframes, and complete.

The review has shown that there is further opportunity for ASQA to apply enhanced regulatory strategies that effectively assess the compliance of individual providers or groups of providers. These strategies may include, but are not limited to:

- conducting regulatory activities at short notice, or with no notice, which involve unannounced site visits either by consent or under entry warrants

- imposing overseas student attendance monitoring requirements, and

- using PRISMS data to monitor overseas student movement between related providers or facilitated by certain education agents, and to detect concerns that can be the subject of written directions to providers to address more routine compliance concerns.

Offshore delivery challenges

It is important that offshore students enrolled in Australian RTOs be afforded the same quality of training and assessment and student protections that are provided to students studying in Australia.

Under current arrangements, Australian RTOs delivering to offshore students are exempt from requiring these students to be issued a Unique Student Identifier (USI). The USI is an important element of the Australian domestic VET landscape and ensures that students have electronic access to their learning outcomes across their lifetime, helps to safeguard the integrity of Australian Qualifications Framework (AQF) qualifications, and improves the reliability of data collection.

While ASQA's previous regulatory activities in relation to offshore delivery in China and Hong Kong found these providers to be compliant with a high level of student engagement, it also established a number of risk factors. ASQA has a commitment to undertake a third round of regulatory scrutiny of providers delivering VET offshore in China in 2019–20. This third round of scrutiny will be informed by the findings of the earlier regulatory work.

ASQA has also identified the delivery of assessment-only services offshore and 100 per cent online delivery of VET to offshore students as key areas requiring further scrutiny.

Supporting quality through communication

ASQA's regulatory role involves supplying information to providers on compliance issues. ASQA accomplishes this using a range of existing strategies and resources designed to support provider compliance; for example, factsheets, webinars, and provider information sessions. Much of the material currently available, however, focuses on providers' obligations under the VET Quality Framework.

Given the complexity of the regulatory framework for VET providers delivering to overseas students, which involves meeting both the VET Quality Framework and National Code requirements, increased communication could be beneficial to support the needs of these providers. Additional information could also be made available to relevant providers regarding the ELICOS Standards.

Many CRICOS providers strive to comply but find it challenging to interpret the dual legislative framework. There are also compliance challenges for RTOs delivering VET to offshore students arising from the distances between head office and delivery locations and the need to meet both the VET Quality Framework and local laws and requirements. ASQA has a role in providing meaningful and accessible information to these providers to assist them to comply with the requirements.

In keeping with ASQA's approach, this material should focus on encouraging and supporting compliance through targeted information to providers on the compliance requirements relevant to their operations.

Given the risk areas established by the strategic review regulatory activities, it is clear that these areas should be prioritised for the development of information to support compliance. Development of other material should then be undertaken in response to provider demand and the emergence of new risks.

ASQA Action 4

That ASQA develops information for VET and ELICOS providers delivering to overseas students, and providers delivering VET offshore, to support a positive approach to compliance by clearly explaining all the requirements specific to these delivery arrangements, and that the development of this material be prioritised on the basis of the risk factors identified in this review.

The information developed by ASQA to support providers to improve their compliance should be supplemented by a broader communications strategy aimed at students and education agents.

Publishing additional information will help students and education agents to understand what they should expect from providers. This important consumer information may help students, education agents and other third parties recognise those providers seeking to deliver quality outcomes for their students. Over time, this may assist in driving growth to providers that are fully compliant with their obligations and away from poor quality providers.

Recommendation 6

That government agencies, including the Australian Government Department of Education, Australian Government Department of Home Affairs, Australian Government Department of Employment, Skills, Small and Family Business, Austrade, the Office of the Commonwealth Ombudsman (who is also the Overseas Student Ombudsman), and state and territory government trade agencies, use the provider information released by ASQA to develop complementary materials targeted to students, education agents, and other third parties, to assist them to recognise compliant behaviours.

Recognising quality through engagement

ASQA has formed a range of partnerships, both bilateral and multilateral, with government agencies to support the exchange of data and information focused on non-compliance. These partnerships are essential in the treatment of systemic risk in international education where no one agency controls the relevant legislative, policy and funding settings.

In support of these arrangements, ASQA has executed Memorandums of Understanding (MoUs) with a number of Australian Government departments and agencies, and other domestic regulatory and licensing bodies. ASQA has also executed MoUs with several offshore regulators to support the exchange of information. These relationships have been of practical benefit to ASQA in understanding the local environment that providers operate in when delivering offshore.

ASQA shares compliance information it holds with agencies that rely on registration with ASQA as the basis of approval decisions for a range of related programs. For example, ASQA has protocols in place with each of the state and territory governments, executed at ministerial level, that provide for the sharing of relevant information. To date, these protocols have largely focused on the delivery of VET to domestic students.

Through the strategic review activities, ASQA expanded its engagement with government agencies with responsibility for promoting VET and ELICOS international education, including Austrade and the state and territory government trade agencies.

These agencies undertake outreach activities to overseas students and education agents and provide a range of business and export assistance to providers. As a result, they are able to gather critical intelligence about the sector which would be of use to ASQA in building its understanding of risk.

These agencies also seek to engage with ASQA so that they might be better informed of ASQA's regulatory outcomes, practices, priorities and strategies.

ASQA Action 5

That ASQA expand the existing information-sharing protocols with state and territory governments to include agencies with responsibility for international education and establish an agreement with Austrade to facilitate the exchange of information in relation to CRICOS providers, overseas student issues and the delivery of VET offshore.

Other reforms

There are a range of other reforms underway that are designed to improve the quality of VET more broadly and these reforms will also benefit international students. Of particular relevance to the delivery of VET, is the Australian Government's response to Professor Valerie Braithwaite's review of the VET legislative framework. Significant initiatives include:

- **improving the collection and sharing of data**—shifting to real-time collection of RTO activity data is ground-breaking and will enable ASQA to respond to emerging risks in a more agile manner

- **protecting and informing students**—requiring providers to publish nationally consistent consumer information, that is both accessible and meaningful to students, will help drive consumer behaviour and will reassure overseas students

- **strengthening registration requirements for providers**—ensuring that providers, particularly in their initial phase of operation, have the motivation and ability to deliver quality training and assessment will protect students and the reputation of VET

- **improving ASQA's regulatory practices by enhancing the engagement between the regulator and the sector**—supporting a more consistent and transparent approach by ASQA to its regulatory task will provide positive reinforcement for compliant providers, and help motivate non-compliant providers to improve their practices

- **focusing on the capabilities of trainers and assessors**—maintaining a focus on the compliance of providers delivering the TAE Training and Education Training Package, and providing them with ongoing education support, will help lift the quality of trainers and assessors across VET.

In addition, the Australian Government has committed to the following reforms designed to further strengthen the protection afforded overseas students through the National Code.

- The Australian Government Department of Education is leading an important initiative to enhance the transparency of education agent performance by publishing performance data on education agents active in the Australian international education system. This initiative will assist providers and students to engage education agents that deliver positive student outcomes.

- The Australian Government, in response to the findings of the Migrant Workers' Taskforce, is taking action to ensure that overseas students are made aware of their employment rights and is giving consideration to requiring providers to assist students experiencing workplace issues.

The Australian Government decision on ASQA moving to full cost recovery for its activities will require changes in the fees and charges for CRICOS and ELICOS providers. The new arrangements are expected to take effect from 1 July 2020 and will require legislative change to support the new measures.

1. Introduction

Background

The Australian Skills Quality Authority (ASQA) commenced operations as the national regulator for Australia's vocational education and training (VET) sector on 1 July 2011. ASQA was established through the *National Vocational Education and Training Regulator Act 2011* (NVR Act).

ASQA's regulation is supported by a framework of legislation and standards, including the VET Quality Framework and the *Standards for VET Accredited Courses 2012*.

The NVR Act defines the VET Quality Framework as comprising the:

- Standards for NVR Registered Training Organisations[1]

- Quality Standards

- Australian Qualifications Framework

- Fit and Proper Person Requirements

- Financial Viability Risk Assessment Requirements

- Data Provision Requirements.

ASQA, as an ESOS agency[2] under the *Education Services for Overseas Students Act 2000* (ESOS Act), also regulates providers, where relevant, against the:

- ESOS Act

- *National Code of Practice for Providers of Education and Training for Overseas Students 2018* (National Code)

- *English Language Intensive Courses for Overseas Students Standards 2018* (ELICOS Standards).
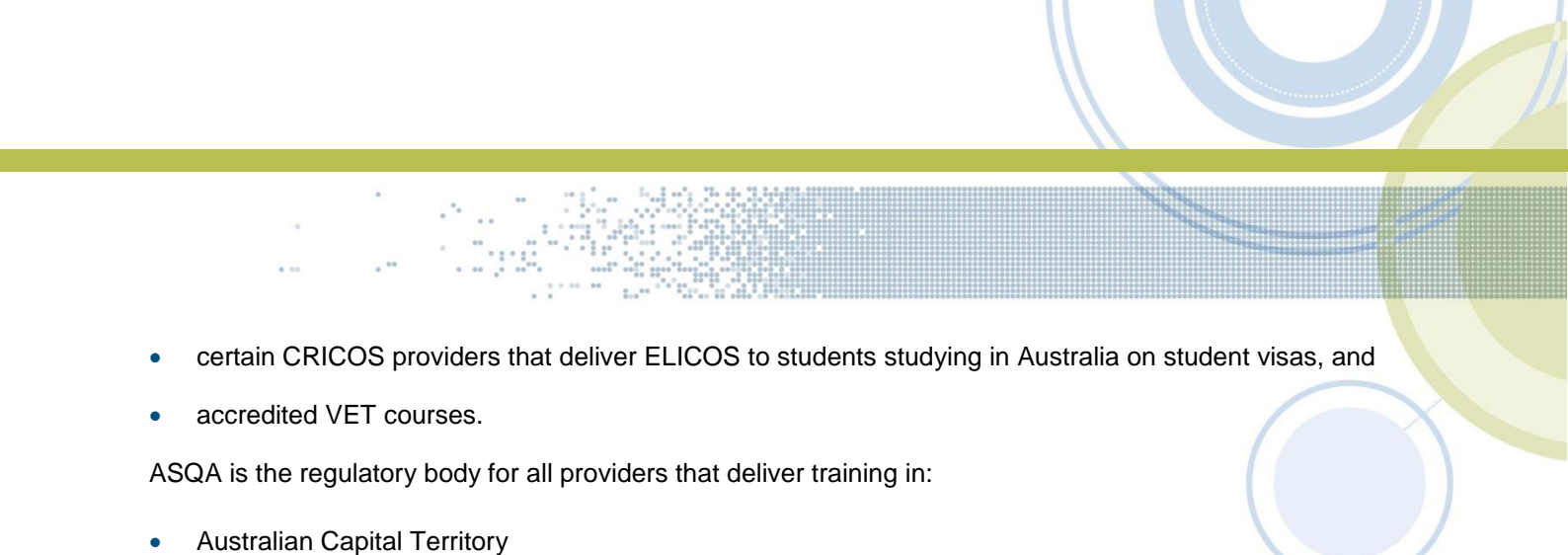
ASQA is the national regulator for:

- Registered Training Organisations (RTOs) that deliver VET qualifications and accredited courses to domestic students and students residing offshore

- providers that deliver VET courses registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to overseas students studying in Australia on student visas

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[1] The current Standards are cited as the *Standards for Registered Training Organisations (RTOs) 2015* (Standards for RTOs)

[2] From 1 July 2016, ASQA is the ESOS agency under the *Education Services for Overseas Students Act 2000* (ESOS Act) for all NVR registered training organisations (within the meaning of the NVR Act) in all states and territories. From this date, ASQA is also the ESOS agency for providers of English Language Intensive Courses to Overseas Students (ELICOS) programs in all Australian states and territories except where a provider delivers the program:

- in the capacity of a school; or
- in the capacity of a higher education provider; or
- under an Entry Arrangement with at least one higher education provider.

- certain CRICOS providers that deliver ELICOS to students studying in Australia on student visas, and

- accredited VET courses.

ASQA is the regulatory body for all providers that deliver training in:

- Australian Capital Territory

- New South Wales

- Northern Territory

- South Australia

- Queensland, and

- Tasmania.

ASQA is also the regulatory body for providers in Victoria and Western Australia that offer courses to:

- overseas students studying in Australia on a student visa, and/or

- students (including through online learning) in the Australian Capital Territory, New South Wales, the Northern Territory, South Australia, Queensland and/or Tasmania.

Where ASQA has regulatory responsibility for a provider, it is also the regulatory body for any VET delivery offshore by that provider.

ASQA regulates providers to ensure nationally approved quality standards are met so that students, employers, governments and the community can have confidence in the quality of VET and ELICOS course outcomes delivered by Australian providers.

Figure 1 shows the distribution of ASQA-regulated RTOs by the state and territory of the registration of their head offices.

Figure 1: Percentage of total ASQA-regulated RTOs by state/territory as at 31 March 2019
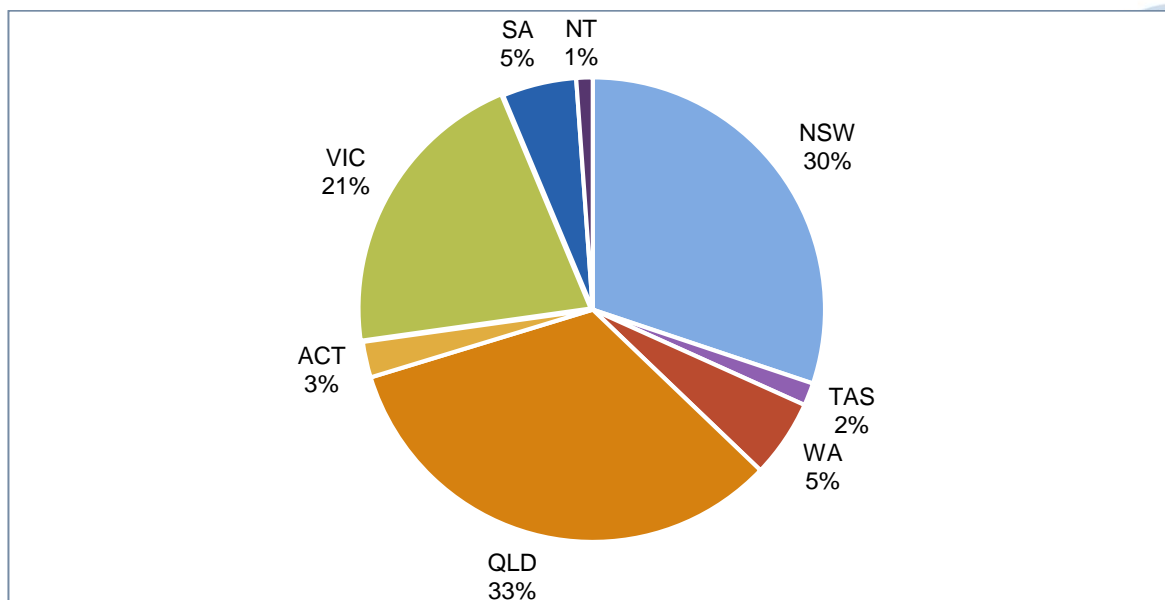
As at 31 March 2019, ASQA was responsible for the regulation of 3854 of the 4274 RTOs registered to deliver VET nationally or offshore. This represents around 90 per cent of the total VET provider market. As at 31 March 2019, 73 ASQA-regulated providers were also regulated by TEQSA—these providers are referred to as 'dual sector providers'.

The Victorian Registration and Qualifications Authority (VRQA) and Training Accreditation Council Western Australia (TAC-WA) each regulate approximately five per cent of the national VET provider market (Figure 2). VRQA and TAC-WA are responsible for regulation of any training delivered offshore by their regulated providers.

Figure 2: Regulators' market share of registered training organisations as at 31 March 2019
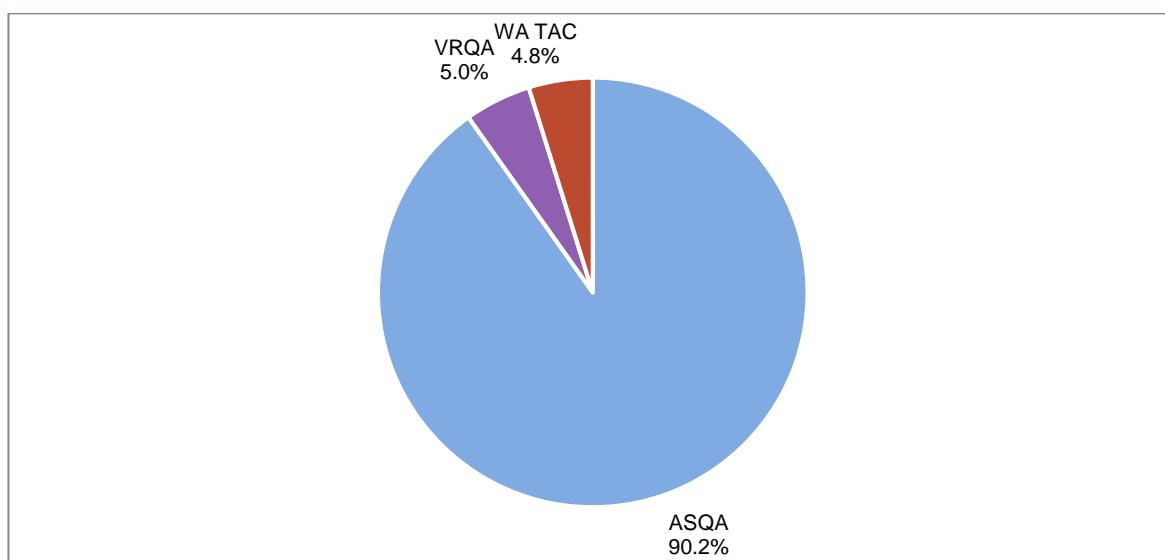
Of the 3854 RTOs regulated by ASQA, 601 (20.8 per cent) were also registered on CRICOS to deliver VET programs to overseas students studying on a student visa. In addition, ASQA was responsible for the regulation of 84 providers registered on CRICOS to deliver ELICOS programs only to overseas students studying on a student visa. These 84 ELICOS-only providers did not deliver VET courses and are not RTOs.

Of the total 685 CRICOS providers regulated by ASQA, 278 (40.6 per cent) are registered to deliver ELICOS (comprising 194 RTOs registered on CRICOS to deliver both VET and ELICOS programs to overseas students and the 84 ELICOS-only providers mentioned above). Figure 3 below sets out the registration types and numbers of ASQA-regulated providers.

Figure 3: ASQA-regulated providers by type as at 31 March 2019

Registration type			Totals	Description
RTO	**CRICOS**	**ELICOS**		
X			3,253	RTOs (approved for VET delivery to domestic or offshore students only i.e. not registered on CRICOS)
X	X		407	RTOs which are also registered on CRICOS to deliver VET to overseas students (but are not registered for ELICOS delivery)
X	X	X	194	RTOs which are also registered on CRICOS to deliver both VET and ELICOS to overseas students
	X	X	84	ELICOS only providers (providers registered on CRICOS to deliver ELICOS but not VET so are not RTOs)
3,854	**685**	**278**	**3,938**	

Of the providers regulated by ASQA in 2017[3], 66 were reported as delivering VET[4] to international students through program enrolments at offshore locations. A further three ASQA-regulated providers delivered VET offshore to international students for subjects only. A further two providers regulated by TAC-WA reported delivering VET through program enrolments in offshore locations to international students in 2017.

ASQA's regulatory approach

ASQA takes a risk-based approach to regulation that is consistent with the *Australian Government guide to regulation* and applies a range of regulatory responses proportionate to risks identified.

The primary risk for ASQA to manage is a provider certifying that a person has competencies that do not reflect his/her skills, knowledge and attitudes. The potential damage of this outcome flows not just to the individual, but to employers and the wider community. A further risk ASQA has responsibility for is that

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[3] National VET Provider Collection, 2017 and National VET in Schools Collection, 2017. This is the most recent data available to ASQA on the number of providers reporting offshore delivery activity to international students.
[4] ELICOS courses are not delivered offshore. While ELICOS providers may deliver English language courses offshore, ASQA has no regulatory responsibility for these courses.

CRICOS providers may not be collecting and accurately reporting information relevant to the administration of student visa law.

ASQA's Regulatory Risk Framework[5] outlines how ASQA manages risk on two levels—operational (provider risk) and strategic (systemic).

Systemic risk is defined as any risk likely to exist across the sector or in a concerning proportion of providers. If left untreated, significant risks of this type can have a detrimental impact on the quality of training and assessment for individuals, industry and the wider community, and may lead to loss of confidence in the sector.

Managing systemic risk in VET is a shared responsibility. Where ASQA has identified a systemic risk, it seeks to work with other regulatory, funding and policy bodies to treat risks beyond its jurisdiction that may undermine confidence in the sector or in its ability to regulate effectively.

Since 2016, ASQA has been releasing an annual regulatory strategy that outlines the systemic risks that will be the focus of its regulatory efforts. The complex nature of systemic risks generally requires more than one year to investigate (often including targeted provider audits) and develop an effective response. In 2018, ASQA published the *Regulatory Strategy 2018-20*, establishing ASQA's priorities for a two-year period, in recognition of this complexity.

ASQA takes an evidence-based approach to determining the systemic priorities for each regulatory strategy, using a range of indicators and intelligence to identify the areas that pose the greatest systemic risk to Australia's VET sector. Key inputs into the development of ASQA's regulatory strategy include:

- consideration of Australian Government priorities

- outcomes from stakeholder consultation and environmental scanning

- data analysis, including ASQA's internal regulatory data.

Once ASQA has identified its systemic priorities, it determines the most appropriate treatment strategy depending on the nature of the risk, which can include conducting a strategic review. Strategic reviews are conducted under Section 157(1) (e) of the NVR Act, which states that the National VET regulator has the following function:

> *'… if requested to do so by the Minister, or on the Regulator's own initiative, to advise and make recommendations to the Minister on matters relating to vocational education and training.'*[6]

ASQA's strategic reviews conduct in-depth analysis of any issues, industry sectors, qualifications or methods of delivery that impact on the quality of vocational education and training. The focus is on examining systemic poor practice and identifying appropriate actions to address this poor practice across groups of providers or the system, not just resolving issues with individual providers.

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[5] Australian Skills Quality Authority 2016, *Regulatory Risk Framework*, viewed June 2019
<https://www.asqa.gov.au/sites/default/files/ASQA_Regulatory_Risk_Framework.pdf>
[6] *National Vocational Education and Training Regulator Act 2011,* Section 157(1)(e*).* Available at:
https://www.legislation.gov.au/Details/C2017C00245.

To date, ASQA has released reports on eight strategic reviews targeting training 'hot spots'—that is, areas where intelligence has identified risks to the quality of outcomes achieved by training delivery and assessment:

- *Training for aged and community care in Australia* (released December 2013)

- *Training for the White Card for Australia's Construction Industry* (released December 2013)

- *Marketing and advertising practices of Australia's registered training organisations* (released December 2013)

- *Training for early childhood education and care in Australia* (released August 2015)

- *Targeted audit of VET FEE-HELP providers 2015* (released October 2015)

- *Training in equine programs in Australia* (released December 2015)

- *Training in security programs in Australia* (released January 2016)

- *A review of issues relating to unduly short training* (released June 2017).

Copies of these reports may be accessed at: https://www.asqa.gov.au/news-publications/publications/strategic-review.

Other relevant sector reviews

ASQA is responsible for responding to, and delivering on, government policy priorities. Several government-commissioned reviews and other major initiatives, both in progress and completed, will have implications for ASQA's operations and regulatory practices, including its regulation of VET and ELICOS international education. These include:

- the implementation of the Australian Government[7] response *to All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011* (All eyes on quality)[8] which was released in June 2018

- *Strengthening Skills: Expert Review of Australia's Vocational Education and Training System*[9] (the Joyce Report), which was released by the Australian Government on 2 April 2019

- the review of the Australian Qualifications Framework (AQF)[10], the national policy for regulated qualifications in Australian education and training, which is due to be completed by September 2019

- reforms to enhance training packages, with recommendations to be considered by the Council of Australian Governments (COAG) Industry and Skills Council during 2019

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[7] Department of Education, *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011*, Canberra: Australia, 2018 <https://docs.education.gov.au/node/50871>

[8] ibid

[9] Department of the Prime Minister and Cabinet, *Strengthening Skills: Expert Review of Australia's Vocational Education and Training System,* Canberra: Australia, 2019 <https://pmc.gov.au/resource-centre/domestic-policy/vet-review/strengthening-skills-expert-review-australias-vocational-education-and-training-system>

[10] Department of Education, 'Australian Qualifications Framework Review', viewed June 2019, <https://www.education.gov.au/australian-qualifications-framework-review-0>

- the Performance Information for VET (PIVET) project commissioned by the COAG Industry and Skills Council which includes several activities designed to transform the VET data available to consumers, governments and regulators.

These broader initiatives are focused on improving the quality of VET delivery by Australian providers, and will benefit all students, both domestic and international. The recommendations made in this strategic review will seek to leverage the opportunities offered by these initiatives and ensure the specific needs of international students are considered. Where relevant, these reform themes will be further discussed in later chapters.

Further detail on the *All eyes on quality* review and the Government's response to the review are described below reflecting its significance to ASQA's operations.

Australian Government initiative: *All eyes on quality* – agreed reform themes

In June 2017, then Assistant Minister for Vocational Education and Skills, the Hon Karen Andrews MP, commissioned Professor Valerie Braithwaite to conduct an independent review of the legislative framework that governs the regulation of VET, to ensure it supports an efficient and effective approach to regulation and to ensure the quality of the national VET sector.

Professor Braithwaite made 23 recommendations designed to support the VET sector in meeting the challenges of the future in her report, entitled *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011* (dated January 2018).

In its response to the report released in June 2018, the Australian Government grouped the recommendations under five themes. A summary of the recommendations accepted and those under further consideration by the Australian Government, using these themes, is set out below.

1. **Enhancing engagement between the regulator and sector**—supporting proactive engagement by ASQA to strengthen the student-focused regulatory approach by involving the sector to develop the regulatory culture that drives ASQA's use of its legislative powers; enhancing the transparency and consistency of ASQA's use of the regulatory framework by clearly articulating the principles that guide ASQA's interpretation and use of its regulatory powers; and developing positive assurance flags in ASQA's risk matrix that can be communicated publicly in a way supported by providers without imposing additional red tape. The Australian Government is giving further consideration to expanding the pre and post-audit dialogue with stakeholders to improve the quality of the student journey.

2. **Strengthening registration requirements of RTOs**—requiring providers to demonstrate educational commitment and knowledge of how to provide best practice support to students; strengthening the fit and proper person requirements and change notification requirements; and providing for greater scrutiny of new providers where the delivery of training does not commence within 12 months of registration, and preventing new providers from amending their scope of registration within this period. The Australian Government is giving further consideration to strengthening the Standards for RTOs to require providers to explicitly address student safety and wellbeing.

3. **Teaching excellence**—the Australian Government is giving further consideration to improving teacher excellence by requiring providers to conduct, and submit to ASQA, an assessment of the quality of its teaching workforce and improvement actions; reviewing the Training and Education Training Package to create a career path for teaching excellence; and creating the role of Master Assessor.

4. **Improving the collection and sharing of data**—prioritising the improvements required to facilitate the 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. The Australian Government is giving further consideration to increasing the frequency of data provision to the NCVER; exploring ways to improve the quality of the Student Outcomes Survey; and enabling NCVER to make provider level data publicly available and identifiable.

5. **Protecting and informing students**—requiring providers to publish nationally consistent consumer information that is accessible and meaningful to students to support their decision-making; and requiring providers to keep electronic student records over the life of the providers, preferably using an Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) compliant student management system. The Australian Government is giving further consideration to strengthening consumer protection in student enrolment agreements; and establishing a national Tertiary Sector Ombudsman.

The Australian Government is working with states and territories through the Council of Australian Governments (COAG) Industry and Skills Council to progress these reforms, including referring reforms aimed at improving engagement between the regulator and the VET sector to ASQA for advice.

A number of the reforms require legislative amendments to the NVR Act to facilitate their implementation. The Australian Government Department of Employment, Skills, Small and Family Business is progressing drafting of *the National Vocational Education and Training Regulator Amendment Bill 2019* in consultation with ASQA.

There was strong alignment between the key themes in the report and the priority areas ASQA has identified for action under previous regulatory strategies and strategic reviews. Consequently, ASQA is well-placed to respond to the reforms supported by the Australian Government.

In addition to these reviews and initiatives, ASQA is currently working towards the implementation of full cost recovery for its activities from 2020–21 onwards which was an initiative announced in the Australian Government Budget 2018–19. The details of this arrangement are subject to consultation with, and agreement from, the COAG Industry and Skills Council.

ASQA is currently developing a draft 2020–21 Cost Recovery Implementation Statement to support consultation with the sector. The move to full cost recovery affects all of ASQA's regulatory activity, including its functions under the ESOS Act. The ESOS Act will require amendment to provide for the agreed charging regime and ASQA is currently liaising with the Australian Government Department of Education and the Australian Government Department of Finance to support the development of the appropriate charging regime.

ASQA's priorities

ASQA's *Regulatory Strategy 2018-20* outlines the key strategic initiatives to be prioritised over this period. These initiatives built on earlier work undertaken by ASQA and respond to the key reform themes identified in *All eyes on quality* and supported by the Australian Government. The priorities include:

- **maintaining the focus on the capability of VET trainers and assessors** by continuing scrutiny of providers that deliver, and apply to deliver, training products from the TAE Training and Education Training Package, and providing ongoing support to these providers to promote quality training and assessment practice

- **recognising and supporting quality** by promoting a partnership approach to the regulation of the VET and ELICOS sectors. ASQA will seek to raise providers' awareness of opportunities for continuous performance improvement, motivate providers to strive to meet compliance requirements and provide pathways for providers to develop quality practice

- **strengthening registration requirements** by increasing the scrutiny of the fit and proper person requirements, which are designed to ensure people and/or associated entities who exert influence over the operations of providers have the characteristics and principles necessary to deliver high-quality services and outcomes for graduates. This initiative continues ASQA's efforts to increase scrutiny on new entrants into the sector. It will result in proportionately greater levels of analysis of persons who are associated with new and existing training providers; for example, where ownership or key personnel change

- **engaging through information and communication programs** as an important component of effective regulation. Each year, ASQA engages in a range of activities designed to inform stakeholders about ASQA's regulatory activities and changes in the sector. *All eyes on quality* recommended that ASQA engage in broader regulatory conversations and education programs with the sector. ASQA is in discussion with the Australian Government on how to engage with providers, through a broader approach to compliance education, to drive behavioural change.

Drivers of this strategic review

The importance of international education to Australia is emphasised in the Australian Government's *National Strategy for International Education 2025*[11] (the National Strategy), which was released in April 2016. The National Strategy sets a 10-year vision for Australian international education and provides a framework of priorities to sustainably grow the sector, while maintaining Australia's reputation for high quality training and assessment.

In support of the National Strategy, the Australian Government Department of Education is committed to supporting an average annual growth rate of three to five per cent in international education export earnings and maintaining positive growth in the number of students enrolled offshore in transnational education and training delivered by Australian providers.[12]

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[11] Department of Education, 'National Strategy for International Education 2025', viewed June 2019, <https://www.education.gov.au/national-strategy-international-education>.

[12] Department of Education, *Portfolio Budget Statements 2019–20*, Canberra: Australia, 2019, p.52

The National Strategy includes the goal of providing effective quality assurance and regulation and commits to:

- Action 3.1: Maintaining strong quality assurance systems, and

- Action 3.2: Ensuring strong student protection.

ASQA has a key role in supporting these actions to ensure the growth of the international education sector, particularly the provision of VET and ELICOS, is underpinned by quality assurance and strong student protection.

Risk factors

ASQA's environmental scanning in 2015 identified two issues in the overseas student market as systemic risks. These risks were identified after feedback from stakeholders and a review of concerns raised through media articles:

1. Overseas students who primarily enrolled in VET to gain work rights during and post-study and/or to seek permanent residency, with little or no intention of undertaking training.

2. Overseas students transferring between providers in order to find providers which are lax in imposing the National Code requirements.

From mid-2015, there was a significant increase in CRICOS applications for VET (and to a lesser extent ELICOS) both through applications for initial registration as a CRICOS provider and to add qualifications to existing providers' scopes of registration. While there were a range of factors that may have contributed to this increase in VET (and ELICOS) activity, there was some concern that a contributing factor may have been the significant tightening of the eligibility rules for the VET FEE-HELP (VFH) scheme[13].

From the beginning of 2015 to mid-2017, ASQA was engaged in undertaking a number of complex and resource-intensive audits of large VFH providers as part of two targeted audit programs. Through these audits, ASQA cancelled the registration of 18 providers[14], all of which were providers approved on CRICOS.

ASQA was also aware of the dynamics of the CRICOS sector which had previously experienced periods of rapid growth punctuated by sharp declines linked to emerging quality issues or exogenous shocks; for example, changes in currency values and safety concerns for Indian students reported in the media in

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[13] In 2009, the Australian Government introduced VFH for learners studying VET qualifications. In 2012, the design and character of the VFH scheme was altered to substantially increase the number of eligible courses and providers. Between 2012 and 2014, the number of providers and learners accessing the scheme increased significantly. During 2015 and 2016, in response to concerns about the program, the Australian Government made a number of significant changes to the VFH scheme, including the banning of inducements, tightening rules regarding marketing and recruitment practices, applying census dates and cooling off periods, aligning the levying of student debt with course delivery, and ensuring academic suitability for a course. Also from 2016, the scheme was capped, meaning that VFH approved providers could only offer loans up to the maximum of their 2015 amounts. From 1 January 2017, the VFH scheme was replaced with the VET Student Loans program. Providers were required to apply to become VET Student Loans course providers, and a number of VFH approved providers did not meet the eligibility criteria for the new program. For those providers who were approved for the VET Student Loans program, the program reduced the number of eligible courses and placed caps on the amount that could be funded through the loan program.

[14] As at 31 May 2019, two providers were seeking a review by the Administrative Appeals Tribunal of ASQA's decisions and these matters are yet to be finalised.

2009. It is also known that poor quality practices by a small number of providers, if left unchecked, can have the capacity to inflict significant harm on students and reputational damage to the sector.

Environmental scanning undertaken by ASQA in 2015 also identified stakeholder concerns in relation to the offshore delivery of VET, including the verification of appropriate work placements, resources and facilities, and the ability of delivery from offshore locations to provide the appropriate Australian context required by training packages.

In addition, ASQA was aware that ASQA-regulated providers were being engaged by other government agencies to provide a range of services, including:

- offshore assessment-only services for Trades Recognition Australia, to assess people with trade skills gained overseas for the purpose of migration and skills recognition

- delivery of non-AQF Industry Skills and Training (IST) Program courses offshore to international students, under license from the Australian Government Department of Education.

Initial response to risk factors

In response to the increase in CRICOS provider activity and other risk factors, ASQA contacted the Australian Government Department of Home Affairs (at that time, the Australian Government Department of Immigration and Border Protection) to initiate discussions on possible collaborative strategies to treat the risks in the CRICOS sector.

The Education Regulators and Immigration Committee (ERIC) was established in August 2015. ERIC is chaired by the Australian Government Department of Home Affairs and also includes senior representatives from ASQA, the Tertiary Education Quality and Standards Agency (TEQSA), and the Australian Government Department of Education.

ERIC meets regularly and provides a forum for agencies to consider emerging trends, risks and issues in the overseas education sector, and to provide feedback on policy and operational initiatives that may impact on student visas or the provision of services to overseas students.

ERIC is supported by a working group of officers from the relevant agencies that meets quarterly to share operational information. In 2016, in collaboration with ERIC members, ASQA undertook a project, *Risks in the overseas student sector*, which identified:

- the student pathway and risks arising at each stage of an overseas student's lifecycle

- regulatory responsibilities for agencies involved in overseas education in Australia

- key risks, in priority order, for treatment through cross-agency collaboration

- relevant agency strategies for treating identified risks.

This project documented the roles and responsibilities of relevant agencies in addressing the shared risks. As a result of this project, it was determined that there were two significant risks which could be addressed by ASQA in relation to CRICOS provider behaviour.

- The recruitment of overseas students who do not have a genuine desire to undertake study which undermines the integrity of the VET and ELICOS sectors, the student visa program, and community support for overseas education.

- The provision of poor-quality VET to overseas students, especially considering their vulnerability, which has negative consequences for students and presents a reputational risk to the sector more broadly.

Through ERIC, agencies have continued to share their insights about risks and available data. ASQA uses the data and information gathered to develop a more sophisticated understanding of the risk indicators and to develop strategies to treat these risks. This work is ongoing and has helped inform ASQA's regulatory strategy for CRICOS providers.

ASQA commenced work in developing a strategy for the regulation of offshore delivery of VET by Australian RTOs in response to the issues raised through its environmental scanning. Research into delivery patterns and risk factors was undertaken and informed the first round of offshore audits conducted in China in 2015. A second round of offshore audits was undertaken in China and Hong Kong in 2017.

As a risk-based regulator, ASQA is committed to working with government agencies to share relevant information and ensure a level of transparency about provider behaviour across multiple programs. In response to the identified risks, ASQA worked actively with other agencies to ensure that there were appropriate information-sharing practices in place.

Conduct of this strategic review

ASQA's *Regulatory Strategy 2017-18*[15] was released in August 2017 and identified Australia's VET and ELICOS international education sector as a systemic risk due to the level of growth in CRICOS providers and students, concerns raised by stakeholders about the vulnerability of overseas students, and the integrity of Australia's student visa program. The strategy also included a commitment to undertake further scrutiny of providers delivering to offshore students in China and through assessment-only services.

ASQA announced it would commence a strategic review of international VET and ELICOS delivery by ASQA-regulated providers (the International Education Strategic Review) on 22 August 2017.

The strategic review was established to:

- work with stakeholders to better understand the drivers contributing to the identified risks and collaborate to develop effective responses taking into account the shared responsibility for VET and ELICOS quality across a range of government, industry and provider organisations

- advise on findings and recommendations aimed at protecting the quality of international VET and English language education services delivered by ASQA-regulated providers.

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[15] Australian Skills Quality Authority, *Regulatory strategy 2017-18*, Australia, 2017
<https://www.asqa.gov.au/file/8546/download?token=y7aS6WNW>.

The strategic review was informed by a reference committee, which comprised senior representatives from:

- ASQA (Chair)

- TAFE Directors Australia

- English Australia

- Independent Tertiary Education Council Australia (formerly Australian Council of Private Education and Training)

- International Education Association of Australia

- Council of International Students Australia

- Australian Chamber of Commerce and Industry

- Australian Industry Group

- Office of the Commonwealth Ombudsman (Overseas Student Ombudsman)

- Department of Industry, New South Wales

- Trade and Investment Queensland

- Department of Economic Development, Jobs, Transport and Resources, Victoria

- Department of Education, Tasmania

- Department of Jobs, Tourism, Science and Innovation, Western Australia

- Tertiary Education Quality and Standards Agency

- Australian Government Department of Home Affairs

- Australian Trade and Investment Commission (Austrade)

- Australian Government Department of Education.

A list of individuals representing these organisations is included at Appendix A.

To inform the review, ASQA:

- analysed data and intelligence available through its risk intelligence work, including the compliance history of providers, along with the data and intelligence held by other government agencies

- developed risk indicators to identify providers of interest to test provider compliance, data sources and risk indicators against

- developed and conducted a program of regulatory activities of providers of interest, which used a variety of regulatory techniques designed to respond to the risk factors identified for each provider

- reviewed various Australian and international research and reports

- undertook targeted consultation on strategies to recognise and support VET and ELICOS quality and research into the arrangements adopted by New Zealand to foster quality

- commissioned research into the quality of the data available concerning the offshore delivery of VET.

Planning for the review commenced in 2017, but regulatory activities were delayed to enable providers to implement the requirements of the revised National Code and ELICOS Standards, which applied from 1 January 2018.

Structure of this report

Chapter 2: Describes the global demand for and benefits of international education and the drivers of student choice, including the impact on the Australian international VET and ELICOS sectors. It also outlines the risks for the Australian VET and ELICOS sectors, the economy and the community.

Chapter 3: Describes the regulatory framework that governs the delivery of VET to all students and ELICOS to overseas students, and the student visa program. It also documents the role of relevant government agencies and regulatory bodies. It provides an overview of the recent changes made to the ESOS framework through the National Code and ELICOS Standards. This chapter makes recommendations for other agencies to improve the reliability of student data and inter-agency collaboration to treat risk.

Chapter 4: Describes the recent regulatory work undertaken by ASQA in regulating the overseas student sector in Australia, including the specific regulatory activities conducted by ASQA in conjunction with this strategic review to test provider compliance, the risk indicators available to ASQA and its regulatory strategies. Learnings from applying the revised regulatory framework described in chapter 3 through these regulatory activities are documented. This chapter makes recommendations for other agencies and commits ASQA to take action to address the risks raised through ASQA's regulatory work in the overseas student sector.

Chapter 5: Describes the regulatory work ASQA has undertaken to date concerning the delivery of VET to offshore students. It documents the particular risks for RTO compliance and the equitable treatment of students this form of delivery presents, and the ability of these risks to be managed within the current regulatory architecture using the data available. This chapter makes recommendations to other agencies and commits ASQA to take action to address the risks identified in relation to the delivery of VET to offshore students.

Chapter 6: Describes the opportunities available to recognise and support quality in the sector through improved communication with providers and collaboration with other stakeholders. The chapter documents the findings of a comparative analysis of key elements of the Australian and New Zealand regulatory approaches. It makes recommendations for other agencies and commits ASQA to take action to improve the recognition of and support offered to providers.

Terminology in this report

The terminology used in the international education sector by various government agencies and stakeholders varies, and the complexity of the interplay of the VET and ESOS sector architecture results in numerous categories of providers that are registered to deliver courses to different student cohorts. Given the breadth of this strategic review and the varying terminology, the guide below is designed to assist the reader of this report. Wherever possible, ASQA has based these definitions on those used in legislation or by the NCVER.

Definitions of the sector and providers used in this report

Term	Definition
International education	The delivery of education across all sectors, including schooling, VET, English language and higher education to all international students regardless of delivery location or mode of delivery.
Overseas education	The delivery of education across all sectors to a student who holds a student visa enrolled with a provider registered on CRICOS in Australia.
Offshore VET	The delivery of VET courses either through face-to-face delivery in-country or online to non-domestic students residing offshore by ASQA-regulated RTOs.
Providers/CRICOS providers	Providers registered on CRICOS that deliver VET and/or ELICOS. A provider may also be a registered training organisation.
ELICOS-only providers	Providers that only deliver ELICOS and are therefore not governed by the VET Quality Framework.
Registered training organisations (RTOs)	Organisations registered under the NVR Act that are approved to deliver VET to domestic, overseas or offshore students. For the purposes of the report, RTO is used to denote discussion of NVR obligations.

Definitions of students used in this report

Term	Definition
International students	Students who hold a student visa or a temporary resident permit or who reside in an overseas country for the purpose of undertaking education and training.[16]
Overseas students	A person (whether within or outside Australia) who holds a student visa. This term is consistent with the definition under the ESOS Act[17].
Offshore students	Non-domestic students enrolled from offshore locations in face-to-face (in whole or in part) VET programs or online with Australian VET providers.
Domestic students	Students whose citizenship is Australian, New Zealand or permanent resident for the purpose of undertaking education and training[18].

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[16] NCVER, *Total VET students and courses 2017*, page 23

[17] *Education Services for Overseas Students Act 2000, section 5 Definitions.* Available at: https://www.legislation.gov.au/Series/C2004A00757 (accessed June 2019)

[18] NCVER, *Total VET students and courses 2017*, page 23

2. Context for international education

This chapter discusses the global demand for international education across all education sectors and the factors that students take into consideration when deciding where to pursue their education. It describes the benefits of international education, across all education sectors, to Australia's broader economy and community, and the factors that influence student choices.

It also describes the specific factors that drive international demand for Australia's VET and ELICOS courses. This chapter discusses the risks to the quality of VET and ELICOS courses that can arise when CRICOS providers act inappropriately when seeking to attract overseas students. It also considers the challenges associated with delivering VET to offshore students.

Growth in worldwide demand for international education

The number of globally mobile students in 2016 was five million with the OECD estimating that by 2025 this number will rise to eight million.[19] This projected growth in student mobility is a continuation of a long term expansion trend which saw the number of internationally mobile students rise 50 per cent between 2005 and 2012.

Demand for international education is influenced by a range of factors, with increased global development and industrialisation expected to underpin the growth in future demand. While global demand for international education is expected to remain buoyant, Australia faces increasing global competition for international students. For example, Canada[20], New Zealand[21] and the UK[22] have released strategies with ambitious targets to increase their international student numbers.

There is little doubt that the composition of the student population will continue to evolve. Some of Australia's current major source countries for overseas students, such as China, are expected to grow the quality and capacity of their own education systems to cater for their domestic students and to compete for international students.

Further, demand for education from new markets is likely to emerge, and the way international education is delivered is likely to change. In its roadmap[23] developed in support of the National Strategy, Austrade refers to research[24] which predicts that the Australian onshore sector will continue to increase and

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[19] Altbach and Bassett, 2004, referenced in Tremblay, K., Lalancette, D. and Roseveare, D., *Assessment of Higher Education Learning Outcomes,* OECD, 2012, p.24

[20] Government of Canada, Global Affairs Canada 2014, *Canada's International Education Strategy – Harnessing our knowledge advantage to drive innovation and prosperity*, Canada, viewed June 2019 <https://international.gc.ca/global-markets-marches-mondiaux/education/strategy-strategie.aspx?lang=eng>

[21] New Zealand Government, Education New Zealand (ENZ) 2018, *International Education Strategy 2018–2030*, Wellington, New Zealand, viewed June 2019 <https://enz.govt.nz/assets/Uploads/International-Education-Strategy-2018-2030.pdf>

[22] Government of the United Kingdom 2013, *International Education: Global Growth and Prosperity*, United Kingdom*,* viewed June 2019 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/340600/bis-13-1081-international-education-global-growth-and-prosperity-revised.pdf>

[23] Australian Trade and Investment Commission (Austrade), 'AIE2025 Roadmap, available at: https://www.austrade.gov.au/Australian/Education/Services/Australian-International-Education-2025/aie2025-roadmap

[24] Deloitte Access Economics 2015*, Growth and opportunity in Australian International Education: A report prepared for Austrade*, available at: https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-growth-opportunity-australian-international-education-011215.pdf

describes there being over one billion students around the world in the relatively untapped borderless skills market of in-market, online and blended delivery.

This growing demand will impact on the profile of offshore VET delivery activity. It is also likely that product offerings will evolve to respond to increasing demand for the delivery of lower-cost training delivered outside of the formal Australian Qualifications Framework and customised to local needs.

Benefits of international education

International education is one of Australia's top service exports. The sector has generated sustained export earnings growth since 2013. In the year to March 2019, education exports were valued at $36.6 billion, which was 15.4 per cent higher than the previous year[25].

In addition to generating significant export earnings, international education is also a significant creator of jobs in Australia. These jobs are not just in the education sector, but also across a wide range of primary and service industries. All overseas students studying in Australia are required to purchase visas, compulsory private healthcare and pay full tuition fees, on top of purchasing routine consumer goods, accommodation and services. The Australian Government Department of Education has estimated that the full-time equivalent jobs supported by international education across all sectors in Australia were 241,783 in 2017.[26]

International education can deliver a broader range of benefits for the Australian economy and community. International students that study with Australian providers create networks and form friendships that endure. This can lead to long term business and cultural ties that increase Australia's engagement with the world, trade, business innovation and growth, and cultural diversity.

Australia as a destination of choice for overseas students

Despite its relatively small population, Australia has the third largest share of the global market for overseas students, as illustrated in Figure 4.

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[25] ABS, 5368.0 International Trade in Goods and Services, Australia
[26] Australian Government Department of Education and Training, *Research Snapshot December 2018,* viewed June 2019 <https://internationaleducation.gov.au/research/Research-Snapshots/Documents/RS_Job%20supported.pdf>.

Figure 4: Distribution of international students in tertiary education by country of destination, 2016[27]
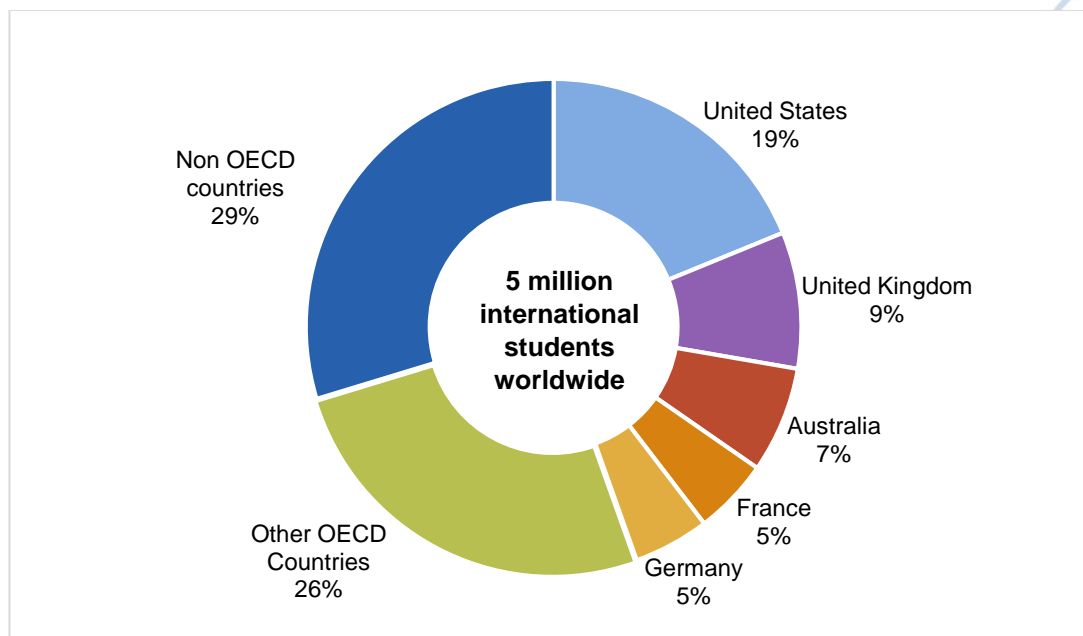
In 2018, there were more than 875,000 enrolments generated by almost 700,000 full-fee paying overseas students in Australia, across all education sectors[28]. This represents a 10 per cent increase on 2017 and compares with an average annual enrolment growth rate of almost 11 per cent annually over the preceding five years.[29] The majority of overseas students were enrolled in higher education courses, with China and India the top two source countries.

Overseas student growth has been strongest in the higher education and VET sectors in recent years, as shown by Figure 5. The largest volume of enrolments and commencements in 2018 were in higher education (45 per cent and 34 per cent, respectively) followed by VET (30 per cent and 30 per cent), ELICOS (18 per cent and 24 per cent) and the non-award[30] sector (six per cent and eight per cent).[31]

[27] OECD, *Education at a Glance 2018,* viewed June 2019 <https://www.oecd.org/education/education-at-a-glance/>.

[28] Department of Education and Training 2018, *2018 International Student Data – End of year summary of international student data 2018*, Canberra: Australia, viewed June 2019 < https://internationaleducation.gov.au/research/International-Student-Data/Documents/MONTHLY%20SUMMARIES/2018/International%20student%20data%20December%202018%20detailed%20summary.pdf>

[29] Ibid

[30] Includes courses that do not result in an award (or qualification) that is recognised under the AQF. Australian non-award courses include two broad types: foundation and other enabling courses; and mobility courses, including study abroad and study exchange programs.

[31] Department of Education and Training 2018, *2018 International Student Data – End of year summary of international student data 2018*

Figure 5: Overseas student commencements in Australia by sector, 2015 to 2018[32]
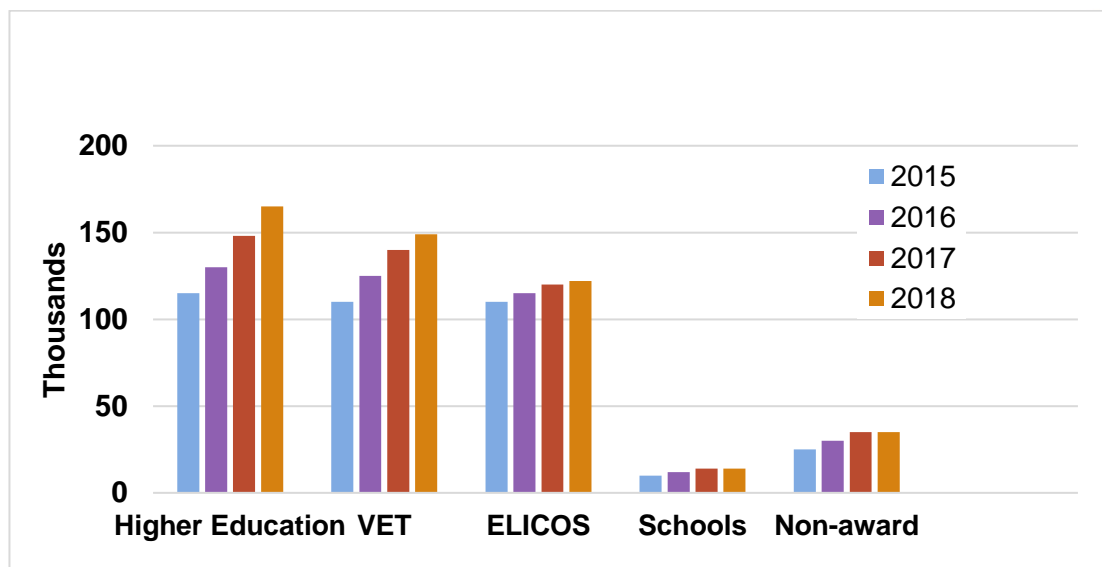
The distribution of overseas students, and resulting economic activity, is concentrated in New South Wales which recorded 38 per cent of enrolments, followed by Victoria with 32 per cent, Queensland with 15 per cent, Western Australia with six per cent, South Australia with four and a half per cent, the Australian Capital Territory with just over two per cent, Tasmania with just over one per cent, and the Northern Territory with just under half a per cent (Figure 6).

Figure 6: Number of student visas granted by state[33]

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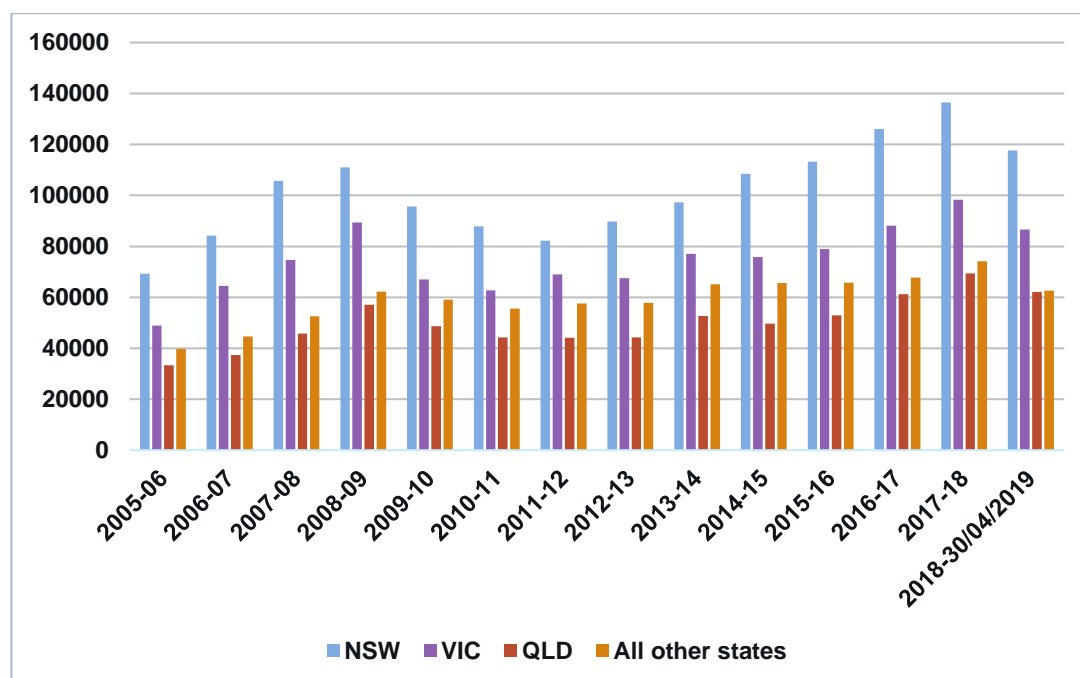
[32] Ibid

[33] BP0015 Student visas lodged, Australian Government Department of Home Affairs, viewed 19 June 2019.

In 2018, 97 per cent of overseas students studied in a major city[34] with the majority of these students studying in Sydney and Melbourne.

In 2018, 26,739 overseas students were recorded as studying in the top 10 regional centres. Outside of Hobart and Darwin, which accounted for 45 per cent of these students, the Queensland regional cities of Cairns (nine per cent), Toowoomba (eight per cent) and Townsville (seven per cent) recorded the next three highest shares, followed by Richmond – Tweed (six per cent) and New England/North West (five per cent) in New South Wales. In 2018, total enrolments in regional areas grew by 10 per cent on 2017, with the largest growth in Hobart (37 per cent), followed by Ballarat (20 per cent).

Description of the VET and ELICOS sectors

Of the more than 875,000 overseas student enrolments in 2018, 243,582 were in VET and 156,249 were in ELICOS courses provided across all education sectors. Of the 156,249 total ELICOS overseas student enrolments, 96,600 were in ASQA-regulated ELICOS providers, with the remaining enrolments spread across the other education sectors.

Within Australia's overseas education sector, the VET sector accounted for almost 28 per cent of the total overseas student enrolments in 2018. VET enrolments increased by over 12 per cent over the previous year. The total ELICOS sector increased one per cent on the previous year and in 2018 accounted for almost 18 per cent of the total overseas student enrolments.[35]

Between 2015 and 2018, annual VET sector commencements grew by almost 50,000. Overseas student growth in the ELICOS sector remained relatively stable with small increases in student commencements between 2015 and 2018.

Table 1: Enrolments and commencements— full year[36]

Sector	Enrolments				Commencements			
	2016	**2017**	**2018**	**2019[36]**	**2016**	**2017**	**2018**	**2019[36]**
VET	186,504	216,120	243,582	133,911	118,324	135,842	147,322	21,584
ELICOS	150,173	155,200	156,249	51,032	114,350	117,552	117,648	11,347
Higher education	305,330	349,137	398,840	260,504	130,997	148,745	166,336	3926
Non-award	44,043	49,979	49,861	14,928	34,774	37,032	37,055	2990
Schools	23,250	25,663	26,777	19,866	12,356	13,402	13,100	6181
Total	**709,300**	**796,099**	**875,309**	**480,241**	**410,801**	**452,573**	**481,461**	**46,028**

In 2018, India contributed the largest share of VET overseas student enrolments (29,656 or 12 per cent). India has consistently been the top source market for VET for at least the past 15 years. China was the next largest source country (22,206 or nine per cent), followed by Brazil (20,385 or eight per cent) and Nepal (19,397 or eight per cent). The Republic of South Korea, which was the second top source country

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[34] Major cities include capital and other large cities (for example, Gold Coast and Newcastle) in each state and territory, with the exception of Tasmania and Northern Territory. All enrolments in Tasmania and the Northern Territory are considered regional areas.

[35] Australian Government Department of Education and Training data – as at January 2019.

[36] 2019 data is year-to-date as at January 2019.

in 2016, has dropped to fifth position (17,331 or seven per cent), however, it is noted that the number of enrolments from this country has remained consistent since that time.

The fastest growing market for VET in 2018 was Nepal, with a 108 per cent growth rate from 2017. Myanmar was the next fastest growing market with a 58 per cent growth rate, followed by Mongolia (52 per cent) and Sri Lanka (50 per cent). Figure 7 shows the fastest growing source countries for the VET sector in 2018.

Figure 7: Fastest growing VET markets – 2018 full year
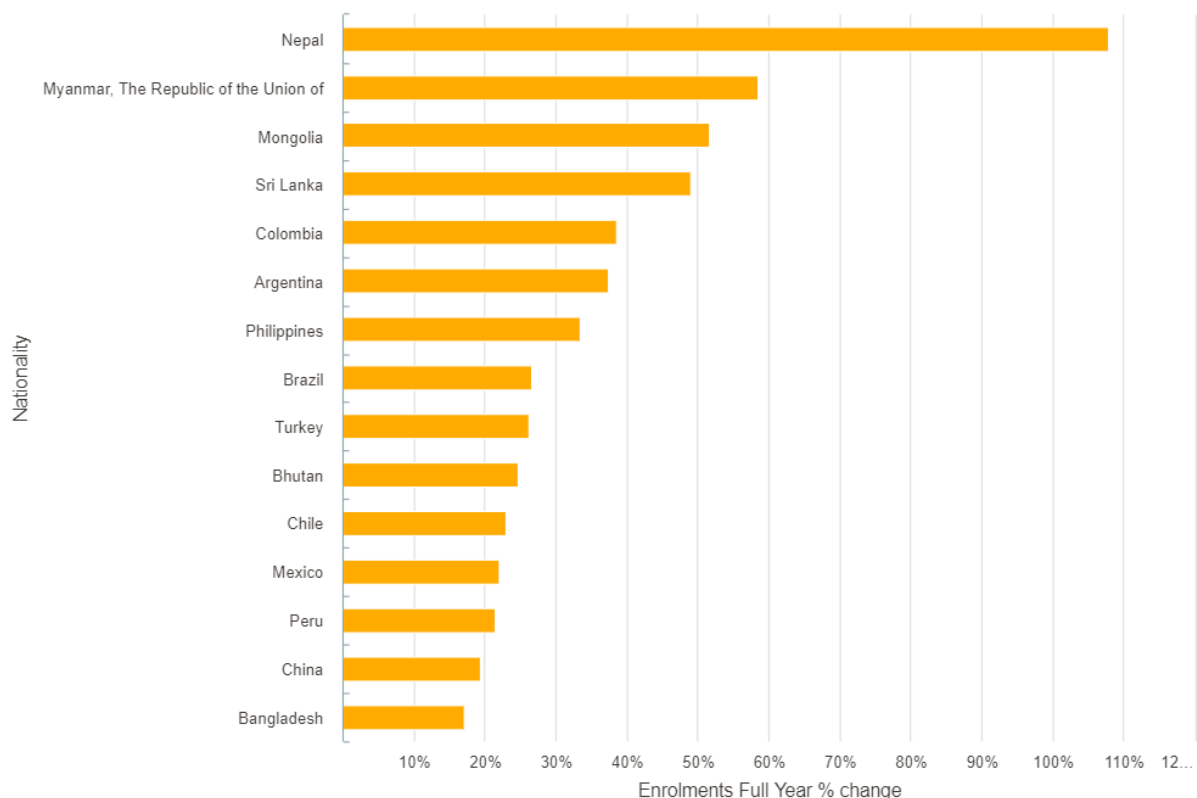
Source: Department of Education and Training
Filtered by: Year 2018, Sector VET, and State All

VET overseas students predominantly enrolled in the Management and Commerce field of education (134,954) (Figure 8). This figure was substantially greater than all other fields and it has been the top field of education for at least the past 15 years. Food, Hospitality and Personal Services experienced a sharp drop of enrolments in 2011 and have produced comparable figures since that time, falling to third place for the first time in 2018.

Figure 8: Top fields of VET education – 2018 full year

Source: Department of Education and Training
Filtered by: Year 2018, Nationality
All, Sector VET, and State All
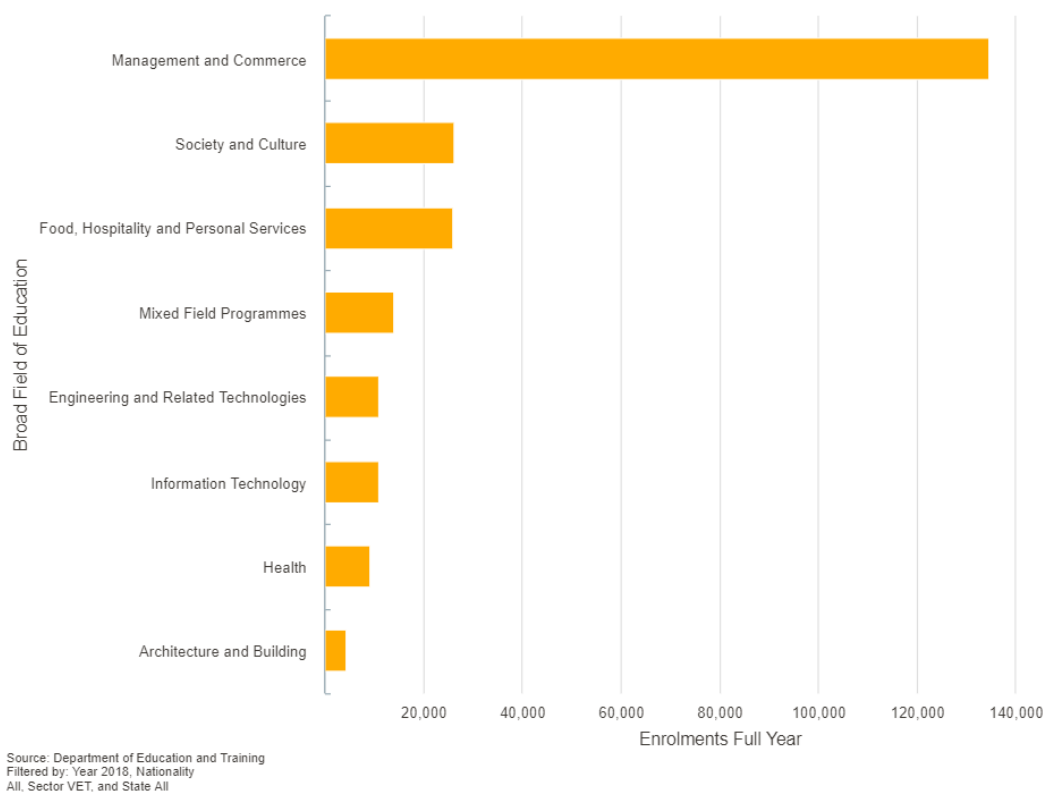
China was the largest source country of total ELICOS student enrolments (47,737 or 31 per cent)[37]. Brazil was the next largest nationality for enrolments (18,063 or 12 per cent), followed by Columbia (14,648 or nine per cent) and Thailand (8,828 or six per cent). In the total ELICOS sector, Myanmar was the fastest growing market with a 105 per cent growth rate, followed by the USA (67 per cent)[38] and Mongolia (63 per cent)[39].

International visitors also undertaking VET and ELICOS study

Research undertaken by Tourism Research Australia[40], through an annual survey of international visitors passing through Australia's international airports, shows that there are also many additional students who had undertaken study in Australia but who were not holding a student visa. While these students may be enrolled with CRICOS providers, it is not a requirement as they are not student visa holders.

The results from the sample-based survey are weighted to passenger card data from the Australian Government Department of Home Affairs and indicate that there was an estimated additional 116,000 visitors undertaking a course in Australia on another visa type in 2018. Of these estimated 116,000 studying visitors, around 48,000 studied an ELICOS course and around 14,000 studied a VET course.

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[37] Australian Government Department of Education and Training data, as at January 2019.

[38] This growth is from a very low base—enrolments from the USA grew from 24 in 2017 to 40 in 2018.

[39] Australian Government Department of Education and Training data, as at January 2019.

[40] Australian Trade and Investment Commission, 'MIP Education Insight: Students studying on non-student visas from Tourism Research Australia, International Visitor Survey 2017 and 2018'.
<https://www.austrade.gov.au/Australian/Education/News/Updates/mip-education-insight-students-studying-on-non-student-visas>

Drivers for overseas student choice

A range of factors influence a student's choice to study in a foreign country; many of these are interrelated and they can be categorised under broad themes. A description of these themes and their importance to Australia's comparative advantage is provided below.

Quality of education offerings

An important motivating factor for some students considering their educational future is the lack of educational opportunities in their own country leading them to consider pursuing an education in another country. The teaching quality and reputation of the educational institutions and the course offerings in other countries acts as a primary driver for a student to choose overseas study.

Research has consistently found that quality is one of the key reasons students select a host country[41]. The results of the 2018 International Student Survey[42] found the top five factors for deciding to study ELICOS in Australia were teaching quality (98 per cent), personal safety (97 per cent), institution reputation (94 per cent), cost of living (92 per cent) and cost of study (92 per cent).

One study found that the first consideration of a student is the course they wish to study. After that, they decide the country and finally choose the institution that best meets their needs.[43] Central to this decision-making process is the global recognition of the qualifications and whether they lead to improved employment outcomes, whether in the host country, at home, or in a third country.

Australia's standards-based VET system, driven by industry and supported by strong quality-assurance frameworks is highly regarded internationally as students can be assured that course outcomes are highly relevant to job roles. Research has found broadly positive employment outcomes for Australian international graduates of higher education and VET courses, with international graduates valued over their local counterparts for their perceived critical thinking skills, life experience and English proficiency.[44]

A further advantage of an education in Australia is that courses are offered in English, and learners can use English outside the classroom in the broader community. English is still seen as the global language of trade, business and research, and is an attractive feature of the education landscape for overseas students. Australia's ELICOS sector is well-regarded and there are strong linkages and flexible pathways from ELICOS courses to the other education sectors.

Overseas students will often undertake an ELICOS course before studying in the VET sector. As these courses are intensive, overseas students can progress and obtain the most from their VET sector study, without being disadvantaged by their English language skills.

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[41] Deloitte Access Economics 2015

[42] Department of Education and Training 2018, *2018 International Student Survey Results*, Canberra: Australia, viewed June 2019 < https://internationaleducation.gov.au/research/research-papers/Documents/ED19-0041%20International%20Student%20Survey%20ELICOS%20Infographic_ACC-03.pdf>

[43] Whinnett, E. and Hussain, T, Hobsons EMEA 2014, *Beyond the data: Influencing international student decision making*, USA, viewed April 2019
<https://www.hobsons.com/res/Whitepapers/23_Beyond_The_Data_Influencing_International_Student_Decision_Making.pdf>, p.20
[44] Australian Education International (AEI) 2010, *International Graduate Outcomes and Employer Perceptions*. Australia, viewed June 2019 < https://internationaleducation.gov.au/News/Latest-News/Documents/2010_International_Graduate_Outcomes_pdf.pdf>

Strong regulation of the Australian ELICOS sector, through the establishment and maintenance of an appropriate regulatory framework, has also been one of Australia's key features and strengths in attracting learners.[45]

Over half of overseas students undertake study in more than one education sector during their Australian education experience. Many students are attracted by Australia's pathway system which provides alternative entry to students unable to enter their preferred course directly, through a range of settings including schools, ELICOS providers, VET, or pathway courses established by dedicated providers, higher education institutions or VET providers.

In Australia, overseas students are afforded additional protections through the National Code and ELICOS Standards. If for any reason an education provider cannot deliver a student's course of study, the Tuition Protection Scheme (TPS) ensures a student will either be placed in another course, be placed with another registered provider or receive a refund of their unspent tuition fees.

These protections make Australia a reassuring option for overseas students, as they can be confident that they will not be disadvantaged by changes in the market. Australia is seen as a 'low risk' education system based on its level of structure and transparency. The regulatory framework is discussed in more detail in chapter 3.

Post-study work rights

It is recognised that the destination country's visa policy settings, including the ability to work after the completion of a course can be an important determinant of study destination for some students. Students value the opportunity to gain relevant work experience, viewing it as important to improving their chances of achieving the employment outcomes they desire. This is especially the case where the increasing number of students heading abroad for education may erode the value of a standalone international qualification.[46]

Post-study work opportunities in Australia can be an important factor for some overseas students, particularly in the VET sector. Overseas student graduates from the VET sector who have nominated an occupation listed on the skilled occupation list relevant to their study and who have had their skills assessed by a relevant skills assessing authority, are eligible to apply for a Temporary Graduate (Subclass 485) visa which provides for 18 months in Australia with full work rights.

It is accepted policy that overseas students will take into consideration their ability to access post-study work rights while considering the merits of possible study destinations. In Australia, the post-study visa arrangements are more generous for higher education courses but VET post-study work rights remain attractive in comparison with other countries.

Costs of education and working during study

An important consideration for students and their families is the cost of getting an education in a foreign country. In addition to the costs of tuition fees, visa approval and travel costs, overseas students need to

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[45] English Australia 2014, *Survey of major ELICOS regional markets in 2013,* NSW: Australia, viewed June 2019 <https://www.englishaustralia.com.au/documents/item/263>

[46] Deloitte Access Economics 2015, p.45

fund their cost of living during their studies. This can be significant, especially in cities like Sydney and Melbourne, where the majority of overseas students study.

Students no doubt compare the costs associated with their education across different countries and consider how they can pay tuition fees while also meeting other conditions of their student visa application. In Australia, it is a requirement for the grant of a student visa that the applicant can demonstrate they have access to sufficient funds to meet their costs and expenses, and those of their family members, during their stay in Australia. Applicants are also required to hold private health insurance for the duration of their stay in Australia.

Overseas students may seek the ability to undertake paid employment when in Australia. The work rights on a student visa provide students with an opportunity to gain professional experience and engage more broadly in Australian society and supplement their discretionary income. However, overseas students are not meant to rely on work to support their stay in Australia. In Australia, student visas generally include an automatic right to work up to 40 hours a fortnight while courses are in session, and have no work restrictions during the holiday periods.

Compared with key countries, such as New Zealand, Canada, the UK and the USA, Australia has competitive work rights that are attractive for overseas students.

Influence of education agents and other third parties

Education agents are often the first point of contact for overseas students when they are considering where to study. Education agents have relationships with providers to refer students. These relationships significantly influence where students choose to undertake their course of study.

This is one of the reasons why education agents are crucial to the overseas student market, especially when considering that almost 75 per cent of overseas students engage the assistance of education agents for the purposes of research, enrolling and applying for a visa in Australia[47].

Providers often rely heavily on education agents as a part of their business model for recruiting students, with education agents receiving a commission from affiliated education providers for these services.
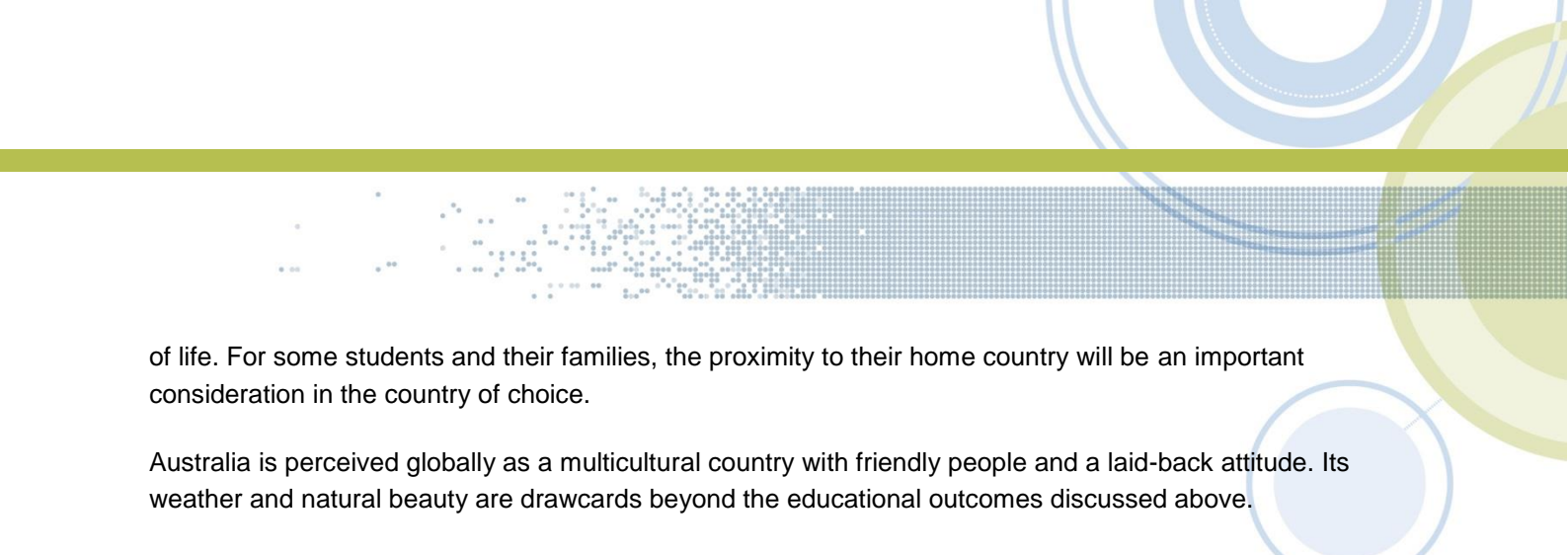
Students' choice can also be influenced by family, friends and the promotional activities of providers and destination countries.

Student experience

Student choice is also subject to a range of more subjective factors informed by personal preferences. Many students and their families place a premium on their wellbeing and safety, with consideration given to both on and off campus factors. Related to this driver is the assessment, both real and perceived, of the broader community acceptance of international students.

Students, like all others, want to feel welcome in the community and may look to the presence of support networks from their cultural background, at least initially, to help them adjust to that country and a new way

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[47] Provider Registration and International Student Management System (PRISMS) data.

of life. For some students and their families, the proximity to their home country will be an important consideration in the country of choice.

Australia is perceived globally as a multicultural country with friendly people and a laid-back attitude. Its weather and natural beauty are drawcards beyond the educational outcomes discussed above.

Risks to VET and ELICOS quality, visa integrity and overseas student welfare

Australia competes in a global market for overseas students. The Australian Government supports Australian education providers to grow and build a sustainable sector for the genuine education of overseas students, while maintaining integrity in the visa program.

The primary drivers of informed student choice should be the quality of the VET and/or ELICOS programs on offer, and the confidence that student welfare will be protected. As discussed above, however, several important factors shape student choices.

Legislative and policy settings, including visa arrangements, can create an attractive environment for students that helps create a sustainable demand for overseas education. It is important to understand the impact that these broader settings can have on the behaviour of providers, education agents and students.

As a risk-based regulator, ASQA seeks to ensure that its regulatory focus is informed by an understanding of these settings and the incentives that can arise for undesirable outcomes in the VET and ELICOS sectors. These risks are discussed below.

Visa outcomes drive student demand for courses

A common concern, and a key risk identified as a driver for this review, is that some overseas students seek only to pursue long-term paid employment opportunities and/or migration outcomes rather than a quality education. Where students do not value their education, there can be an incentive to gravitate to poor-quality providers that do not require students to participate fully.

Every student visa applicant, including family members, is assessed by the Australian Government Department of Home Affairs against the Genuine Temporary Entrant (GTE) requirement. The GTE is a legislative provision and a key integrity measure to ensure the student visa program is used as intended and not as a way for overseas students to maintain ongoing residency in Australia.

The GTE requirement is not designed to exclude those students who, after studying in Australia, wish to undertake a period of paid employment to practise those skills or those graduates who go on to develop further skills required by the Australian labour market and apply to obtain permanent residence. It is designed, however, to ensure that the applicant's primary motivation for seeking to study in Australia is to obtain the qualification, rather than a migration outcome.

As discussed earlier, the ability to undertake paid employment upon graduation can be a motivating factor in students' choice of country of study and the Australian visa program provides for graduates of VET courses to apply for a Temporary Graduate (Subclass 485) visa. The Subclass 485 visa was introduced in

2007, as part of the changes in the General Skilled Migration program, to allow overseas students to increase their work experience and their English language skills. This visa was specifically designed to provide eligible graduates with the opportunity to supplement their Australian study with practical experience.

This visa underwent significant changes in 2013, as a result of the recommendations from the Strategic Review of the Student Visa Program 2011 (the Knight Review). The changes to the visa were designed to encourage recovery after the 2008–09 drop in overseas student numbers and ensure Australia remained competitive in the global environment.

As part of these changes, the Skilled Graduate (Subclass 485) visa was renamed the Temporary Graduate (Subclass 485) visa, and has become a key component of the Temporary Visa Program. Previously, the Subclass 485 visa was a component of the Skilled Migration Program.

The Australian Government Department of Home Affairs website describes the Subclass 485 visa as:

> *'This visa is for international students who have recently graduated with skills and qualifications that are relevant to specific occupations Australia needs. It lets you live, study and work in Australia temporarily.'[48]*

The core requirement for this visa is the Australian Study Requirement which requires an applicant, within six months of lodgement, to have completed study in Australia in no less than 16 months, studied in English, studied a course/s that are registered on CRICOS for a least two years, and completed study while holding an appropriate visa.

The Temporary Graduate (Subclass 485) visa has two streams, the Graduate Work stream and the Post-Study Work stream:

- **Graduate Work stream**—for overseas students who have recently graduated with the skills and qualifications that relate to an occupation on the list of eligible skilled occupations. Applicants in this stream must have completed a trade qualification, diploma or degree. Successful applicants are granted a visa of 18 months validity.

- **Post-Study Work stream**—for overseas students who have recently graduated with an Australian Bachelor degree, Master's degree or Doctorate from an Australian education institution. This stream is only available to overseas students who applied for, and were granted, their first student visa on or after 5 November 2011. Successful applicants are granted a visa of two, three or four years' duration, depending on the highest educational qualification they have obtained.

As at 31 December 2018, there were 70,049 Temporary Graduate (Subclass 485) visa holders in Australia, which is a 29 per cent increase compared to 31 December 2017 (54,254).

This growth has come more from the higher education sector than the VET sector. VET sector graduates are eligible for the Graduate Work stream of the Temporary Graduate (Subclass 485) visa. In 2013-14,

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[48] Department of Home Affairs, 'Temporary Graduate visa', viewed March 2019, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-graduate-485>.

15,661 of the Graduate Work stream visas were granted. This number has decreased year on year, with 8142 of the Graduate Work stream Temporary Graduate (Subclass 485) visas being granted in 2017-18.

The pathway between the student visa, graduate visa and temporary skilled visas can influence student demand for some courses linked to the occupations on the skilled occupation list. The Subclass 485 visa provides visa holders with an opportunity to become eligible to apply for a skilled visa, such as a Skilled Independent (Subclass 189) visa or a Temporary Skill Shortage (Subclass 482) visa (previously known as a 457 visa).

There have been recent changes made to Australia's temporary work visa settings, described below.

Temporary Skills Shortage program

In 2018, changes were made to the structure and benefits of the General Skilled Migration program to change the eligibility criteria for temporary skills visas and to restrict the pathway from temporary visas to permanent residency for some occupations. These changes are summarised below.

The Subclass 457 visa was abolished in March 2018, and the visa program was renamed the Temporary Skill Shortage (TSS) program.

The number of occupations eligible for the TSS was reduced from 651 to 435, with these occupations grouped into two streams:

- **Short-term stream**—this is for employers to source genuine temporary overseas skilled workers in 250 occupations listed on the Short-term Skilled Occupation List for a maximum of two years (or up to four years if an international trade obligation applies)

- **Medium-term stream**—this is for employers to source highly-skilled overseas workers to fill medium-term critical skills in 185 occupations included on the Medium-term and Long-term Strategic Skills List for up to four years, with eligibility to apply for permanent residence after three years.

Two years of relevant occupational experience is required for all TSS visa applications.

Those occupations included in the two-year TSS stream are no longer eligible to be sponsored for a permanent-entry employer-sponsored visa.

Eligibility for Subclass 482 visa is largely determined by the applicant's occupation and previous occupational experience. Historically, this is reflected by some of the more common courses being linked to the listed occupations[49]. When the skilled occupation list has changed, there has been movement of providers to offer related courses and of students to enrol in these courses.

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[49] *Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019*, viewed March 2019, <https://www.legislation.gov.au/Details/F2019L00274>; *Migration Regulations 1994 - Specification of Skilled Occupations, Relevant Assessing Authorities and Countries for General Skilled Migration Visas - IMMI 11/069,* viewed March 2019 <https://www.legislation.gov.au/Details/F2011L02010>; PRISMS data.

Permanent visas applicants must meet certain criteria, which may include age restrictions, minimum English language requirements, and skills, health and character requirements. If an applicant is applying independently (that is, they are not being sponsored) or is being nominated by an Australian state or territory government agency, the application is a points-tested process.

State and territory governments influence the allocation of permanent visas through a range of policy settings, including by providing additional points for the level of education held by an applicant and for having a connection, including having studied, in the state or territory. These permanent visas can include the Skilled Nominated (Subclass 190) visa and the Skilled Independent (Subclass 189) visa, which provides additional points for study at a regional location.

While there is often speculation about the nexus of Australia's overseas student program and permanent skilled migration, permanent residency does not appear to be a significant factor in student decision-making. Data published by Commonwealth Treasury and Australian Government Department of Home Affairs[50] shows that only a small proportion of those arriving as overseas students eventually transition to permanent residence (Figure 9).

This research found that:

> *'Of the 1.6 million individuals examined between 2000-01 and 2013-14, 16 per cent eventually transitioned to permanent residence. Reflecting the time involved in studying, students take longer to make this transition than 457 visa holders. For those who transition to permanent residence, 25 per cent do so within two and a half years, and 75 per cent within just under five and a half years.*
>
> *The time taken for students to transition to permanent residence did not decrease much between 2000-01 and 2013-14, perhaps reflecting an increased requirement for students to demonstrate their labour market capabilities through workforce participation. This has made the transition more difficult and less direct. Students have increasingly had to look towards 457 visas and then employer sponsored pathways to permanent residence.'*

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[50] The Treasury and Australian Government Department of Home Affairs 2018, *Shaping A Nation: Population growth and immigration over time,* viewed June 2019 <https://cdn.tspace.gov.au/uploads/sites/107/2018/04/Shaping-a-Nation-1.pdf>.

Figure 9: Student visa transitions
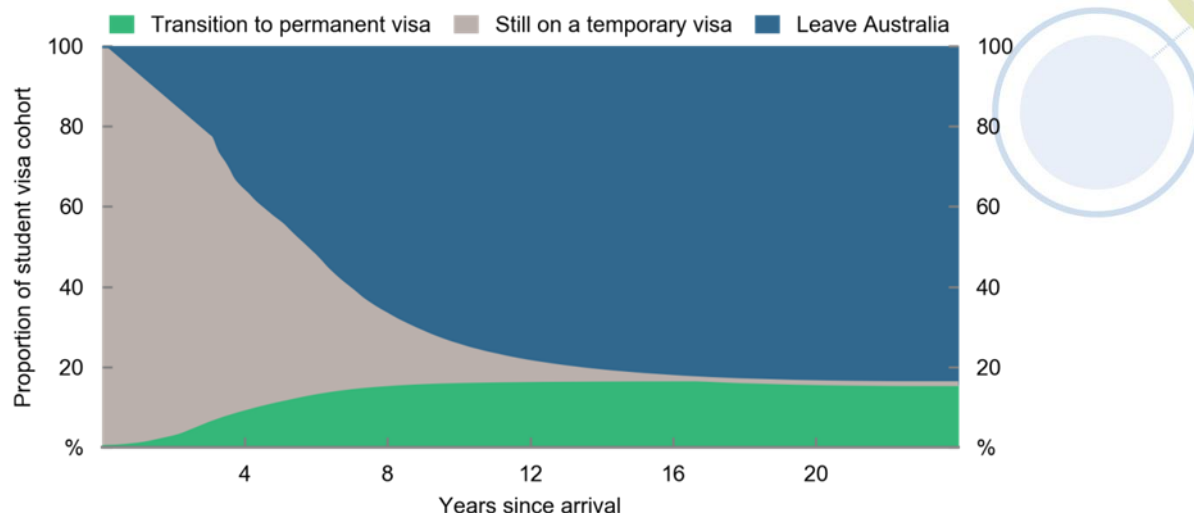
Source: Unpublished Home Affairs data, authors' calculations.

Visa settings can influence the number of overseas students choosing to study in Australia. Research shows that, for the overwhelming majority of overseas students, becoming an Australian permanent resident does not appear to be a relevant consideration in their decision-making. Graduate, temporary skills and permanent Australian visa settings are reviewed periodically to ensure they are appropriate.

Visa and other policy settings can also impact on the distribution of overseas students. Governments use these arrangements to attract overseas students to a broader range of locations and spread the benefits to regional institutions and communities. For example, the Australian Government has recently announced the introduction of a scholarship program that seeks to encourage overseas students to study at regional institutions.

The resulting impact on local markets for education services can be significant and are important considerations for ASQA as a risk-based regulator. Opportunities for rapid student growth can attract poor-quality providers that do not engage appropriately with students. Unsustainable growth can also result in the need for subsequent policy changes which can have a negative impact on affected students.

It is therefore imperative that the regulator is aware of these policy settings and has access to the relevant data to monitor the impact of these broader settings to ensure that the resulting growth is sustainable and the quality of education is safeguarded.

Working in breach of student visa conditions

There are concerns that some overseas students enrol in VET courses with the sole purpose of coming to Australian to undertake paid employment and that they are assisted to achieve this by some education agents and some VET providers. It remains unclear how widespread this practice may be.

In other cases, some overseas students suffer genuine financial hardship while undertaking their study. The costs of living in Australia, especially in Sydney and Melbourne, can be challenging. Some students

can also be under family and cultural pressure to make remittances to their families at home during their stay in Australia, placing them under further financial pressure.

Due to the cost of living in Australia, some overseas students have been known to cancel their health insurance when they arrive onshore, in breach of their visa conditions. This lack of health insurance heightens the risk of these students breaching their visa conditions by working extra hours to cover medical expenses that arise, or incurring a debt to the Australian Government if they access public health facilities.

Overseas students, just like domestic students, may undertake part-time work and often take on low-paying semi-skilled and unskilled jobs. Overseas students who find themselves under pressure financially for any reason may be tempted to extend their working hours beyond the 40 hours permitted each fortnight.

There is anecdotal evidence that education agents may be recruiting students based on promises to the overseas students and their families that work in excess of 40 hours per fortnight is permitted. ASQA has found several providers that do not require their students to attend scheduled classes, which facilitates students working over the allowable 40 hours a fortnight. This provider approach is a significant risk to the quality of the VET courses, student outcomes and the integrity of Australia's visa program.

Work hours beyond those allowed under visa conditions can also lead to damaging outcomes for individual students. Overseas students who do work in excess of 40 hours per fortnight can be vulnerable on several fronts. Their studies can suffer, and they can face exploitation by unscrupulous employers. Many overseas students fear the loss of their student visas as a result of being reported for breaching their visa. This fear can leave them open to workplace exploitation.

Australian Government initiative: Migrant Workers' Taskforce

The Migrant Workers' Taskforce, established by the Australian Government, detailed these international student workforce practices in its report released in March 2019[51]. Two examples from its report are included below.

The National Temporary Migrant Work Survey[52], conducted by the University of NSW and University of Technology Sydney, found that 'wage theft' is widespread among international students and backpackers in Australia. The survey of 4322 temporary migrants from 107 countries found that one in three overseas students and backpackers are paid about half the legal minimum wage.

The Inquiry[53] into 7-Eleven undertaken by the Fair Work Ombudsman (FWO) commenced in 2014 and disclosed concerning levels of non-compliance with the *Fair Work Act 2009* and *Fair Work Regulations*

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[51] Department of Employment, Skills, Small and Family Business 2019, *Report of the Migrant Workers' Taskforce*, Australia, viewed June 2019 <https://docs.employment.gov.au/system/files/doc/other/mwt_final_report.pdf>.

[52] Berg, L and Farbenblum, B., *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey*, UNSW Law, Sydney and University of Technology Sydney, 2017, viewed June 2019, < https://www.mwji.org/highlights/2017/11/14/report-released-wage-theft-in-australia-findings-of-the-national-temporary-migrant-work-survey>.

[53] Fair Work Ombudsman 2016, *A report of the Fair Work Ombudsman's Inquiry into 7-Eleven: Identifying and addressing the drivers of non-compliance in the 7-Eleven network*, FWO: Melbourne, 2016, viewed June 2019 <https://www.fairwork.gov.au/ArticleDocuments/763/7-eleven-inquiry-report.pdf.aspx>.

2009, including instances of deliberate manipulation of records to disguise underpayment of wages, with the typical employee being a male international student visa holder.

In relation to the 7-Eleven practice, one of the key methods that franchisees used to obtain reductions in student visa holder's wages, was allowing students to work in excess of the restrictions imposed by their visa condition. This leverage gave the franchisees the ability to threaten student visa holders with being reported and/or cancelled by the Australian Government Department of Home Affairs (then DIBP) if they complained about their working conditions or rights. The FWO Inquiry found that these were not isolated incidents of exploitation of visa holders but rather a systemic and structured approach by the franchisees.

The Migrant Workers' Taskforce made several recommendations to address the risk to overseas students:

- **Recommendation 15**: It is recommended that education providers, including through their education agents, give information to international students on workplace rights prior to coming to Australia and periodically during their time studying in Australia.

- **Recommendation 16**: It is recommended that education providers, through their overseas students support services, assist international students experiencing workplace issues, including referrals to external support services that are at minimal or no additional cost to the student and that specific reference to this obligation be made in the *National Code of Practice for Providers of Education and Training to Overseas Students 2018*.

- **Recommendation 17**: It is recommended that the Council for International Education develop and disseminate best-practice guidelines for use by educational institutions.

The Australian Government responded to the recommendations in March 2019, noting that action was underway to address recommendations 15 and 17, and that further consideration would be given to amending the National Code (recommendation 16) when it was next reviewed.

Education agents

Education agents are an integral part of Australia's overseas education sector. They represent education providers to students and advise prospective students on courses of study available to them in all education sectors.

There is no legal requirement under Australian law for providers or overseas students to engage an agent, but most do—agents facilitated almost 74 per cent of the total overseas student enrolments in 2017[54].

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[54] Department of Education and Training 2019, *Publication of education agent performance data,* viewed June 2019, <https://docs.education.gov.au/system/files/doc/other/policy_paper_agent_data_publication_1.pdf>.

Table 2: Use of education agents by overseas students in education sectors

Sector	Total % of enrolments by sector in 2017	2013 (%)	2014 (%)	2015 (%)	2016 (%)	2017 (%)
Higher Education	44	61.2	64.6	67.5	70.2	71.0
VET	27	62.6	66.8	70.8	70.9	72.9
ELICOS	19	78.6	81.5	82.8	83.8	85.1
Non-Award*	6	49.0	49.6	48.3	53.5	52.0
Schools	3	72.7	72.7	74.5	74.5	76.2
All Sectors	**99	65.1	68.5	71.2	72.4	73.6

* Non-Award includes courses that do not lead to a qualification, including Foundation Courses and Tertiary Preparation Programs

** Does not equal 100 per cent due to rounding

There is little reliable information to help students choose an appropriate education agent. As noted by the Productivity Commission[55], education agents can play a useful advisory and intermediary role for overseas students and can be a cost-effective option for institutions looking to recruit students across a range of countries (at least in the short-term).

ASQA does not regulate migration agents or education agents. Unlike migration agents (onshore), education agents are a non-regulated sector and there are no official registration processes for becoming an education agent.

Providers are responsible for the conduct of all third parties that act on their behalf, including education agents with whom they have written agreements. ASQA's role is to regulate providers to ensure nationally approved standards are met—both under the NVR Act and the ESOS Act—including providers' obligations to ensure their education agents act ethically, honestly and in the best interests of overseas students.

Both potential domestic and overseas students face considerable difficulties in accessing reliable information to enable them to independently choose an appropriate training provider—that is, a provider that will deliver them high-quality training leading to good job outcomes at a reasonable price. There can be significant inconsistencies in how providers advertise their course offerings and the VET system can be complex and confusing for consumers.

Overseas students are at a further disadvantage when seeking reliable course and provider information given their language barriers and unfamiliarity with the Australian education sector. Overseas students also have additional obligations arising from their visa conditions, including work and course transfer restrictions, and they may rely on education agents for advice on their compliance obligations.

For many overseas students, their primary source of advice will be education agents and they face difficulties trying to verify information independently. In these circumstances, it is crucial that overseas

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[55] Productivity Commission 2015, *International Education Services: Productivity Commission Research Paper*, Canberra: Australia, viewed June 2019, < https://www.pc.gov.au/research/completed/international-education/international-education.pdf>

students have access to clear, reliable and accurate information to inform them of their obligations and assist them to hold their education agents and providers to account.

Offshore VET Delivery

Many countries in the Asia-Pacific region, and increasingly across Latin America, are seeking to improve their VET systems and provide their workforce with industry-relevant skills to drive productivity, enhance economic growth and increase their global competitiveness. The demand for skills is growing due to economic challenges arising from population demographics, technology advances, structural adjustment of labour markets and the rapidly evolving needs of industry. Australia is well-placed to respond to this increasing global demand for skills development, particularly in industries such as mining where Australia is regarded as a global leader.

Australian education providers have been 'early adopters' of the offshore delivery of VET by partnering with foreign institutions to deliver Australian qualifications. Since the late 1980s, Australian TAFEs have been active in establishing relationships with international scholars in technical areas.

In the early 2000s, the Australian and Chinese governments funded a capacity-building project to help establish a VET system that was responsive to the needs of Chinese industry. Offshore delivery of VET grew substantially until around 2009. Since this time, the delivery of formal AQF qualifications by Australian RTOs has declined. Anecdotally, it understood that it has been replaced by a greater involvement in the non-formal training markets.

In 2017[56], Australian RTOs delivering VET offshore reported 36,765 program enrolments by approximately 34,300 students in over 40 locations outside of Australia. This was a decline of seven per cent on the 2016 program enrolments (39,526 program enrolments) and a decline of almost 14 per cent on the 2015 program enrolments (42,738 program enrolments).

The majority, 92 per cent, of VET program enrolments offshore were with public RTOs. China accounts for two-thirds of total program enrolments and around half of the entire student population enrolled in programs with Victorian TAFE providers is Chinese-born.

The decline in program enrolments from 2016 to 2017 was driven primarily by declining offshore program enrolments in China, which fell by 21 per cent from 26,482 in 2016. This downturn in VET enrolments with Australian RTOs offshore has been driven by increasing competition from other countries and a tightening of government regulations on foreign providers offering programs in China.

In 2015, the Chinese Ministry of Education announced greater scrutiny of Sino-foreign joint programs, to ensure that they are delivered in areas of skills shortage, are of high quality and are not rolled out indiscriminately across large numbers of Chinese partners and provinces.

Vietnam was the top offshore location for private RTOs. Hong Kong was one of the top five offshore locations for both public and private RTOs, but otherwise offshore delivery locations varied between public and private RTOs (see table 3).

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[56] Data for 2018 VET delivery to offshore students is not yet available.

Table 3: Top 5 offshore locations by program enrolments and RTO type (2017)[57]

Total Public (TAFE and University)		Total (Private and Enterprise provider)	
Country	Enrolments	Country	Enrolments
China	20,860	Vietnam	545
Fiji	2275	New Zealand	525
Mauritius	1085	Philippines	410
Kuwait	1030	Hong Kong	360
Hong Kong	980	Malaysia	300
Other	*7595*	*Other*	*800*
Total	33,825	Total	2,940

VET program enrolments across all other offshore locations grew by 21 per cent (from 13,044 in 2016). Figure 10 shows the relative decline in offshore enrolments in China and the growth in other locations.

Figure 10: Offshore VET program enrolments in China and other locations[58]
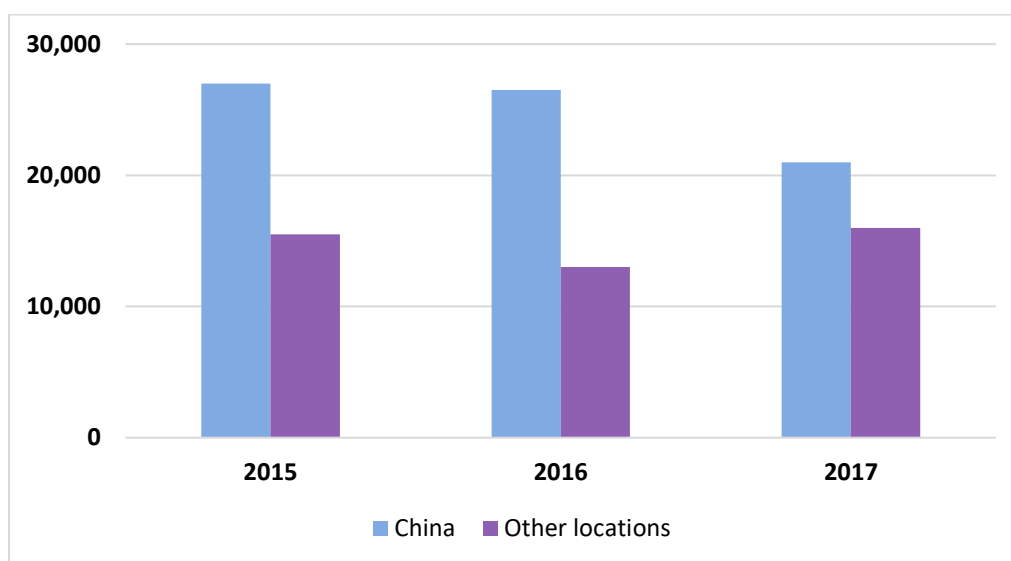
In 2017, Management and Commerce was the top broad field of education for offshore VET students (45 per cent of all program enrolments) followed by Engineering and Related Technologies (15 per cent of all program enrolments), although enrolments in these fields did not grow in 2017.

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[57] Australian Government Department of Education and Training 2018, *Research Snapshot October 2018: Offshore delivery of Australian VET courses in 2017*, viewed June 2019, <https://internationaleducation.gov.au/research/Research-Snapshots/Documents/RS_Offshore%20VET_2017.pdf>

[58] Ibid.

Offshore program enrolments grew in the fields of Education (by 41 per cent), Health (by 25 per cent) and Food, Hospitality and Personal Services (by 19 per cent). Offshore enrolments in the Natural and Physical Sciences field more than tripled from 70 in 2016 to 265 in 2017.[59]

In 2017, English for Academic Purposes (EAP) recorded the highest share of total program enrolments (at just over eight per cent). Most of this delivery was through non-award courses, which are outside of ASQA's jurisdiction.

The total number of Australian RTOs delivering VET programs offshore increased from 53 in 2015, to 68 in 2017. ASQA had responsibility for 66 of these RTOs in 2017. In addition to these RTOs delivering VET to offshore students from locations outside of Australia, ASQA-regulated RTOs also offer online VET courses to offshore students from domestic locations.

Drivers of offshore student demand

Research into the factors that drive offshore students to choose to undertake Australian VET courses is limited. In support of the National Strategy, the Department of Education commissioned a research project[60] to build an evidence base to inform policy, practice and research. This study found:

- teachers and administrators in China observed that students enrolled in international programs tend to have a more global perspective than their peers, be smart, motivated, creative and entrepreneurial, and have great potential for further growth

- courses delivered in China that include foreign content can be up to three to four times as expensive as the local qualifications, making the decision to enrol in these programs a considerable investment for students and their families

- two-thirds of students enrolled in an international major (that is, with Australian content) because their school or college recommended it

- the benefits of completing an international VET course at home provides students with English language skills that make them more employable, gives them access to foreign cultures and provides them with more opportunities to work overseas

- the Australian approach to training was seen as being 'broader' than local alternatives while also being specialised and practical

- most students would recommend their course to their peers.

Offshore delivery of non-AQF qualifications

While the quality of AQF qualifications is well regarded in offshore markets, there is a growing demand for more bespoke and cost-effective VET products.

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[59] Australian Government Department of Education and Training 2018, *Research Snapshot October 2018: Offshore delivery of Australian VET courses in 2017*

[60] Brown, J., Buttress, W. and Matthews, D. 2018. *Survey and Focus Groups of Students Enrolled in Australian Vocational Education and Training (VET) Offshore: Final Report*, Canberra: Department of Education and Training.

In its education report, *Responding to Growth October 2014*[61], Austrade characterised the delivery of qualifications offshore through a physical presence or partnerships with foreign education providers as 'Transnational Education 1.0'. It noted several challenges presented by this type of delivery:

- qualifications delivered offshore must meet the standards established under the AQF and Australia's national regulation of education quality

- there can be high financial and regulatory risks associated with operating offshore

- the capacity of local students to pay and the increased cost of delivery offshore.

In this report, Austrade advised that its research suggested that there are greater opportunities in Transnational Education 2.0 – the delivery of Australian skills and training services (not recognised Australian qualifications) to overseas government and business partners.

ASQA does not regulate the delivery of non-AQF qualifications either domestically or offshore. There are, however, potential risks to the reputation of Australia's VET sector if ASQA-regulated providers deliver poor quality training and assessment outcomes for students offshore.

Offshore delivery risks

There are a range of risks related to the delivery of VET to international students from offshore locations. Ensuring that the actual delivery adheres to the RTO's policies and procedures can be challenging and the distances involved can make effective oversight difficult, even for high-quality providers. Many RTOs form partnership arrangements with local organisations or form consortia with a number of organisations to deliver courses.

Among the issues that can impede the successful implementation of the program as it was intended by the RTO, are:

- partner organisations' level of understanding of effective delivery of competency-based training and compliance requirements

- ineffective governance arrangements exacerbated by communication difficulties and language and cultural differences

- sourcing appropriate resources and work placements in accordance with training package requirements

- employing appropriately qualified staff to provide training and assessments.

The delivery of VET courses online to offshore students also raises a number of risks primarily related to whether the expected competencies are achievable and validly assessable in the e-learning environment. RTOs need to ensure that students have the capability to engage in this form of learning and that they are offered appropriate support to successfully complete their courses. RTOs also need to ensure that the identity of the learner is verified and that assessments are valid.

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[61] Austrade 2014, *Transnational education insights and opportunities: Responding to growth*, Australia.

There are also English-language risks to offshore students who enrol with RTOs delivering outside of Australia through face-to-face classes and/or online. These students may struggle to succeed if the RTO has not engaged appropriately qualified staff with sufficient English language skills. These students may find that they are unable to develop or validly demonstrate competencies where the qualification is intended to be delivered in English.

RTOs delivering assessment-only services need to ensure that all assessment is conducted in a manner that is valid and sufficient. In particular, the assessment of practical vocational skills would need to be conducted in a way that can be observed by the assessor. Where RTOs fail to put in place effective oversight arrangements, the validity of these qualifications is questionable.

There is anecdotal evidence that there is an increasing demand for non-AQF training by foreign governments and businesses. It is important that it is clear to learners that these courses are outside of Australia's Nationally Recognised Training framework. Where these providers do not deliver a quality outcome, there is a risk that they cause reputational damage to the broader VET sector.

Summary

Clearly Australia remains an attractive destination for overseas students and there is ongoing strong demand for VET and ELICOS courses. Australia's reputation for quality VET and ELICOS courses, along with its welcoming approach to overseas students, makes it a strong performer in the global competition for international education.

The drivers of this student demand are complex and relate to a range of interrelated factors, including the ability to work in Australia while undertaking study and post-graduation. Australia's post-study work rights, and its work-rights settings, remain competitive.

The desire to pursue paid employment opportunities, even in breach of their visa conditions, is likely to motivate some students and introduces the risk that some providers and agents will seek to exploit this demand and recruit these overseas students using misleading and unethical practices.

Overseas students rely heavily on the assistance of education agents when making decisions and can lack reliable information to hold their providers and education agents to account. This dependence makes overseas students vulnerable to being misinformed, misled and, in the worst circumstances, open to exploitation by their providers, education agents and other third parties, such as employers.

The demand for offshore VET has moderated since its peak in around 2009 primarily due to a decline in enrolments by Chinese students. There has been some moderate growth in other countries which has offset this decline. Stakeholders report an increase in the demand for the delivery of non-AQF qualifications, the regulation of which is outside ASQA's jurisdiction. The regulatory architecture and ASQA's regulatory approach to these issues are discussed in Chapter 5.

3. Overseas student sector—Australia's regulatory architecture

This chapter provides an overview of the VET and ELICOS regulatory environment for overseas education. It explains the context in which ASQA and ASQA-regulated providers, and specifically those that are approved on CRICOS, must operate to meet the requirements of the relevant regulatory instruments. It also outlines the roles and responsibilities of other government agencies and regulatory bodies involved in the sector and the data available to assist in regulation.

This section also considers the recent changes made to the ESOS framework through the National Code and ELICOS Standards and explains the interplay between the regulatory instruments for providers that deliver VET courses to overseas students.

This chapter then describes the student visa program, and the responsibilities of providers and students to adhere to the requirements of the student visa program.

The Australian VET sector

The VET sector plays a vital role in developing Australia's national workforce. The sector helps to ensure Australia has an educated and highly skilled population through the delivery of current industry-developed training packages. Vocational competencies are also transferrable worldwide and prepare graduates to move straight into the workforce.

Australia's current VET regulatory framework, including the formation of ASQA, was established by the Australian Parliament under the NVR Act. The national regulatory system was established through:

- a referral of powers to the Commonwealth from most states (except Victoria and Western Australia)

- the exercise of the Commonwealth's constitutional powers in the regulation of vocational education and training in the territories.

On 1 July 2011, ASQA became the national regulatory body for the VET sector. Before the establishment of ASQA, regulatory arrangements for VET were dispersed between eight states and territories. ASQA's establishment as the national VET regulator involved the referral of powers to the Commonwealth from all states (except Victoria and Western Australia), as set out in an intergovernmental agreement.

The exercise of the Commonwealth's constitutional power provided for ASQA's operation in the Australian Capital Territory and the Northern Territory. ASQA assumed regulatory responsibility for VET from state and territory jurisdictions in phases throughout 2011–12. For VET delivery to domestic students, the jurisdiction of Victoria has remained the regulatory responsibility of the Victorian Registration and Qualifications Authority, and the jurisdiction of Western Australia has remained the regulatory responsibility of the Training Accreditation Council Western Australia.

All registered training organisations (RTOs) are required to comply with the legislative requirements of the NVR Act and any supporting instruments. This includes delivery offshore, and domestic delivery to overseas students studying in Australia on a student visa and to domestic students.

VET Quality Framework

Australia's VET system is led by a council made up of Australian, state and territory government ministers responsible for industry and skills. The Council of Australian Governments (COAG) Industry and Skills Council manages the overall arrangements for VET policy in line with the legislation that establishes the VET Quality Framework and oversees the specific requirements for industry sectors through training packages.

All RTOs must comply, at all times, with the VET Quality Framework in order to be registered as a training organisation in Australia. The VET Quality Framework aims to achieve national consistency in the way RTOs are registered and monitored and in how standards in the VET sector are enforced. The VET Quality Framework is endorsed by the NVR Act and comprises several components which are described below.

VET Quality Framework	
Standards for NVR Registered Training Organisations	These Standards are the main instrument for assessing and monitoring VET providers to ensure quality training and assessment. The purpose of the Standards is to: • describe the requirements that an organisation must meet in order to be an RTO in Australia • ensure that training delivered by RTOs meets industry requirements (as set out in training packages and accredited courses) and has integrity for employment and further study • ensure RTOs operate ethically and consider the needs of both students and industry. ASQA uses the Standards to ensure nationally consistent, high-quality training and assessment across Australia's VET system. RTO obligations under the Standards apply to all delivery by RTOs including offshore, to overseas students studying in Australia on a student visa, and to domestic students. The current Standards are cited as the *Standards for Registered Training Organisations (RTOs) 2015* (Standards for RTOs).
Quality Standards	Quality Standards were introduced as an amendment to the NVR Act in 2015. Under section 231A of the Act, the Minister may make a legislative instrument to set standards relating to quality in the VET sector. To date, no additional standards have been created.
Australian Qualifications Framework	The Australian Qualifications Framework (AQF) is the national policy for regulated qualifications in the Australian education and training system. It incorporates the qualifications from each education and training sector (schools, VET and higher education) into a single comprehensive national qualifications framework. RTOs are required to be fully compliant with all aspects of the AQF. While some parts of the AQF are primarily intended for course development rather than training delivery, delivery of training products must ensure students have the opportunity to properly develop the skills and knowledge that have been

| | described in the training package or course document. By ensuring that delivery aligns to the AQF in the same way training product design does, the skill level and employability of VET graduates is assured.

In the 2017–18 Budget, the Australian Government announced a review of the AQF, which will ensure that the framework continues to meet the needs of students, employers, education providers and the wider community. The review is expected to be completed by September 2019. |
|---|---|
| Fit and Proper Person Requirements | These Requirements describe the criteria for suitability as a fit and proper person to be an executive officer, high managerial agent, or to exercise a degree of control or influence over and of an RTO.

As of 2015, these requirements are part of the Standards for RTOs. |
| Financial Viability Risk Assessment Requirements | This instrument sets out details of the financial viability risk assessment of registered and applicant training organisations.

The assessment of an organisation's financial viability risk is directed at evaluating the likelihood of its business continuity, and its capacity to achieve quality outcomes. |
| Data Provision Requirements | This instrument sets out the requirements for RTOs in relation to the submission of data to ASQA upon request and to submit quality indicator data annually. |

Training packages

The cornerstone of the Australian VET system is the key leadership role played by industry. This role includes the development of training packages. Training packages are developed by Service Skills Organisations (SSOs) when industry identifies the need for nationally recognised training that is not currently covered by a training package. Training packages are periodically updated to ensure they remain industry relevant.

SSOs develop and validate training packages through extensive research and consultation with industry stakeholders. Training packages are then endorsed by the Australian Industry Skills Committee before being submitted to the COAG Industry and Skills Council for approval and use throughout Australia.

RTOs are authorised to deliver training packages qualifications and units of competency, if the RTO has had the training package product/s approved by ASQA to be included on its scope of registration.

While ASQA has no role in the development, endorsement or maintenance of training packages, it does ensure that RTOs are ready to deliver/are delivering training and assessment that meets training package requirements. ASQA takes regulatory action if RTOs do not meet training package requirements.

VET accredited courses

As well as training packages, the Australian VET system also uses accredited VET courses to meet industry requirements for training. VET accredited courses are also nationally recognised qualifications, developed in consultation with industry. These courses are developed to address niche and/or new and emerging areas where no suitable training package qualification exists.

VET accredited courses are developed by course developers, often RTOs or private organisations with a particular interest and expertise in specific industry areas. ASQA assesses and approves VET accredited courses and ensures providers meet the requirements of these courses.

Reporting VET data

In 2012, COAG agreed to the collection and reporting of Total VET Activity data by all RTOs from 1 January 2014. This is reflected in the Data Provision Requirements, under the NVR Act.

Under these reporting requirements, all RTOs (excluding a small number of RTOs that are exempted) delivering VET qualifications and courses to students, either within Australia or in offshore locations, are obliged to report information about their students and their training. RTOs must collect Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) compliant records for all students, and for all competency enrolments and outcomes achieved, throughout the calendar year.

In 2016, COAG authorised a review of the Total VET Activity data collection and submission arrangements. After this review, COAG agreed to a revised National VET Data Policy to outline data collection and submission requirements for Total VET Activity. The policy articulates why VET data is collected, the obligations on RTOs to collect and submit comprehensive data on their delivery of Nationally Recognised Training, and the arrangements for disclosing and using the VET Data.

Total VET Activity data is collected by the National Centre for Vocational Education Research (NCVER) as the national body responsible for collecting, managing, analysing and communicating research and statistics on the VET sector. RTOs are required to submit completed Total VET Activity data at the conclusion of a calendar year, if they have not already done so by other reporting mechanisms. The NCVER collate and analyse the information, and release findings in the second half of the following year.

As a result, there is a considerable time lag before this data is available to ASQA, and this has significant implications for ASQA's ability to detect emerging risk factors.

Government initiative: access to real-time VET delivery data

Professor Braithwaite identified a number of shortcomings with the current VET data environment and presented four recommendations that call for an improvement in the current collection and data sharing arrangements in VET, which are considered essential for efficient regulation.[62] These recommendations seek to increase the frequency, response rates and accessibility of VET student and RTO data to improve

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[62] Department of Education, *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011*

timely identification of, and response to, systemic and provider issues, as well as to improve student and RTO access to sectoral information.

In response, the Australian Government is currently exploring ways to facilitate near real-time upload of data from RTOs through a systemic submission interface that will enable more frequent VET data collection for the sector. ASQA considers this initiative to be a 'game changer' in terms of its ability to better regulate VET delivery through the early detection of emerging risks.

Recording student information

Also in 2012, COAG agreed to implement a specially designed tool to provide students with the ability to obtain a complete record of their VET enrolments and achievements from a single source. The Unique Student Identifier (USI) scheme was introduced from 1 January 2015.

The USI is a reference number allocated to a student to create a secure online record of recognised training and qualifications from the RTOs that a student has undertaken training with. A USI is mandatory for all:

- domestic students, regardless of whether they are studying in Australia or offshore

- students studying in Australia on a student visa.

Some students may also be exempted if they have a genuine personal objection to being assigned a USI with eligibility for an exemption determined by the Student Identifiers Registrar. A USI is not required for international students studying a VET course offshore and the impact of this exemption is discussed further in chapter 5, where ASQA discusses the need for change.

The ESOS regulatory framework

The *Education Services for Overseas Students Act 2000* (ESOS Act), and associated legislation, form the ESOS regulatory framework. This is the legal framework for the provision of education services to overseas students who are studying in Australia on a student visa. The obligations of the ESOS Act apply to delivery to overseas students in the schooling, ELICOS, VET and higher education sectors.

The principle objects of the ESOS Act are:

a. to provide tuition assurance, and refunds, for overseas students for courses for which they have paid

b. to protect and enhance Australia's reputation for quality education and training services, and

c. to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.[63]

The ESOS regulatory framework is complemented by the *Migration Act 1958* and *Migration Regulations 1994*, as well as the *Tertiary Education Quality and Standards Agency Act 2011* (the legislation for higher

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[63] *Education Services for Overseas Students Act 2000, section 4A Objects*. Available at: https://www.legislation.gov.au/Series/C2004A00757 (accessed June 2019)

education), the NVR Act, and state and territory legislation relevant to the education and training of overseas students.

ASQA is the ESOS Agency for all registered VET providers approved to deliver to overseas students, regardless of the location in which the registered VET provider operates.

ASQA is also the ESOS Agency for providers delivering ELICOS courses, except where the courses are delivered:

- in the capacity of a school

- in the capacity of a higher education provider, or

- under an 'entry arrangement' with at least one higher education provider[65].

The framework provides a consistent national approach to the registration of education providers, so that the quality of the training and the care of students, remains assured.

ESOS Standards for registered providers

The *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code) sets out standards for the conduct of registered providers.

The objectives of the National Code are to:

- support the ESOS framework

- establish and safeguard Australia's international reputation as a provider of high-quality education and training

- protect the interests of overseas students

- support registered providers in monitoring student compliance with student visa conditions and in reporting any student breaches to the Australian Government.

The National Code governs the protection of overseas students and delivery of courses to those students by CRICOS providers.

Migration Act 1958 and *Migration Regulations 1994*

This legislative framework regulates the 'entry into, and presence in, Australia of aliens, and the departure and deportation from Australia of aliens and certain other persons'[64]. As part of these legislative requirements, students coming to Australia on a student visa must:

- be enrolled in a full-time registered course

- maintain enrolment in a registered course that, once completed, will provide a qualification from the Australian Qualifications Framework (at the same level as, or at a higher level than, the registered course in relation to which the visa was granted), and

- ensure that they achieve satisfactory course progress or course attendance, as required by their registered provider.

To enrol an overseas student into a course, providers must uphold the integrity of the student visa program. Providers are obligated to ensure they provide a course and monitor a student's enrolment, which meets these migration requirements.

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[64] *Migration Act 1958.* Available at: https://www.legislation.gov.au/Details/C2019C00181 (Accessed June 2019)

[65] 'Entry arrangement' means a pathway arrangement under which an overseas student who completes an ELICOS program with the provider meets the minimum English proficiency requirements for entry with the higher education provider to study a higher education course or Foundation program.

The National Code is a legislative instrument of the ESOS Act. As such, it is legally enforceable and all registered providers must comply with these requirements. ASQA assesses a provider's compliance with the National Code when granting, renewing or monitoring provider registration. Breaches of the National Code by providers can result in enforcement action under the ESOS Act, including the imposition of conditions on registration or suspension or cancellation of registration.

The current National Code commenced on 1 January 2018, replacing the previous Code which—largely—had been in place since 2007[66]. The changes in the National Code were aimed at developing a streamlined approach to make it easier and simpler for regulators and registered providers to interpret[67]. The most significant changes to the National Code for VET and ELICOS providers related to:

• improving the transparency of written agreements, including agreements between providers and education agents that represent them (Standards 3 and 4)

• protecting the welfare of younger overseas students (Standard 5)

• strengthening the monitoring and reporting of course attendance and progress, thereby supporting students to complete their course within the required time frame and fulfil their visa requirements (Standard 8)

• informing the regulator of changes to registered course details and/or third-party arrangements (Standard 11).

Specific to ASQA and its role as the ESOS Agency for all registered VET providers, the key changes related to:

• **Standard 8—Overseas student visa requirements**: the obligations of Standard 8 came from a combination of three standards in the previous National Code. The purpose of this standard is to ensure providers safeguard the integrity of Australia's migration laws by supporting overseas students to complete their course within the required duration and fulfil their visa requirements for course attendance and course progress

• **Standard 11—Additional registration requirements**: the obligations of Standard 11 came largely from Section C of the previous National Code. The purpose of this standard is to ensure registered providers supply sufficient detail of delivery arrangements and continue to meet the requirements for registration.

Following the implementation of the revised National Code, ASQA's regulatory work has been able to assess the effectiveness of these changes—particularly for delivery of VET courses. There are some aspects of the National Code where changes are warranted to clarify VET delivery requirements and maintain the integrity of the student visa program. These aspects are discussed in chapter 4.

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[66] The *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* took effect from 1 July 2007. It was replaced by the *National Code of Practice for Providers of Education and Training to Overseas Students 2017* which took effect on 9 April 2017. There were no substantive differences between these two National Code versions.
[67] Department of Education and Training 2017, *Strengthening Australia's Protections for International Students: National Code of Practice for Providers of Education and Training to Overseas Students 2018,* Australia, viewed June 2019. <https://internationaleducation.gov.au/Regulatory-Information/Documents/FINAL%20National%20Code%20Factsheet%20-%20General%20changes.pdf>

Education agents

Although education agents are a non-regulated sector, and there are no official registration processes for becoming an education agent, recent changes to the ESOS Act and National Code strengthened the provider obligations to monitor individual agents.

Changes to the National Code strengthened provider responsibilities in monitoring the activities undertaken on their behalf by education agents, to ensure the agent that a provider uses acts ethically, honestly and in the best interests of overseas students. The National Code stipulates that providers are responsible for the conduct of all third parties, including their education agents.

For providers, these changes complement the requirements of the Standards for RTOs which stipulate RTOs must have sufficient strategies and resources to systematically monitor any services (including any activities related to the recruitment of prospective learners) delivered on their behalf, and must use these to ensure that the services delivered comply with the Standards for RTOs at all times. Combined, the National Code and the Standards for RTOs reinforce that providers are responsible for the actions taken by their education agents.

Australian Government initiative: Education agent performance information

Recent changes to the ESOS Act in 2017 provided for performance data being made publicly available by giving the Australian Government Department of Education the power to give information about education agents' performance to providers, and to publish information about education agents' performance.

Currently, while the Australian Government Department of Education is providing data about education agent performance to providers, the information has not been published publicly. On 10 October 2018, the Australian Government committed to publishing performance data on education agents in Australia's international education system. The Australian Government Department of Education has released a policy paper setting out their strategy to meet this commitment and is working to improve the integrity of the data recorded in PRISMs for education agents in preparation for its publication.

Improving the transparency of the performance of education agents by providing publicly accessible information and data will assist providers and students to work with quality education agents. It will also assist the regulators to better monitor provider behaviour.

A comparative assessment of the New Zealand code in relation to how it manages education agents was conducted as part of this strategic review. It is noted that the key difference between the Australian and New Zealand approaches relates to the way each country interacts with agents.

Education New Zealand (ENZ) operates a program focused on identifying and engaging with proven, committed and ethical education agencies. Agencies that successfully meet the core objectives of the program are given ENZ Recognised Agency (ENZRA) status. While this strategic engagement program does not function as a regulatory tool to manage poor conduct, it may act as an incentive to build quality and help drive market changes through more informed consumers. Advice from ENZ is that overseas students are active users of the education agent database. These findings are addressed further in chapter 6.

ELICOS Standards

As well as the National Code requirements, ELICOS providers are also required to comply with specific requirements for registered providers delivering English language courses to overseas students. These requirements are documented as the *English Language Intensive Courses for Overseas Students Standards 2018* (ELICOS Standards).

The ELICOS Standards recognise that students come from overseas to study the English language for a variety of reasons. Some seek to improve their English for work or career purposes, some have a personal interest in becoming fluent in English, and some intend to travel. Others may want to continue their education in English, either in Australia or elsewhere, and need to develop the language skills to undertake further study[68].

The ELICOS Standards prescribe certain requirements, expanding on those obligations imposed by the National Code. All ELICOS courses must:

- be delivered for a minimum of 20 hours face-to-face scheduled course contact hours per week

- use defined teacher-to-student ratios

- use premises that include specific facilities and areas

- employ (or contract) suitably qualified specialist staff to provide academic leadership, teaching and counselling.

ASQA considers provider compliance with the ELICOS Standards where that provider is regulated by ASQA or is applying for registration with ASQA.

The current ELICOS Standards commenced on 1 January 2018 for existing and new ELICOS providers. These ELICOS Standards included a significant change to the definition of what constitutes an ELICOS course which is set out below.

Australian Government initiative: summary of changes to ELICOS Standards

The previous standards defined an ELICOS course as:

> 'English language intensive courses for overseas students studying in Australia on student visas.'[69]

In this context, "intensive" denoted full-time study comprising a minimum of 20 scheduled course contact hours per week of face-to face classes of English language instruction. Therefore, these standards did not apply to:

- intensive English language programs provided to non-student visa holders

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[68] *ELICOS Standards 2018, Introduction*, available at: https://www.legislation.gov.au/Details/F2017L01349. (Accessed June 2019)
[69] *Education Services for Overseas Students Act 2000 - ELICOS Standards (19/06/2011).* Available at: https://www.legislation.gov.au/Details/F2011L01252 (Accessed June 2019)

- non-intensive English language programs (fewer than 20 contact hours per week of English language teaching)

- English as a Second Language programs or support services provided within school, vocational education and training or higher education settings

- English language programs for domestic students, or

- Foundation Programs.

The current ELICOS Standards define an ELICOS course as:

'An ELICOS course is a course of education or training that is:

- *solely or predominantly of English language instruction, and*

- *provided, or intended to be provided, to an overseas student as defined in section 5 of the ESOS Act.*

Courses which do not fall within the definition of 'ELICOS' include, but are not limited to:

- *English language programs provided exclusively to non-student visa holders*

- *English as an additional language program or support services provided within the school sector as part of a school curriculum, and*

- *Foundation Programs.'[70]*

The previous ELICOS Standards allowed many providers to deliver English language courses that did not fall into the definition of an ELICOS course. In these circumstances, English language instruction was delivered to overseas students as VET accredited courses. These CRICOS providers operated under the NVR Act and were governed by the National Code but did not need to meet the specific requirements of the ELICOS Standards.

The broadening of the definition of an ELICOS course requires all approved providers to deliver English language courses consistently. That is, any provider wanting to deliver an English language course to an overseas student must ensure delivery meets the requirements of the National Code and the ELICOS Standards.

At the time of the change, ASQA was regulating 151 CRICOS providers approved to deliver VET accredited courses to English language overseas students. Of these, 52 providers were also approved to deliver ELICOS courses. Each of these providers was granted time to teach out its existing cohort of students and, where applicable, to apply to ASQA for registration of ELICOS[71].

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[70] *ELICOS Standards 2018, Introduction.* Available at: https://www.legislation.gov.au/Details/F2017L01349 (Accessed June 2019)

[71] Registered providers approved to deliver VET accredited courses had conditions placed on their registration preventing them from enrolling any new English language student into a VET accredited course but allowing the provider to teach out its existing cohort of students.

Of the 52 providers already approved for ELICOS, nine providers have since been approved to deliver additional ELICOS courses.

Of the remaining 99 providers, 36 have since been granted approval to deliver ELICOS courses; three providers applied to deliver ELICOS but were not approved; and 60 providers did not seek ELICOS registration.

ESOS registers

Providers that are registered under the ESOS Act to deliver courses to overseas students are listed on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). The register contains information about each provider and the courses they are approved to deliver, including the location from which they are approved to deliver. The register is administered and maintained by the Australian Government Department of Education.

Supporting CRICOS is the Provider Registration and International Student Management System (PRISMS) which records information about providers and student visa holders. PRISMS is a secure database owned and maintained by the Australian Government Department of Education for the purposes of administering the ESOS Act. PRISMS enables registered providers to comply with legislative requirements by:

- issuing bona fide confirmations of enrolments (CoE)[72] to visa applicants as 'evidence of enrolment' in a registered full-time course, as required for the grant of a student visa by the Department of Home Affairs

- reporting changes in course enrolments, particularly where study ceases (non-compliance), or the duration of the study changes.

PRISMS also facilitates the monitoring of student compliance with visa conditions, as well as provider compliance with the ESOS Act[73].

PRISMS is the central system used by registered providers (and their agents) and government agencies to manage and monitor overseas students. PRISMS provides a range of reports and data exports, which can assist providers, state education departments, regulators, the Australian Government Department of Education and the Australian Government Department of Home Affairs by consolidating the information provided. The data available on PRISMS is available in 'real time', meaning that the reviewer can access current information about a registered provider or student visa holder.

Data interpretation and reconciliation

There are several data sources held by different agencies that record information relevant to overseas students and offshore students. In addition to PRISMS, the Australian Government Department of Home

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[72] The CoE provides evidence of a student's enrolment with a registered provider. This evidence is required before Home Affairs will issue a student visa.

[73] Department of Education and Training 2018, *Provider Registration and International Student Management System (PRISMS) Provider User Guide,* Australia, p.4, viewed June 2019 <https://prisms.education.gov.au/Information/ShowInformation.aspx?Doc=Provider_User_Guide&key=information-provider-user-guide&Heading=>.

Affairs records student visa data and the National Centre for Vocational Education Research (NCVER) collects data in relation to VET activity, both in Australia and offshore, for all students.

Each agency records or collects this data for its own administrative purposes and uses definitions and methodologies relevant to these administrative roles. While this is understandable, it does make using and interpreting the data complex and open to interpretation errors. This undermines effective risk-based regulation.

PRISMS data

The International Research and Analysis Unit of the Australian Government Department of Education releases a range of data on overseas students studying in Australia on a monthly basis. Published data is cumulative over time periods, so is reported by sector enrolments to ensure students moving courses or undertaking more than one course are not double counted.

As a result, numbers of students by education sectors are not reported and the data focuses on student enrolments and commencements to ensure an accurate understanding of activity across each education sector, including both VET and ELICOS.

The section below, Australian Government Department of Education advice on interpreting PRISMS data, is from the Department's website and is designed to assist users to interpret PRISMS data. The advice demonstrates the complexity of the PRISMS data and the caution required when using enrolment numbers to extrapolate student numbers.

Australian Government Department of Education advice on interpreting PRISMS data

PRISMS data[74]

Data is initially uploaded into PRISMS by educational providers when enrolment is offered to a prospective student before a visa is granted, and again when a student obtains and uses their visa to enter Australia and starts studying. Providers also update PRISMS when students change courses or fail to comply with student visa requirements.

The Australian Government Department of Home Affairs updates PRISMS as students enter or leave Australia or change their visa or residence status. PRISMS receives data electronically every night as student visas are granted or cancelled and as students are recorded on the Australian Government Department of Home Affairs' systems as entering Australia. Only enrolments that represent students who have actually started studying in Australia are counted in student enrolment data.

Enrolments versus students

Student enrolment data generally does not represent the number of overseas students in Australia or the number of student visas issued. Instead, data counts actual course enrolments. The exception is the data at

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[74] Department of Education and Training, 'Explanatory notes for international student enrolment data', viewed June 2019 <https://internationaleducation.gov.au/research/International-Student-Data/Pages/ExplanatoryNotesforAEIStudentEnrolmentData.aspx>

the beginning of a month which represents a close approximation to the number of students enrolled on that day.

How are enrolments counted?

A student attending two different courses in the same reference period (for example ELICOS and a VET diploma) will have both enrolments counted. Students will be counted as enrolled in Australia even if they have left Australia temporarily (for example during end-of-year holidays). Students are not recorded as enrolled in Australia if, for example, they are moving between institutions at the date of reporting and their new course details have yet to be entered by institutions.

The monthly total of enrolments combines continuing enrolments from the previous month with new enrolments commencing during the month.

What is a commencement?

A commencement is a new student enrolment in a particular course at a particular institution.

How is nationality recorded?

Student enrolment data allocates a student's nationality based on citizenship data uploaded into PRISMS from both the Australian Government Department of Home Affairs and educational institutions. This may not coincide with their country of home residence. PRISMS data also caters for refugees, stateless people and errors in data entry.

What types of students does the student enrolment data include?

International student enrolment data covers onshore international students studying on Student (Subclass 500) visas only. It does not include overseas students on Australian-funded scholarships or sponsorships or students undertaking study while holding a tourist or other temporary entry visas (or their dependants). New Zealand students are not included in this data as they do not require a student visa to study in Australia.

Student visa data

The Australian Government Department of Home Affairs releases bi-annual data about the student visa and temporary graduate visa program it administers. The report is produced to assist education providers, representative bodies and policymakers.

The Department of Home Affairs' reports note that the information used in the reports comes from new data sources and, consequently, figures for previous financial years may differ slightly from those previously published by the department. As variations in figures can occur between reports, the data for each current financial year should always be considered provisional.

The Australian Government Department of Home Affairs uses the term 'student visa holders' which includes secondary visa holders, who are dependants of the primary visa holder (that is, the student). Secondary visa holders are around 15 per cent of the total student visa holders.

This data is broken down between education sectors, including the VET sector and the total ELICOS sector (that is across all education sectors and stand-alone ELICOS providers).

NCVER data

Data on international VET delivery (to both overseas students and offshore students) by student numbers and subject and program enrolments is also released by the National Centre for Vocational Education Research (NCVER) on total VET activity as described earlier in this chapter.

The NCVER data is derived from the National VET Provider Collection and the National VET in Schools Collection which is reported by individual providers and compiled under the Australian VET Management Information Statistical Standard (AVETMISS). The NCVER applies a process to identify and remove duplicate training activity where the same activity is reported for the same training provider in the same collection period via different data submitters.

NCVER releases data for subject and program enrolments and estimated student numbers. From 1 January 2015, all students undertaking nationally recognised VET in Australia, and Australian students undertaking study offshore, were required to have a USI. The implementation of the USI has given the NCVER a mechanism with which to better estimate student numbers by identifying and potentially removing duplicate student records.

Due to collection and reporting cycles, the NCVER data is affected by a significant time lag. Hence, the 2018 data set is not yet available. NCVER only collects data relating to VET and does not collect data in relation to the provision of ELICOS courses, even where these are provided by VET providers.

The NCVER defines:

- **International Students (based on funding source)**—students who hold a student visa or a temporary residency permit **or** who reside in an overseas country for the purpose of undertaking education and training, and

- **Overseas (training delivery)**—training delivered by Australian providers to students who are located in another country and who are not normally based in Australia. Overseas training (training delivery) is identified by 'overseas' training delivery locations.

The NCVER data for international students includes both overseas students (that is, students studying in Australia on a student visa) as well as other students holding temporary resident permits and non-domestic students studying offshore.

Table 4 is a summary of the selected data publicly released by these agencies in relation to overseas VET and ELICOS students and offshore VET students over the past four years.

Table 4: International student activity: 2015–2018

Estimated student activity	2015	2016	2017	2018
NCVER - Total VET students and courses 2017 – published by NCVER				
International students	155,600	168,700	186,300	N/A
Students - overseas training delivery	34,800	33,100	34,300	N/A
	2015	**2016**	**2017**	**2018**
PRISMS Data – Student visa holders – published by Department of Education				
Student enrolments—VET	168,300	187,800	216,100	244,300
Student commencements—VET	108,700	119,600	135,800	148,000
Student enrolments—ELICOS	144,900	151,100	155,200	156,400
Student commencements—ELICOS	111,300	115,300	117,600	117,800
	2014-15	**2015-16**	**2016-17**	**2017-18**
Student visa and Temporary Graduate visa program report – published by Department of Home Affairs (financial year)				
Student visa grant rates—Total—VET	65,600	70,100	76,500	90,600
Student visa grant rates—Total—ELICOS	33,200	34,300	40,000	38,500

Using the data

These data sets do not enable a clear understanding of overseas student numbers and there is no advice provided as to how these figures relate to each other or should be interpreted. There is a lack of clarity of student and provider behaviour. This makes establishing an agreed evidence base for policy-making, regulation and market development challenging.

Several recent reports have commented on the difficulty of accessing and using the disparate datasets in the international education sector.

In a report commissioned by Navitas, Nous Group found the following key limitations to International Education and Training (IET) data: timing and accessibility issues for key data sources, and unreconciled differences and inconsistencies across key data sources. The Nous Group report made several recommendations, including that:

> 'The Department of Education and Training, along with other bodies, produces short and easily consumable snapshots on international education data. It is recommended that these be continued, and indeed increased, in a regular and consistent fashion, allowing the sector to quickly

glean insights from the latest trends in IET. This is particularly relevant from a market efficiency perspective, ensuring a strong understanding of available information across the sector leads to an improved allocation of resources.' [75]

The International Education Association of Australia (IEAA) also undertook research into international education data gaps funded by an Australian Government Enabling Growth and Innovation Grant. IEAA undertook a comprehensive analysis of existing international education data, as well as identifying any data gaps or areas for improvement. The research project also included a consultation process which engaged almost 200 stakeholders between October 2017 and April 2018.

According to this research, two of the most commonly cited concerns were the need to reduce time lags, improve accessibility of existing data sources, especially enrolments, commencements and visa data; and the need for more publicly available data at more granular level of detail.

The IEAA report recommended:

1. Improve awareness and accessibility of international education data:

    −   Establish a single comprehensive repository or portal for all available data sets

    −   Provide more detailed technical notes and user guides for existing data

    −   Provide data in more accessible formats

2. Expand data sets where critical gaps or insufficiencies exist:

    −   Improve the timelines, accessibility and granularity of visa data

    −   Improve the timeliness, accessibility and granularity of enrolments and commencement data

    −   Invest in new data sets

3. Increase support for interpretation of existing data:

    −   More closely align the Department of Education and Training and Department of Home Affairs data sets

    −   Provide more support for analysis of data

    −   Maintain ongoing dialogue between the sector and data custodians.

It is clear the sector would welcome more regular data releases, and further guidance and assistance in understanding how the various data sets should be interpreted. The Australian Government Department of Education is well regarded as the authoritative source of advice on the activity of overseas students and would be ideally placed to release more regular information using an agreed methodology.

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[75] Nous Group 2018, *Data opportunities in international education and training*, Navitas, Australia. Viewed 23 April 2018. <https://e6c67dfea7107c66cf4b-5fe525cefecba56744297355853ea71e.ssl.cf6.rackcdn.com/Nous-Navitas+-+Data+gaps+in+international+education_FINAL.pdf> p. 25.

Other agencies with legislative and policy responsibilities

There are a range of agencies with policy, legislative and administrative responsibilities under the arrangements that govern the overseas education sector in Australia.

Providers approved to deliver VET courses to overseas students are required to be compliant with all requirements of the:

- NVR Act

- VET Quality Framework, including the Standards for RTOs

- ESOS Act and regulations, and

- National Code.

Many aspects of the legislative frameworks complement each other. While the NVR components can be seen as the basis for delivery, the ESOS components are additional requirements needed to ensure a specific, and more vulnerable, learner cohort is supported before and while in Australia for study, and that providers meet their obligations under the student visa program.

ELICOS providers are required to comply with the requirements of the ESOS Act and regulations, the National Code and the ELICOS Standards.

ASQA does not establish the regulatory framework for the VET sector or the CRICOS sector. While providers are regulated by ASQA, they are required to comply with the requirements and policies set by other agencies.

An overview of the legislative and administrative framework, governing the overseas student sector, is shown at Figure 11.

Figure 11: Overview of legislative and administrative framework for CRICOS providers[76]
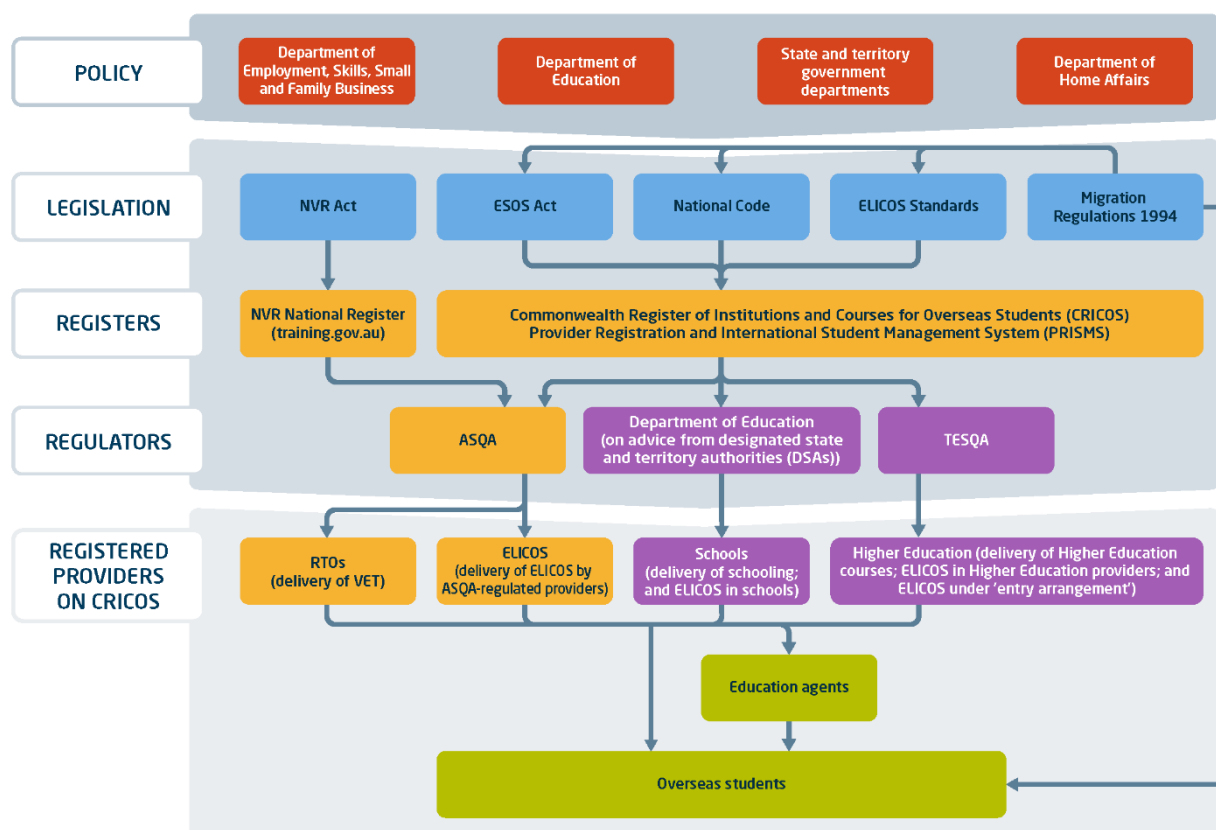
In addition to ASQA and its role, there are other regulatory and government agencies responsible for the registration, oversight and management of providers, systems and students, and promotion that make up the ESOS sector. These are described below.

Australian Government Department of Employment, Skills, Small and Family Business

The Australian Government Department of Employment, Skills, Small and Family Business is responsible for the policy and legislative settings that govern the Australian skills and training sector. The Department works with state and territory government agencies in the governance, regulation and support of the national VET system, and works alongside various independent bodies to ensure quality outcomes are delivered.

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[76] Figure adapted from the 2015 Productivity Commission Research Paper, *International Education Services,* p. 8. Available here: https://www.p c.gov.au/research/completed/international-education/international-education.pdf (Accessed June 2019)

Australian Government Department of Education

The Australian Government Department of Education is responsible for national policies and programs that help Australians access quality and affordable early childcare and childhood education, school education, higher education, international education and research[77].

Specific to the overseas student sector, the Department is responsible for the policies supporting the ESOS Act and related legislative instruments. It is also responsible for the administration of CRICOS and PRISMS. The Department is also the ESOS Agency for the school sector.

Australian Government Department of Home Affairs

The Department is responsible for immigration and customs border policy, multicultural affairs, and a range of other national security and crisis-management functions. The Department is responsible for administering the immigration program, which includes the student visa program.

The Australian Government Department of Home Affairs plays an important role in supporting the sustainability and competitiveness of Australia's international education sector by facilitating the movement of genuine international students wishing to study in Australia, while maintaining strong levels of integrity at Australia's border.[78]

This is achieved by providing information about student visa requirements to potential students, the appropriate administration of the visa structure as set out in the *Migration Regulations 1994*, the regulation and facilitation of the Australian border, and community compliance.

The Department is also responsible for the registration of migration agents, which is undertaken by the Office of the Migration Agents Registration Authority.

Under Section 280 of the *Migration Act 1958*, it is illegal for a person to give migration advice other than by a registered migration agent.[79] They are required to abide by a Code of Conduct that outlines their obligations in such areas as disclosure, their agreements with their client and the disclosure of fees. The Code of Conduct also sets standards of how they are to act within their positions.

This legislation only regulates the conduct of persons giving migration advice in Australia, however. Persons providing migration advice offshore can operate as either a registered migration agent, following the Code of Conduct and adhering to all requirements; or can operate as an unregistered agent with limited restrictions in regard to their actions.

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[77] Department of Education, 'About the Department', viewed June 2019, <https://www.education.gov.au/about-department>.

[78] Department of Prime Minister and Cabinet 2016, *Deregulation of the student visa programme and future directions for streamlined visa processing RIS*, viewed 11 April 2019, <https://ris.pmc.gov.au/2016/07/25/deregulation-student-visa-programme-and-future-directions-streamlined-visa-processing>.

[79] *Migration Act 1958 (Cth), Part 3, Division 2, s 280(1).* Available at: https://www.legislation.gov.au/Details/C2019C00181 (Accessed June 2019)

Tertiary Education Quality and Standards Agency

The Tertiary Education Quality and Standards Agency (TEQSA) is the national quality assurance and regulatory agency for higher education in Australia. All organisations that offer higher education qualifications in or from Australia, must be registered by TEQSA.[80]

TEQSA is also the ESOS Agency for higher education courses foundation programs (except those delivered by schools), and ELICOS programs delivered by higher education providers or through a direct-entry arrangement with a higher education provider.

Designated state and territory authorities

State and territory government agencies are designated state and territory authorities (DSAs) and provide advice on the arrangements for overseas students' participation in the schooling sector. DSAs are not ESOS Agencies, but play a role in assessing and recommending schools' registration on CRICOS. The DSA for a provider is the education agency responsible for approving schools to operate in their state or territory:

- Australian Capital Territory: http://www.education.act.gov.au/home

- New South Wales: http://www.boardofstudies.nsw.edu.au/

- Northern Territory: https://education.nt.gov.au/

- Queensland: http://deta.qld.gov.au/

- South Australia: http://www.eecsrsb.sa.gov.au/

- Tasmania: https://www.tasc.tas.gov.au/

- Victoria: http://www.vrqa.vic.gov.au/Pages/default.aspx

- Western Australia: http://www.des.wa.gov.au/schooleducation/International-education/Pages/default.aspx

Schools apply for CRICOS registration through a DSA, which assesses the application and, if approved, issues an assessment certificate. The assessment certificate is provided to the Australian Government Department of Education, as the ESOS Agency for schools, to complete the decision-making process.

Austrade

The Australian Trade and Investment Commission (Austrade) is the Australian Government's international trade promotion and investment attraction agency. Austrade contributes to Australia's economic prosperity by helping Australian businesses, education institutions, tourism operators, governments and citizens as they:

- develop international markets and promote international education

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[80] Tertiary Education Quality and Standards Agency, 'What we do', viewed June 2019, <https://www.teqsa.gov.au/what-we-do>

- win productive foreign direct investment

- strengthen Australia's tourism industry

- seek consular and passport services.[81]

Austrade delivers quality trade and investment services to businesses to grow Australia's prosperity by generating and providing market information and insights, promoting Australian capability, and facilitating connections through its extensive global network. This is discussed further in chapter 6.

Consumer protection for overseas students

ASQA was not established nor given powers to be a consumer-protection body like a specific ombudsman service.[82] ASQA's role in dealing with consumer protection issues for overseas students extends to ensuring registered providers are complying with their obligations under the ESOS Act, the National Code 2018 and, where relevant, the ELICOS Standards[83]. ASQA's role is not to seek a remedy for an individual student, but to ensure providers are meeting their obligations by regulating against the legislative framework[84].

There are, however, a range of consumer protections provided by other agencies which are available for overseas students.

Overseas Student Ombudsman

In 2011, the Office of the Commonwealth Ombudsman (also known as the Overseas Student Ombudsman (OSO)) was established to provide overseas students with a single agency for most complaints about private education providers and training institutions.[85] The purpose of the OSO is to address the risks associated with significant growth in the overseas education sector and to protect Australia's global reputation.[86]

The OSO is available to students if they are not satisfied with the way their provider has dealt with their complaint. The OSO can investigate matters such as:

- refusing admission to a course

- fees and refunds

- course or provider transfers

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[82] Australian Skills Quality Authority 2017, *Australian Skills Quality Authority's submission to the Review of the National Vocational Education and Training Regulator Act 2011*, Australia, para 28.5. Viewed 22 May 2019, <https://submissions.education.gov.au/Forms/nvetr/Documents/030.pdf>

[83] Australian Skills Quality Authority, *Quality in the VET system – a shared responsibility*, viewed 22 May 2019, <https://www.asqa.gov.au/about/australias-vet-sector>.

[84] Australian Skills Quality Authority, *ASQA Annual Report 2017-18*, viewed 20 May 2019, <https://www.asqa.gov.au/sites/g/files/net3521/f/asqa_annual_report_2017-18.pdf>.

[85] Austrade, 'Support services for students', viewed 21 May 2019, <https://www.studyinaustralia.gov.au/english/live-in-australia/support-services>.

[86] Office of the Commonwealth Ombudsman 2015, *Report on the first four years of operation,* Australia.

- course progress or attendance

- cancellation of enrolment

- accommodation or work arranged by the provider

- incorrect advice given by an education agent.[87]

The OSO also provides information to education providers for best practice when dealing with complaint handling.

Other consumer protection authorities

Overseas students may also seek the assistance of their state-based consumer protection agency. The following are the relevant authorities in each jurisdiction:

- Access Canberra

- NSW Fair Trading

- NT Consumer Affairs

- Office of Fair Trading Queensland

- SA Office of Consumer and Business Services (CBS)

- Tasmania Consumer, Building and Occupational Services (CBOS)

- Consumer Affairs Victoria (CAV)

- WA Consumer Protection—Department Of Mines, Industry Regulation and Safety[88]

Consumer complaints may also be lodged with the Australian Competition and Consumer Commission (ACCC). *The ACCC promotes competition and fair trade in markets to benefit consumers, businesses, and the community.*[89] The ACCC does not however investigate or resolve individual complaints.[90]

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[87] Austrade, 'Support services for students'.

[88] Australian Competition & Consumer Commission 'Consumer protection agencies', viewed 21 May 2019, <https://www.accc.gov.au/contact-us/other-helpful-agencies/consumer-protection-agencies#state-and-territory-consumer-protection-agencies>.

[89] Department of Education, 'Compliance resources', viewed 22 May 2019, <https://www.education.gov.au/compliance-resources>.

[90] Australian Competition & Consumer Commission, 'Where to go for consumer help', viewed 22 May 2019, <https://www.accc.gov.au/consumers/consumer-protection/where-to-go-for-consumer-help>.

Australian Government initiative – improved student protections

Professor Braithwaite, in her report *All eyes on quality*, noted in the wake of unscrupulous RTOs taking advantage of students under the VET FEE-HELP scheme, protecting students' investments is paramount. The review identified the intertwined regulatory problems of misleading advertising, unfair contracts and inaccessible records as key areas for improving the student journey as well as the ability for students to easily seek recourse in situations where they are in conflict with their RTO. Professor Braithwaite made a number of recommendations designed to address these issues, including the establishment of a national Tertiary Sector Ombudsman.

The Australian Government supports this recommendation in principle and is undertaking further analysis and consultation regarding the proposal to establish a Tertiary Sector Ombudsman given the significant constitutional legal questions that arise in the context of the need for a referral of powers by states and territories to enable its establishment.

Tuition Protection Service

The Tuition Protection Service (TPS) is the codified protection for overseas students in the ESOS Act. The purpose of the TPS, as set out in the explanatory memorandum, is:

- to provide financial and tuition assurance to overseas students for courses for which they have paid

- to protect and enhance Australia's reputation for quality education and training services, and

- to complement Australia's migration laws by ensuring providers collect and report information relevant to the administration of the law relating to student visas.[91]

All providers registered on CRICOS are required to pay a levy to fund the Overseas Students Tuition Fund (OSTF). The fund was established to provide assurance to overseas students where there was a default by the provider and where the education provider failed to meet its obligations under the ESOS Act.

If a provider fails to meet their obligations under the Act, then the Director of TPS may resolve the student(s) situation by finding an alternative course or by refunding the student's unspent tuition fees from OSTF.[92] The Director of TPS may then obtain the debt amount from the education provider.[93]

New Zealand has a similar fee protection scheme that covers both domestic and overseas students. This scheme is addressed further in chapter 6.

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[91] Parliament of Australia *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 [and] Education Services for Overseas Students (TPS Levies) Bill 2011 [and] Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011, Bills Digest no. 95 2011–12*, 15 February 2012, viewed 21 May 2019, <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1112a/12bd095>.

[92] *Education Services for Overseas Students Act 2000 (Cth), Part 5, Division 4, Section 50C,* viewed June 2019, <https://www.legislation.gov.au/Details/C2018C00210>

[93] *Education Services for Overseas Students Act 2000 (Cth), Part 5, Division 2, Subdivision B, Section 47A,* viewed June 2019, <https://www.legislation.gov.au/Details/C2018C00210>

Student visa program

To study in Australia, an overseas student must first obtain a valid Student (Subclass 500) visa. A student visa is designed to allow non-citizens to enter and remain in Australia for the purpose of study. Visas can also be granted for the student's family members. The student visa program is a demand-driven program, and visas are granted to any applicant that meets the legislative requirements of the program. There are not quotas or caps on the program.

A student may apply for a visa from within or outside of Australia but all applicants must meet a number of criteria to be granted a student visa. There are five main requirements that are assessed when considering applications for a Student (Subclass 500) visa:

1. **The study requirement**—an overseas student must be enrolled in a full-time course of study with a provider, and in a course that is registered on CRICOS. An enrolment is created when a provider or an 'authorised user' (which could be an education agent) enters the student's details into PRISMS, creating a Confirmation of Enrolment (CoE).

2. **The Genuine Temporary Entrant (GTE) requirement**— all overseas students must meet Genuine Temporary Entrant (GTE) requirements. That is, they must show they are coming to Australia temporarily to undertake study and are not using the student visa program for other purposes.

3. **The health cover requirement**—an applicant must demonstrate that they have adequate health insurance for the duration of their student visa.

4. **The financial requirement**—as part of the application process, applicants must have genuine access to sufficient funds to meet their costs and expenses, and those of their family members, during their stay in Australia.

5. **The English language requirement**—applicants are also required to meet defined English proficiency requirements. There are no English language requirements if the student enrols in an ELICOS course.

In addition, applicants need to meet health and character requirements before the visa is granted.

To apply for a student visa, the student must generally have evidence of enrolment in a registered course. Evidence of enrolment is commonly a Confirmation of Enrolment (CoE) which is active on PRISMS. If applying inside Australia, a student may apply with a letter of offer, however, they must hold a CoE before the visa can be granted.

The Department of Home Affairs assesses all applicants to judge whether they are a genuine temporary entrant (GTE). As discussed in Chapter 2, this requirement is the key integrity measure to ensure the student visa program is used as intended and not as a way for overseas students to maintain ongoing residency in Australia.

All of an applicant's personal circumstances are considered before a decision is made and weight is placed on a number of factors to allow for their circumstances to be considered as a whole. Ministerial Direction 69 sets out factors that are taken into account when assessing whether an applicant meets the GTE requirement. These factors include:

- **Circumstances in home country (or country of residence)**—reason for not studying in home country or region if similar course is available there, ties to their home country that support the intention to return once study is complete, economic circumstances, military service commitments, political and civil unrest in home country.

- **Potential circumstances in Australia**—ties to Australia which would present as a strong incentive to remain in Australia, level of knowledge of proposed course of study and education providers, previous study and qualification(s), planned living arrangements and financial stability.

- **Value of the course to the applicant's future**—is the course(s) consistent with the applicant's current level of education, relevance to past or proposed future employment in home country or a third country, expected remuneration in home country or third country which could be gained using the qualification(s) from the course(s) of study.

- **The applicant's immigration history**—previous visa applications for Australia or other countries including visa refusals or cancellations.

- **If the applicant is a minor**—the intentions of a parent, legal guardian, or spouse of the applicant.

Unless they fall into an exemption category, applicants must demonstrate they have sufficient Overseas Student Health Cover for the entire visa period.

All students are required to meet the English language and financial requirements. However, an evidence framework determines if evidence is required to be submitted with the application. This framework is governed by the simplified student visa framework, discussed below.

Granted student visas have a number of conditions that overseas students must comply with, including that the student progress in and attend their course, maintain their enrolment with a registered provider, remain enrolled at the AQF level for which their visa was granted or higher, maintain their health insurance and generally not work in excess of 40 hours per fortnight while their course is in session.

Simplified Student Visa Framework

The assessment of Student (Subclass 500) visa applications is undertaken by the Australian Government Department of Home Affairs under a Simplified Student Visa Framework (SSVF). The SSVF was introduced in 2016, in line with the recommendations of the June 2015 *Future directions for streamlined visa processing: report and recommendations*.[94]

The SSVF introduced a new way of assessing risk by the Australian Government Department of Home Affairs. It moved from a four-tier, country-based risk assessment to an individualised risk assessment. It is constructed on a combined country and provider framework which considers the immigration risk associated with both the applicant's education provider and country of citizenship to guide visa evidentiary requirements.[95]

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[94] Department of Immigration and Border Protection 2016, *Future directions for streamlined visa processing: report and recommendations*, viewed 03 April 2019, <https://apo.org.au/node/64870>.

[95] *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016, Explanatory Statement,* viewed 28 March 2019, <https://www.legislation.gov.au/Details/F2016L00523/Explanatory%20Statement/Text>.

The Department of Home Affairs allocates every provider and country an evidence level (1, 2 or 3) based on the immigration outcomes of the student visa holders associated with them. The assessment is based on data available to the Australian Government Department of Home Affairs via their internal systems and PRISMS. Ratings are calculated on the following weightings:

- rate of visa cancellations (25 per cent weighting)

- rate of refusals due to a fraud reason where the applicant lodged overseas (40 per cent weighting)

- rate of refusals (excluding fraud) where the applicant lodged overseas (10 per cent weighting)

- rate of student visa holders becoming unlawful non-citizens (15 per cent weighting)

- rate of subsequent Protection Visa applications (10 per cent weighting).[96]

The country and provider evidence level is combined to determine if the application is subject to streamlined evidence requirements or regular evidence requirements. If the application is subject to regular evidence requirements, the student must attach evidence of English language ability and financial capacity to their application.

If the application is subject to streamlined evidence requirements, declarations as part of the form may be sufficient to satisfy the Department of Home Affairs that the applicant meets the requirements. However, more information can be requested if required during the visa assessment.

Risks of the SSVF

The expected outcome from the SSVF was to create a level playing field between providers, particularly smaller providers, who did not have access to streamlined-type processing, under the previous system. The SSVF provides an incentive for providers to manage the immigration risk posed by their prospective students as student compliance will ultimately affect the provider's evidence level under the SSVF. This is designed to motivate providers to only seek to enrol genuine students.

The two key risks identified by the Australian Government Department of Home Affairs at the commencement of this framework were the:

- student visa framework failing to support the sustainable growth of Australia's international education sector, and

- risk of immigration integrity being compromised by the grant of visas to non-genuine students. [97]

The Australian Government Department of Home Affairs mitigates these risks by using advanced risk analytics, particularly for education provider risk tiering. It was envisaged that the Genuine Temporary Entrant (GTE) requirement would be the main refusal ground for students who appeared not to be genuine, rather than not meeting the financial criteria for the visa.[98]

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[96] Department of Home Affairs, 'Methodology for calculating evidence levels', viewed June 2019, <https://immi.homeaffairs.gov.au/what-we-do/education-program/what-we-do/evidence-levels>.

[97] *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016, Explanatory Statement,* viewed 28 March 2019, <https://www.legislation.gov.au/Details/F2016L00523/Explanatory%20Statement/Text>.

[98] Ibid.

In May 2018, the Australian Government Department of Home Affairs released an appraisal of the SSVF program.[99] The appraisal found that while many features of the framework were working well, there was scope to further refine the SSVF settings to ensure it is operating appropriately, particularly in relation to immigration integrity.

In response to these issues, the appraisal made four main recommendations:

1. That the Australian Government Department of Home Affairs clarify the purpose of the single immigration risk framework to ensure it is better understood by education providers, education agents and student visa holders.

2. That the Australian Government Department of Home Affairs, in consultation with the Education Visa Consultative Committee (EVCC), include onshore refusals in the risk rating methodology to encourage education providers to focus more on the recruitment of genuine students onshore.

3. a) the Australian Government Department of Home Affairs conducts a campaign to educate students on visa condition 8202[100] and encourage compliance when they transfer to a lower AQF level course

   (b) the Australian Government Department of Home Affairs and the Australian Government Department of Education further interrogate the data with a view to gaining a full picture of provider and course transfer trends

   (c) the Australian Government Department of Home Affairs commits to further assessing the appropriateness of transferring immigration risk to the receiving provider.

4. That the Australian Government Department of Home Affairs, in collaboration with other agencies, continues to work with the international education sector to assist education providers to effectively target genuine students and improve data availability, where possible.[101]

In response to the first recommendation, the Australian Government Department of Home Affairs changed the name of the 'Immigration Risk Rating' to the 'Evidence Level' to communicate that these ratings did not reflect the quality of an education provider.

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[99] Australian Council for Private Education and Training, *Simplified Student Visa Framework (SSVF) Appraisal*, Australian Government Department of Home Affairs, viewed May 2018, <https://www.acpet.edu.au/uploads/files/ACPET%20SSVF%20appraisal%20response%203%20Nov%202017.pdf>.

[100] The *Migration Regulations 1994* – Schedule 8 Visa conditions

    8202 (2) A holder not covered by subclause (1):

        (a) must be enrolled in a full-time registered course; and

        (b) subject to subclause (3), **must maintain enrolment in a registered course that, once completed, will provide a qualification from the Australian Qualifications Framework that is at the same level as, or at a higher level than, the registered course in relation to which the visa was granted**; and

        (c) must ensure that neither of the following subparagraphs applies in respect of a registered course undertaken by the holder:

            (i) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course progress for section 19 of the Education Services for Overseas Students Act 2000 and the relevant standard of the national code made by the Education Minister under section 33 of that Act;

            (ii) the education provider has certified the holder, for a registered course undertaken by the holder, as not achieving satisfactory course attendance for section 19 of the Education Services for Overseas Students Act 2000 and the relevant standard of the national code made by the Education Minister under section 33 of that Act.

[101] Australian Council for Private Education and Training, *Simplified Student Visa Framework (SSVF) Appraisal*.

In response to the second recommendation, the Australian Government Department of Home Affairs is in the process of consulting with external stakeholders about including onshore refusals in the Evidence Level frameworks. This change would ensure that education providers that seek to recruit students onshore, whether they be people already in Australia on another temporary visa or overseas students already enrolled with other providers, have these visa outcomes reflected in their Evidence Levels.

In response to the third recommendation, the Australian Government Department of Home Affairs is conducting an education program concerning the requirement to stay at the same AQF level for which the visa was granted.[102]

The Department of Home Affairs is still assessing the appropriateness of transferring immigration risk to the receiving education provider when course transfers occur. This change would mean that if an overseas student transfers to a new education provider, the risk of that overseas student defaulting on their visa conditions may be shared between the education provider that recruited the student from offshore and the education provider at which the overseas student was enrolled at the time of the default.

In response to the fourth recommendation, the Australian Government Department of Home Affairs continues to consult with the education sector through the Education Visa Consultative Committee to assist education providers to target genuine students and improve data availability.

The SSVF methodology allows for changes to occur when there are variations to known risk in the overseas education market, to protect the integrity of the student visa program and the welfare of vulnerable students.

Australian Government Department of Home Affairs Initiative - treatment of emerging risk in Nepal

From 1 May 2019, the Australian Government Department of Home Affairs changed the evidentiary requirements for Nepali students applying for a student visa to study VET courses. These changes required all applicants to submit evidentiary documentation for English language skills and financial capacity, regardless of an applicant's combined evidence level.

Nepal is currently the third largest source country for overseas students in Australia, following China and India. At the same time, Nepal is only the 47th largest country by population in the world.

The change in requirements was not designed to adversely affect the visa outcomes of genuine students seeking to obtain a quality education in Australia. As part of this change, the Australian Government Department of Home Affairs advised it would continually monitor and revise these requirements as needed.[103]

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[102] Education Program, Simplified student visa framework (SSVF), Australian Government Department of Home Affairs, viewed June 2019, <https://immi.homeaffairs.gov.au/what-we-do/education-program/what-we-do/simplified-student-visa-framework>.
[103] Austrade 2019, 'Additional evidence required for Nepal VET student visa applicants', viewed June 2019, <https://www.austrade.gov.au/australian/education/news/austrade-update/additional-evidence-required-for-nepal-vet-student-visa-applicants>.

Risks of students breaching their visa conditions

A student's responsibility when studying on a student visa is to maintain their enrolment while they are in Australia. They are required to maintain full-time enrolment, and abide by the grounds of their grant and any conditions imposed on their visa, including not working more than 40 hours per fortnight when their course is in session.

A student's visa can be cancelled if the Minister is satisfied that they are not, or are not likely to be, a genuine student. There are also grounds to cancel a student's visa if they breach any of the conditions imposed on that visa.

Although the student visa program requirements aim to make sure the student visa program is accessed as intended, there may be overseas students who, once they commence enrolment, do not undertake study. A student is obligated for the duration of their study to comply with the conditions of their visa. This obligation is shared with providers who are required to support the integrity of the student visa program and report students for any breach of their visa conditions.

However, where oversea students do not value quality education and seek only to undertake paid employment, there can be an incentive to transfer to providers more willing to allow student non-attendance and not report breaches of student visa conditions.

A significant issue in previous years related to students transferring to lower level courses while maintaining the same student visa. A condition imposed on the student visa is designed to prevent these types of same visa transfers and students transferring to a lower-level AQF course must apply for a new student visa.

However, particularly for enrolment in VET courses, the visa grant rates indicate that many students are applying for their visa onshore (refer Figure 12). These applications are made by persons who have arrived on another type of temporary visa, for example, a tourist visa, students who have completed one course of study and wish to undertake further study, or students who have arrived on a student visa approved for a higher-level course of study seeking to transfer to a lower-level course. These applications are assessed by the Australian Government Department of Home Affairs. Unsuccessful applicants may seek a review of these decisions at the Administrative Appeals Tribunal.

Figure 12: Onshore and offshore visa grants—VET and higher education[104]
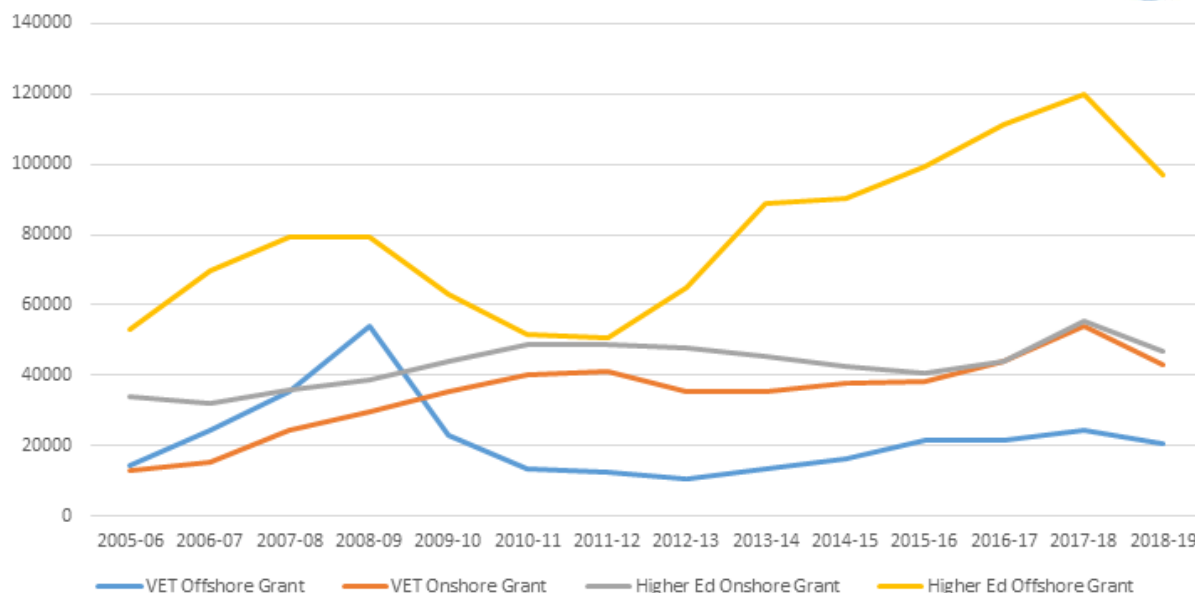
Once onshore, overseas students may also seek to transfer to a different provider and if the new course is at the same AQF level, the student does not need to seek a new visa[105]. Some students seek to transfer to a new provider due to changing preferences or dissatisfaction with their existing provider. There can be incentives, however, for some students to seek out poor-quality providers that do not require their attendance at classes.

This allows overseas students to initially enrol with a provider that has a low evidence level to obtain a visa under the streamlined process and then to move to a provider with a higher evidence level after arriving in Australia. These arrangements can be facilitated by education agents and there are concerns about the practices of agents and providers who aggressively seek to enrol overseas students onshore by enticing them from their original providers using misleading and unethical practices.

This form of course transfer enables a student to avoid scrutiny of their application. The National Code, which started on 1 January 2018, introduced a restriction on overseas students preventing them from transferring to another provider unless they had completed at least six months of their principal course (there are some allowed exceptions to this rule).

There have also been several reports on the extent of English language assessment fraud occurring in Australia. For providers who are willing to evade compliance, this creates possible opportunities to accept students who do not have the minimum English language requirements to study and to provide them with poor quality training and assessment. It may also indicate that these students are seeking to use their time in Australia for purposes other than education.

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[104] Graph data sourced from data.gov.au: https://data.gov.au/dataset/ds-dga-324aa4f7-46bb-4d56-bc2d-772333a2317e/details
[105] Overseas student transfers may occur after the overseas student has completed six months of their principal course, or in accordance with the provider's policy and process for assessing transfer requests prior to this time.

Student visa work rights

The work rights for student visa holders provide students with an opportunity to gain professional experience, engage more broadly in Australian society and supplement their discretionary income. However, overseas students are not meant to rely on work to support their stay in Australia

The desire of overseas students to undertake paid employment can incentivise providers to provide flexible study options for students. The minimum course delivery requirements for providers of VET courses to overseas students are:

- the course duration and amount of training being offered must include at least 20 scheduled course contact hours per week

- at least two-thirds of the units being delivered to an overseas student will be provided face to face (that is, not through online or distance learning)

- in each study period, at least one unit of competency is offered face-to-face.

Where overseas students seek greater flexibility from education providers, there is a risk that providers offer courses that do not meet these minimum standards. These risks are considered as part of ASQA's regulatory work.

Overseas students are not permitted to work before their course commences and may work 40 hours a fortnight when their course of study or training is in session. Overseas students may work in excess of 40 hours a fortnight, when they are on scheduled holidays or are between registered courses.

Regulatory risk—a shared responsibility

The interplay between the legislative regimes administered by various agencies can give rise to incentives that can alter student, provider and education agent behaviour. There needs to be a collaborative approach by agencies to ensure this behaviour does not facilitate unintended consequences.

The establishment of the Education Regulators and Immigration Committee (ERIC) has been an important initiative in improving the cross-agency understanding of these risks and facilitating the regular exchange of data, intelligence and information.

It is essential that the composition and work agenda of this Committee continues to evolve in response to the changing environment. Considering recent machinery-of-government changes and the establishment of the Australian Government Department of Employment, Skills, Small and Family Business, it is timely to expand the membership of ERIC and give consideration to its forward work program to ensure the risks across VET and ESOS compliance, the integrity of the student visa program and student welfare are appropriately managed.

Recommendation 2

That the Education Regulators and Immigration Committee be expanded to include the Australian Government Department of Employment, Skills, Small and Family Business and the work of this Committee be prioritised by the Australian Government Department of Home Affairs, the Australian Government Department of Education, the Tertiary Education Quality Standards Agency and ASQA to ensure shared risks are identified and addressed in a coordinated and collaborative manner.

Summary

The legislative framework governing the overseas student sector is complex, involving the interplay between various legislative settings administered by a range of agencies. The framework is evolving to respond to the factors that influence quality education and support the integrity of the student visa program.

Given the shared risks across this sector, regular data releases using agreed definitions and methodology would assist in providing a common understanding of the level of overseas student and provider activity. It is also critical that agencies maintain collaborative and effective working relationships to detect and respond to the changing landscape and emerging risks.

ASQA is required to apply the legislative framework in its regulatory activities. How it does this, and the challenges of regulating provider behaviour arising from this complexity, is discussed in the next chapter.

4. Onshore delivery—ASQA's regulatory approach

This chapter outlines the regulatory work completed by ASQA under a risk-based approach to regulation, with specific focus on regulatory scrutiny of providers approved on CRICOS. In recent years, ASQA has amended and strengthened its regulatory approach to focus its effort on the most significant risks, both at a systemic and a provider level. ASQA has refined its practices to address identified risks in a more proportionate and effective manner.

To assist the strategic review, ASQA undertook additional targeted regulatory activity to assess the compliance of specific providers. These providers were selected using a risk-based assessment and the activities were conducted by ASQA's Regulatory Operations teams. However, for the purpose of the strategic review, additional oversight was placed on the activities to guide planning and record findings.

The regulatory activities conducted as part of the strategic review, and during the course of ASQA's other regulatory work, have contributed to identifying the specific risks to the overseas student market regulated by ASQA. This chapter makes recommendations for other agencies and commits ASQA to action to address the risks raised through ASQA's regulatory work.

ASQA's regulatory work

ASQA's remit spans almost 4000 VET and/or ELICOS providers. To regulate such a large sector effectively, ASQA directs its resources to risks which pose the greatest threat to quality outcomes. By applying a risk-based approach to regulation, ASQA is able to respond in a proportionate but effective way, investing more time and effort into addressing risks of a more significant nature.

ASQA uses data and intelligence to identify and assess provider risk. Provider risk assessment considers information which, if left untreated, could have a significant and damaging impact on training and assessment outcomes. A provider's risk assessment continually changes, reflecting a range of data sources and information as it becomes available, including:

- information about a provider's previous performance in complying with its regulatory obligations including those related to timely and accurate data provision and fee payment (Compliance History[106])

- other measures of performance against established predictive risk indicators

- information reported by external stakeholders.

Where an assessment identifies provider risk, ASQA uses a suite of tools to respond proportionately to that risk and to undertake effective regulatory activity. In recent years, ASQA has undertaken a series of initiatives to improve how it identifies and responds to risks to ensure that its regulatory activity is the most effective method for obtaining evidence to test compliance and is the most likely to promote compliance. These initiatives are discussed below.

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[106] Australian Skills Quality Authority, 'Provider risk—Compliance History', viewed June 2019, <https://www.asqa.gov.au/news-publications/publications/fact-sheets/provider-risk-compliance-history>.

Accessing and interpreting data

The monitoring of activities undertaken by providers in the overseas student sector, from a data analysis perspective, is significantly more robust than ASQA's ability to use data to monitor VET delivery to domestic students.

PRISMS enables ASQA, as an ESOS Agency, to have access to real-time student data which it can use to interpret provider-specific patterns relating to marketing and enrolment practices, assessment of English language capacity, and providers' regulatory compliance and governance.

ASQA's understanding of the type of information available within PRISMS it has access to, and how this information can support a risk assessment process, has evolved in recent years as ASQA developed its analytical capabilities. ASQA is also able to use this information to guide regulatory activities by identifying student composition and growth, activity scope, location, student completions, and student records to review, to understand a provider's delivery.

As ASQA's risk-management approach has developed, so too has its capability to identify more complex and broader risk behaviours. While ASQA has access to student data of individual providers with its current level of access in PRISMS, it does not have sufficient access to the full range of student data to conduct more sophisticated analysis of patterns and trends concerning whole-of-sector activity. To effectively detect and treat the identified risk factors, ASQA requires more complete access to the data to continue to improve its risk-based framework.

ASQA has been working with the Australian Government Department of Education, in its capacity as the PRISMS system owner, to increase its access to a greater range of PRISMS data.   While this work is ongoing, it is a priority requirement to enhance ASQA's ability to detect and treat CRICOS risks.

Recommendation 3

That the Australian Government Department of Education prioritises the work underway to provide ASQA with access to a greater range of VET and ELICOS-related data held on the PRISMS database.

ASQA has also been working with the Department of Education to improve the interoperability between each agency's provider registration systems. Currently, ASQA uses its provider information system, asqanet, to record certain information about CRICOS providers and then separately enters the same provider information on PRISMS. This is not an efficient way of recording this provider information and introduces unnecessary risk in relation to data entry errors.

The business rules and governance arrangements to support the information system upgrades needed to facilitate interoperability are currently under development and should be prioritised by both agencies. ASQA is committed to ensuring that the resources and effort required to upgrade its IT functionality are applied to achieve this outcome.

ASQA Action 1

That the Australian Skills Quality Authority prioritises the enhancement of asqanet to enable interoperability with PRISMS.

Student-centred audit approach

ASQA developed a student-centred audit approach to provide a greater focus on the student experience and the demonstrated practices of providers. The student-centred audit approach supports the risk-based approach to regulation by considering evidence of student outcomes and the actual services provided by the provider—rather than inputs, outputs and processes—when assessing compliance.

A student-centred audit approach is customised to the areas of greatest concern, targeting the specific risks of the provider. Audit activities consider the student profile, including the vulnerability of the student, at key phases of the student experience. Students are given a voice in the audit process through invitations to participate in online surveys and, where appropriate, interviews. ASQA's focus is on evidence of what is actually happening for students, rather than what systems and processes say should be happening. As these activities are student-focused, they enable the auditor to consider both domestic and overseas students, regardless of the legislative requirements being audited.

The table on the next page shows the key obligations in the Standards for RTOs, the National Code, and the ELICOS Standards 2018 mapped against the phases of the student journey. ASQA also considers compliance with the standards relating to regulatory compliance and governance during the regulatory activity process.

Table 5: Key standards across the student journey

Key phases of the student journey	Examples of provider practice and behaviour	Primary standards / clauses in the *Standards for RTOs 2015*	Primary standards / clauses in the *National Code 2018*	Primary standards / clauses in the *ELICOS Standards 2018*
Marketing and recruitment	The training provider's marketing practices provide accurate and factual information to allow prospective students to make informed decisions. Providers recruit responsibly and ensure prospective students are assessed to meet any prerequisites, including English language proficiency requirements to complete the course.	4.1	1.1, 1.2, 1.3, 1.4	-
Enrolment	The training provider ensures students have the existing skills, knowledge and experience required to successfully undertake the course. Providers and students formalise the enrolment through a written agreement.	5.1, 5.2, 5.3, 7.3	2.1, 2.2, 3.1, 3.3, 3.4, 8.5	P1.2, P3.1
Support and progression	Providers assist students to adjust to study and life in Australia. The training provider assesses student needs and provides appropriate support services to enable student progression, including English language support. Providers clearly articulate to students the requirement to attend class, and participate in training, in order to progress in their studies.	1.7	5.2, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.9, 8.1, 8.3, 8.4, 8.6, 8.7, 8.9	P6.9, P7.2
Training and assessment	Trainers assigned to deliver training are qualified. The training provider has sufficient and appropriate resources for training and assessment. The amount of training and mode of delivery is consistent with requirements. Training and assessment is offered on the basis of full-time study, the course duration and amount of training is suitable for the learner and is at least 20 scheduled course contact hours per week, at least two-thirds of the VET units being delivered is provided face to face, and in each VET course study period, at least one unit is offered face-to-face.	1.1, 1.2, 1.3, 1.8, 1.13 to 1.18, 1.20	11.1, 11.2, 8.18, 8.19, 8.20, 8.21	P1.1, P4.1, P5.1, P5.2, P6.4, P6.7, P6.8, P7.3
Completion	Only students assessed as meeting course or training package requirements are issued with certification.	3.1		P4.2

Other requirements

Regulatory compliance and governance	The training provider has appropriate compliance and governance processes in place such as holding public liability insurance, managing its third parties and agents. The training provider meets additional obligations if delivering to under-18s. The provider has, and implements, policies to respond to student transfer requests.	2.3, 2.4, 8.2	2.4, 2.5, 3.6, 4.4, 4.5, 4.6, 5.4, 5.5, 5.6, 5.7, 6.7, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7	P2.1

Providers delivering VET training to overseas students are required to meet all the requirements of the National Code as well as the Standards for RTOs. Providers delivering ELICOS to overseas students are required to meet all requirements of the National Code and ELICOS Standards.

Between 1 January 2018 and 31 May 2019, ASQA has conducted 268 regulatory activities of CRICOS providers, including 135 site audits under the student-centred audit model. Resulting from these regulatory activities, ASQA has taken the following decisions against CRICOS providers under the ESOS Act.

Table 6: Regulatory decisions against CRICOS providers under the ESOS Act

Regulatory decisions[107]	2017–2018	2018–2019*
Decision to cancel registration	43	29
Decision to cancel (part) registration	3	8
Decision to suspend (all/part) registration	5	8
Decision to reject initial application	37	57
Decision to reject renewal application	11	9
Decision to reject change of scope application	29	44

*2018 – 2019 = 1 July 2018 – 31 March 2019

Some providers seek a review of ASQA's decisions in the Administrative Appeals Tribunal (AAT). When this occurs, regulatory decisions may not be enforced until a considerable time after the original decision was made.

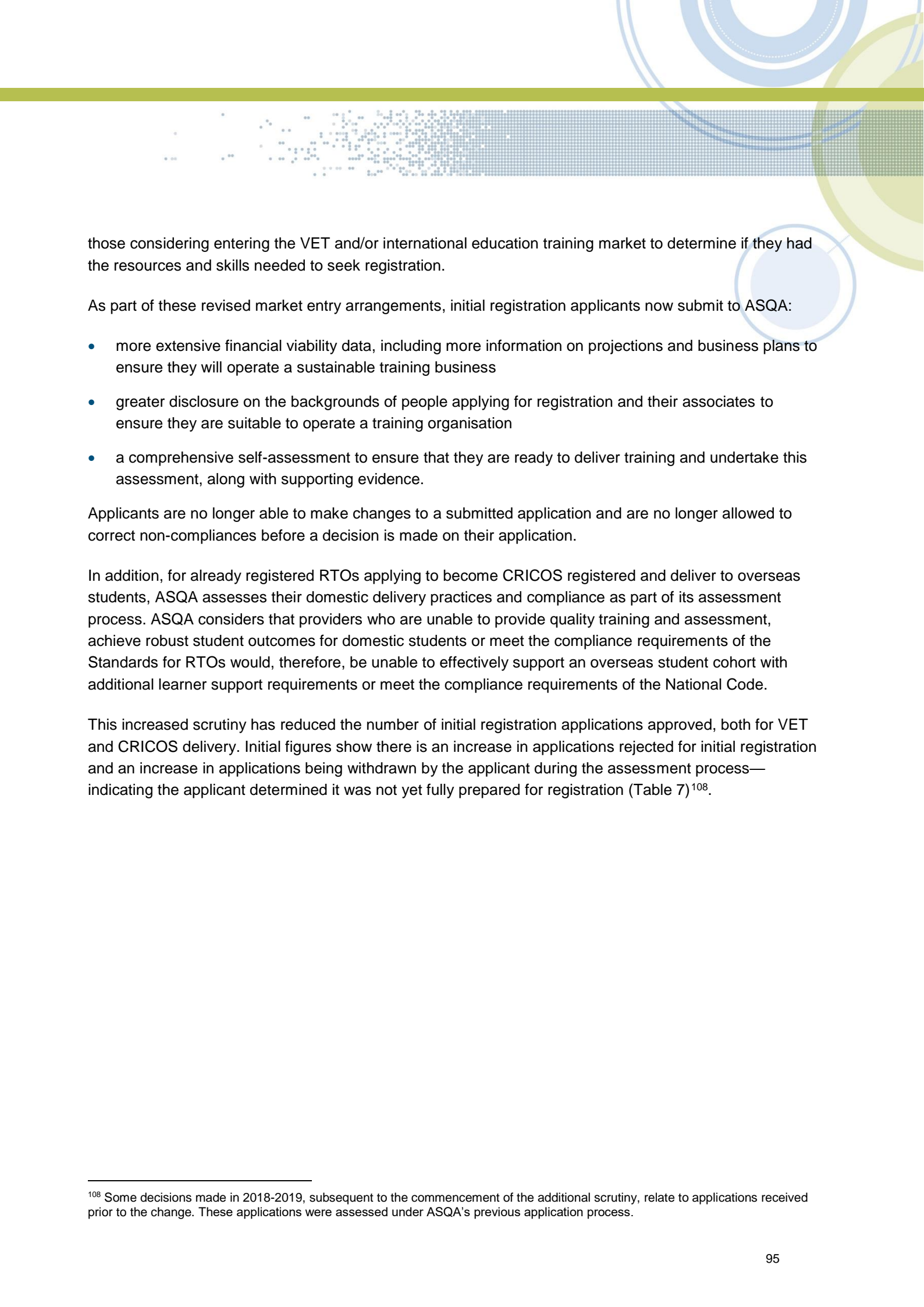## Increasing scrutiny on new entrants to the training market

A significant amount of ASQA's resources are committed to market entry testing of initial applicants for registration and verification of the actual performance of newly registered providers. While an initial registration application can assess a provider's preparedness to deliver training and assessment, a new provider's ability to implement their intended practices is, generally, not able to be tested.

In previous years, ASQA found that applications were submitted by organisations without the educational capacity or the financial resources to deliver the specified training. ASQA's previous guidelines provided applicants with the opportunity to lodge multiple evidence submissions in response to the outcomes of a number of review processes to obtain registration.

Beginning 1 July 2018, ASQA enhanced its scrutiny of entities seeking to provide VET and/or ELICOS courses. The changes to the application and assessment process for initial registration aimed to assist

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[107] s83(3)(c) of the ESOS Act enables ASQA to 'cancel the registered provider's registration for any one or more specified courses for any one or more specified locations'. Decisions made under this part of the ESOS Act are described in the table either as:
- decision to cancel registration (where all courses at all locations have been removed), and
- decision to cancel (part) registration (where at least one course at one or more locations has been removed, but the provider continues to deliver other courses / locations).

those considering entering the VET and/or international education training market to determine if they had the resources and skills needed to seek registration.

As part of these revised market entry arrangements, initial registration applicants now submit to ASQA:

- more extensive financial viability data, including more information on projections and business plans to ensure they will operate a sustainable training business

- greater disclosure on the backgrounds of people applying for registration and their associates to ensure they are suitable to operate a training organisation

- a comprehensive self-assessment to ensure that they are ready to deliver training and undertake this assessment, along with supporting evidence.

Applicants are no longer able to make changes to a submitted application and are no longer allowed to correct non-compliances before a decision is made on their application.

In addition, for already registered RTOs applying to become CRICOS registered and deliver to overseas students, ASQA assesses their domestic delivery practices and compliance as part of its assessment process. ASQA considers that providers who are unable to provide quality training and assessment, achieve robust student outcomes for domestic students or meet the compliance requirements of the Standards for RTOs would, therefore, be unable to effectively support an overseas student cohort with additional learner support requirements or meet the compliance requirements of the National Code.

This increased scrutiny has reduced the number of initial registration applications approved, both for VET and CRICOS delivery. Initial figures show there is an increase in applications rejected for initial registration and an increase in applications being withdrawn by the applicant during the assessment process— indicating the applicant determined it was not yet fully prepared for registration (Table 7)[108].

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[108] Some decisions made in 2018-2019, subsequent to the commencement of the additional scrutiny, relate to applications received prior to the change. These applications were assessed under ASQA's previous application process.

Table 7: Initial registration applications – decisions taken

Application Type	Decision	2015–2016	2016–2017	2017–2018	2018–2019*
VET Initial Applications	Approved	319	234	202	49
	Rejected	68	73	102	52
	Withdrawn	11	12	29	23
CRICOS Initial Applications	Approved	68	92	88	23
	Rejected	10	11	37	16
	Withdrawn	9	8	20	12
	Total	**485**	**430**	**478**	**175**

2018 – 2019 = 1 July 2018 – 31 December 2018

All successful initial VET applicants, including those also applying for initial CRICOS registration, are registered by ASQA for a two-year period only. During the two-year period, a compliance audit is conducted to ensure the provider's actual delivery is in line with their plans and documents that were assessed at initial registration. Delivery must have occurred within that two-year period.

Other regulatory work

ASQA uses escalating action, proportionate to the risks and potential harm, in its regulatory activities. In recent years, ASQA has further enhanced its capabilities to conduct varying forms of regulatory work and utilise the most effective method for obtaining evidence to test compliance. These can include:

- entering premises unannounced, by consent or under warrant, and utilising monitoring or enforcement powers

- imposing conditions on the registration of a provider, requiring them to do or not to do certain things

- conducting site audits where the provider is given reduced or no notice

- conducting site audits where the provider is given standard notice to prepare—one to three months prior to the site visit

- conducting desk audits or evidence analysis activities, and

- conducting interviews with a provider's staff/former staff.

ELICOS changes

The new ELICOS Standards, introduced from 1 January 2018, included a significant change to the definition of what constitutes an ELICOS course. Given the fundamental pedagogical differences between

the Standards for RTOs and the revised ELICOS Standards, providers were no longer able to deliver English-language VET courses to overseas students. These providers offering VET English language courses, if they wanted to continue to deliver English-language instruction to overseas students, were required to apply for registration to deliver an ELICOS course and demonstrate the course met the requirements of the ELICOS Standards.

ASQA invited the 151 affected providers to apply to register ELICOS courses to replace their superseded English-language VET courses. During the transition process, affected providers were granted until 1 March 2018 to complete the application process and these applications were assessed under ASQA's ELICOS risk assessment process. Conditions were also placed on the affected courses to enable the provider to teach out the existing cohort of students. The outcome from this process is described in the previous chapter.

Strategic review regulatory strategy

In 2017, ASQA announced it would undertake a strategic review of international VET and English language education services delivered by ASQA-regulated providers. As part of this review, ASQA undertook to analyse and document provider practice in the CRICOS regulatory space to assess the:

- effectiveness of ASQA's regulatory approach and compliance activities

- data sources and information available for provider risk assessment

- specific risk factors relevant to CRICOS delivery

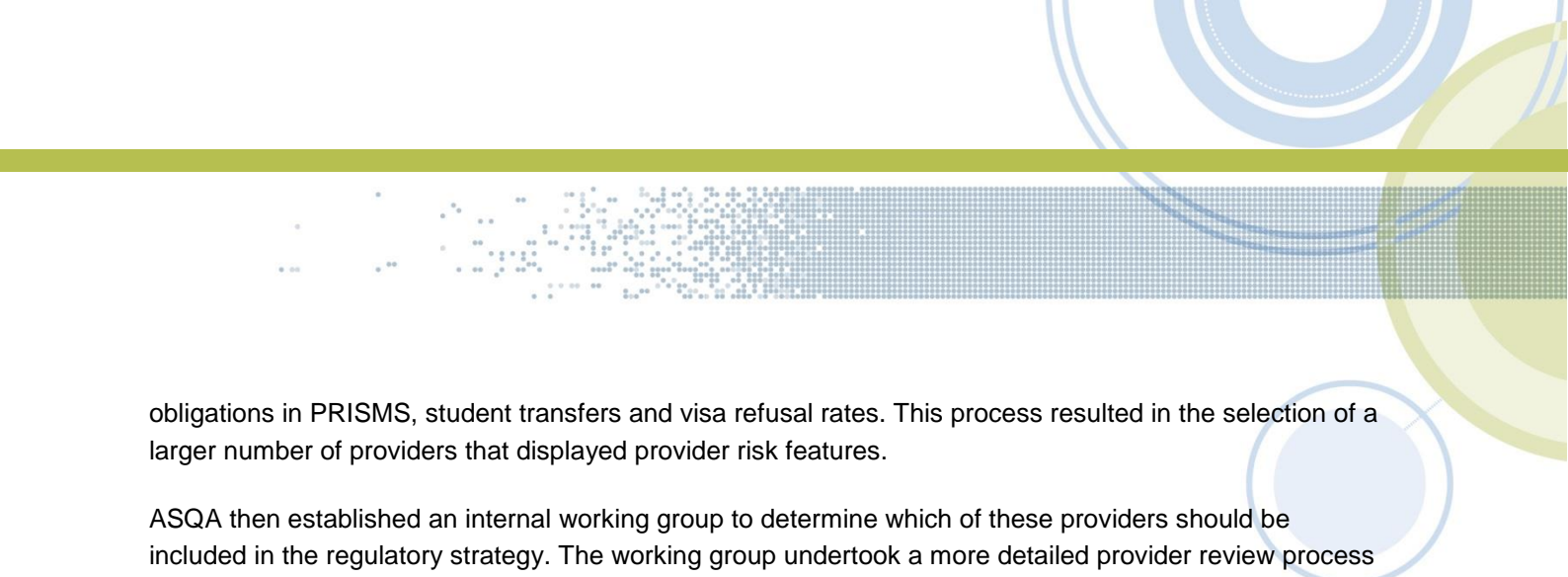- quality of international VET and ELICOS services delivered to overseas students.

In addition to the regulatory activities conducted by ASQA as part of its normal business, 35 regulatory activities of providers delivering VET and/or ELICOS courses to domestic, overseas and/or offshore students commenced. These activities were conducted by the ASQA Regulatory Operations teams and were managed as per normal regulatory process. However, to support the strategic review requirements, additional factors were used to select, coordinate, scope and monitor each activity.

Strategic review regulatory risk assessment

The providers included in the regulatory strategy were selected based on risk, after assessment of intelligence and information held by or available to ASQA, including:

- number of complaints made to and/or intelligence received by ASQA

- number of adverse regulatory decisions by ASQA or another regulator

- Total VET Activity data

- PRISMS data

- other information shared by government agencies.

The initial assessment process assessed all CRICOS-registered providers against risk indicators. In particular, ASQA considered risk indicators related to complaints, student growth, provider reporting

obligations in PRISMS, student transfers and visa refusal rates. This process resulted in the selection of a larger number of providers that displayed provider risk features.

ASQA then established an internal working group to determine which of these providers should be included in the regulatory strategy. The working group undertook a more detailed provider review process to consider the quality, veracity, strength and relevance of the information held.

The working group's analysis of the complaints and intelligence held by ASQA assessed allegations about a range of behaviours exhibited by these providers. While some of this information was within ASQA's jurisdiction, some information related to broader concerns. ASQA was able to consider this information as a general indicator of provider behaviour and practices and, in particular, as an indicator of how a provider managed its student experience.

From the provider review process, 35 providers were selected to be part of the regulatory strategy. Of these 35:

- 18 providers delivered both VET and ELICOS

- 10 providers delivered VET courses only

- four providers delivered ELICOS only

- three RTOs, not approved on CRICOS, delivered non-AQF courses offshore as an International Skills Training (IST) provider.

Of the 35 providers selected, six were also higher education providers.

Strategic review regulatory activities

ASQA began preparation for these regulatory activities by following the student-centred audit approach. Beginning from early 2018, information was collected about or from each provider, with particular focus on the student experience. Student surveys were conducted for announced audit activities and the results from these surveys formed the focus of each regulatory activity.

ASQA's working group considered each regulatory activity to identify the:

- type of activity to be conducted

- scope of activity

- evidence-gathering techniques.

While the initial preparation work determined that the appropriate regulatory response for most providers was to conduct an audit and that most audits would be scheduled within ASQA's standard notice time frames, the risk assessment process identified five providers that displayed risk factors of significant concern.

In particular, ASQA had concerns that relevant evidence may be altered by these providers should they be given notice of pending regulatory activity. For these providers, the working group supported the

application of ASQA's strongest capabilities and utilised provisions under the NVR Act to obtain a monitoring warrant authorising entry to provider premises.

Table 8: Summary of regulatory activities undertaken as part of the Strategic Review

Unannounced site visits, under warrant	**5**
VET/ELICOS approved	1
VET only approved	4
Unannounced, with consent, compliance audits	**3**
VET only approved	3
Short notice compliance / application audits	**9**
VET/ELICOS approved	8
VET only approved	1
Standard notice compliance / application audits	**18**
VET/ELICOS approved	9
VET only approved	2
ELICOS only approved	4
RTO (IST) approved	3

Where audits were conducted on providers that were also ELICOS approved, ASQA engaged NEAS to provide expert advice on ELICOS Standards requirements. A NEAS representative attended the site visit component of these audits and applied the ELICOS Standards to assess teaching and assessment compliance, including reviewing completed student files (where available)[109].

Strategic review regulatory outcomes

The first site visit component of the regulatory activities for a provider began in June 2018 and all 35 providers had been subject to site visits by May 2019.

ASQA conducted multiple site visits for eight of these providers. This was to assess provider practice in multiple locations and, if concerns were present, to confirm that overseas students were studying on a full-time basis. As at 28 June 2019, and as a result of the site visits conducted during these regulatory activities, ASQA imposed conditions under section 10B of the ESOS Act on nine of these providers requiring them to have and implement a documented policy and process for monitoring the attendance of overseas students.

As at 28 June 2019, ASQA has found 14 of the providers that were part of the strategic review to be fully or largely compliant.

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[109] The National ELT Accreditation Scheme Limited (NEAS) representative is an approved ASQA panel auditor and could act as an Audit Assist for the purposes of the audit activity. NEAS is a globally recognised body that provides quality assurance services to ELT and vocational providers in Australia and internationally.

As at 28 June 2019, ASQA has taken final regulatory decisions to:

- cancel the NVR and CRICOS registrations (or reject renewal of registration) of 10 providers

- amend and remove part NVR and CRICOS registration of two providers

- suspend all or part NVR and CRICOS registration of three providers

- issue a written direction to rectify low-level non-compliance to seven providers

- issue a non-statutory notice to rectify low-level non-compliance to four providers

- find three providers compliant with the Standards for RTOs and the National Code.

Seven providers have sought a review and stay of the cancellation decisions in the Administrative Appeals Tribunal (AAT) and these matters remain ongoing. The cancellation decision relating to one provider was revoked by ASQA after resolution of an application by the provider to the Federal Court for judicial review of the decision which included allowing the provider further time to submit additional evidence to demonstrate why the cancellation decision should not be re-made. Two providers sought a review of the cancellation decisions in the AAT but later withdrew their applications.

Of the 35 regulatory activities, six remain ongoing as at 28 June 2019 and are at varying stages of evidence gathering, report preparation, or rectification analysis. ASQA will continue to progress these matters as per normal business process.

An overview of ASQA's regulatory decision-making process for its completed activities is described below.

ASQA's regulatory process

ASQA's regulatory process requires it to document its regulatory findings in a report which is sent to the provider. Where non-compliance is identified, the report describes the gap in compliance and, if required, the nature of further evidence to be given. Providers are afforded an opportunity to demonstrate compliance in response to the findings by providing further evidence.

On review of any further evidence, ASQA makes a final regulatory decision and may:

- find the provider has demonstrated compliance
- determine that low-level non-compliance remains and direct the provider to rectify the outstanding issues
- impose conditions on the provider's registration, and/or
- impose an administrative sanction to suspend, amend or cancel the provider's registration.

Should ASQA impose an administrative sanction, the provider may have the right to have the decision reviewed by ASQA. Depending on the type of decision and how the decision was made, a provider may:

- consider the reasons for the decision, address the outstanding areas of non-compliance and submit a fresh application
- request that ASQA review the decision, and introduce new evidence as part of that process, or

- apply to have a review of ASQA's decisions in the Administrative Appeals Tribunal (AAT), and introduce new evidence as part of that process.

Where a provider exercises its right of review, final regulatory outcomes may be delayed for some time.

Where adverse decisions are made, ASQA informs key Australian Government and state and territory government stakeholders of the decision.

ASQA publishes information about adverse regulatory decisions on its website and on the National Register (training.gov.au). Decisions are published in line with ASQA's policy on publishing decisions as they are made. The information is updated as and when required so as to reflect the progress of any review process through to finalisation.

Student feedback on quality

Student surveys[110] conducted by ASQA to support the strategic review regulatory activities show that, for students enrolled with providers found to be compliant or largely compliant, the student experience was positive for overseas learners of VET and ELICOS courses. Survey responses showed that, of the providers where compliance or low-level non-compliance was found:

- 86 per cent of respondents reported that the provider provided all of the learning resources and equipment needed to complete their course

- 85 per cent of respondents said they had access to good quality learning resources

- 84 per cent of respondents said they had access to good quality facilities

- 88 per cent of respondents reported that the provider's trainers and assessors were professional and knowledgeable

- 85 per cent of respondents confirmed they had been supported to complete their course within the expected course duration, and

- 82 per cent of respondents were satisfied with the training provided by their provider.

ASQA's regulatory strategy also gave students the option to provide 'free-text' feedback on the quality of training and assessment. The written student feedback identified key areas where students found value in the services delivered by their provider. While training and assessment resources and facilities, including staff, were highly ranked, it was the provision of additional support which students valued the most and which led to a quality experience:

> 'They are very supportive in the learning process. The student service department is excellent. The finance department is also very understanding.'

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[110] ASQA's student centred audit approach seeks input from providers' current and former students, including through interviews and surveys. ASQA surveys students to collect information about their experiences from the time they first decided to enrol with a training provider, including by asking them about the training and support they received, their assessment experiences, and the completion of their training.

'The trainers are knowledgeable, professional and accommodating. Facilities are great and also accessible even to those with disability.'

'Trainers are very friendly, knowledge and professional. They will guide all the students in their own way and make it easy to understand.'

'The classes were small thus trainers were able to know each student and keep up with each student's progress.'

'Studying in another language was a wonderful experience for me and moreover because I could accomplish all the task and test during the time I have been studying.'

'The exchanges of ideas inside the classroom from students of different culture and backgrounds.'

'The teachers are very good and comprehensive with my difficulties to understand the language sometimes since English is my second language.'

'The company shows their diversity through the workers and it really helps in making you feel less homesick.'

It is apparent that the student experience becomes relevant when reflecting on the value of the training received. When providers offer a hands-on and supportive environment that encourages active participation in the classroom, students gain support in English language development, cross-culture awareness, and adapting to life when the traditional family support network is far away – experiences which are unique to overseas student requirements. It is these provisions which demonstrate quality in overseas education.

In particular, providers that deliver ELICOS courses demonstrated higher levels of compliance. The ELICOS Standards provide more prescriptive requirements relating to course attendance, training and assessment provisions, and staffing arrangements. These requirements have created a culture of quality outcomes shown by audit findings and student opinion. The student written feedback about ELICOS-only providers show that students see benefit in studying in small classroom environments with qualified staff, including support staff, to guide learning:

'The teachers support, the school is really friendly and help the students to integrate and know each other. Everything was super clear and well explained. I had a really good experience there.'

'The atmosphere of my school is incredible, my best experience is the quality and passion of everyone who works there, in this university, they all help you get ahead and if you have a problem, they are all willing to help you.'

'Studying at [provider] made my English significantly better because besides the teachers being very attentive, I also had the opportunity to talk to people from different countries to practice the language.'

Identified risks for the overseas student market

The primary VET risk for ASQA to manage is a provider certifying that a person has competencies that do not reflect his/her skills, knowledge and attitudes. The potential damage flows not just to the individual, but to employers, the wider community, and to the reputation of Australian VET education.

This primary risk remains consistent, regardless of whether the student is domestic or studying on a student visa. However, the vulnerability of an overseas student can heighten the obligations of this risk. Students coming to Australia to study have additional challenges which can impact on their ability to develop the skills and competencies required. It is the obligation of a provider, in enrolling and delivering to overseas students, to remain cognisant of these challenges and provide training and assessment that supports the student's needs.

Major risk—student course progression and class attendance

Regulatory activities conducted on some providers as part of the strategic review, and in ASQA's wider regulatory work, identified one particular concern relating to overseas student class attendance. Investigation of this issue has found several instances of providers who are not requiring overseas students to attend scheduled classes, but who are still determining that these students are progressing in their course.

Overseas students are required to be enrolled in a full-time registered course to meet the study requirements of the student visa program.

Providers are required to ensure they comply with all requirements of the National Code and the VET Quality Framework at all times to provide quality education, protect student welfare, and maintain the integrity of the student visa program. However, the complex relationship between each standard of the National Code and the Standards for RTOs (in particular) has led to the findings that some providers are deliberately evading or unintentionally not meeting their obligations.

National Code regulatory obligations for student attendance

There are two related standards under the National Code which instruct a provider, and a regulator, in understanding student attendance requirements. These standards specify general obligations and also list specific requirements for each education sector.

Standard 8 – Overseas student visa requirements

The intent of this standard is to safeguard the integrity of Australia's migration laws by supporting overseas students to complete their course within the required duration and to fulfil their visa requirements for course attendance and course progress. Standard 8 provides the general obligation that providers must monitor overseas student course progress and, where applicable, attendance for each course they are enrolled in.

Standard 8 provides specific obligations for schools, ELICOS and foundation programs to require providers in these markets to monitor and manage student attendance at a minimum of 80 per cent of scheduled

contact hours. Standard 8 also sets out specific obligations for higher education providers to monitor and manage student course progress.

For VET providers, Standard 8 requires a provider to monitor and manage student course progress unless a condition has been placed on an individual provider's registration to implement and maintain student attendance at a minimum of 80 per cent of scheduled contact hours.

Implementation of the requirements of Standard 8 requires a VET provider to understand the definition of course progress in the context of the National Code and the Standards for RTOs:

- The National Code defines course progress as 'the measure of advancement within a course towards the completion of that course irrespective of whether course completion is identified through academic merit or skill-based competencies'.

- As VET is a skill-based competency structure, VET providers must also consider their obligations for developing student competencies. The Standards for RTOs defines competency as 'the consistent application of knowledge and skill to the standard of performance required in the workplace'. Where students need to learn to acquire and demonstrate these competencies, students undertake training prior to assessment.

Standard 8 also includes other obligations that providers must meet relating to the mode of delivery that can be offered to overseas students:

- For school, ELICOS or foundation programs, any online or distance learning must be in addition to minimum face-to-face teaching requirements approved by the relevant designated State authority or ESOS agency as part of the registration of the course, if applicable.

- For higher education and VET courses, no more than one-third of the units of the course can be delivered online or by distance learning. This requirement means that at least two-thirds of a course must be delivered by a face-to-face mode of delivery.

Standard 11 – Additional registration requirements

The intent of this standard is to ensure that providers meet, and continue to meet, the requirements for CRICOS registration and to ensure an ESOS Agency (ASQA) has up-to-date information on specific aspects of a provider's operations.

Standard 11 describes the requirements a provider must meet to register a full-time course on CRICOS. For VET courses, the expected duration of the course **must be determined on the basis of the course being delivered as a minimum of 20 scheduled course contact hours**[111] per week unless specified by an accrediting authority (ASQA). As a rule, ASQA does not grant approval for CRICOS courses with less than 20 scheduled course contact hours per week, nor do providers seek it.

This standard also reinforces that the course is not to be delivered entirely by online or distance learning.

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[111] Scheduled course contact hours are the hours for which students enrolled in the course are scheduled to attend classes, course-related information sessions, supervised study sessions, mandatory and supervised work-based training and examinations.

Standard 11 also requires providers to seek approval from their ESOS Agency (ASQA) for any proposed changes to the delivery of a course, at least 30 days prior to the changes being made.

Standards for RTOs regulatory obligations for student attendance

The Standards for RTOs are structured into four parts, with Part 2 describing the training and assessment obligations and Part 3 describing RTOs' obligations to learners and clients. Each of these parts inform a provider as to their obligations in delivering training and assessment.

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

Relevant to Part 2, in particular, is Standard 1 which requires an RTO to ensure that training and assessment strategies and practices are responsive to industry and learner needs and meet the requirements of training packages and VET accredited courses.

All RTOs must have documented training and assessment strategies for every course on their scope of registration, to describe the approach of, and method adopted by, an RTO with respect to training and assessment to enable learners to meet the requirements of the course. Training and assessment strategies must include the amount of training being offered for the course, which has been determined by the existing skills, knowledge and experience of the learner, and the mode of delivery.

An RTO's training and assessment practices must be reflective of their documented training and assessment strategy.

Standard 5 – Each learner is properly informed and protected.

Relevant to Part 3 is Standard 5, which requires an RTO to ensure that students are adequately informed about the services they are to receive, their rights and obligations, and the RTO's responsibilities. This standard requires an RTO to ensure a student is given information prior to enrolment or commencement of training and assessment about a course that is appropriate to meeting the student's needs – taking into consideration that student's existing skills and competencies.

This standard requires an RTO to understand their student's individual needs and abilities and to be able to offer a course that is suitable to those needs. RTOs are required to consider and provide advice about the appropriate training product to meet their needs, and the consideration must take into account the student's skills and competencies, including their existing abilities and English language levels.

Ensuring registered courses meet all regulatory requirements

When delivering to overseas students, and to meet all requirements of the National Code and the Standards for RTOs, a provider must:

- offer and design a course on the basis of full-time study, based on 20 scheduled course contact hours per week

- ensure that at least two-thirds of the VET units of competency or modules being delivered to an overseas student will be provided face-to-face and that at least one face-to-face unit is provided in each study period

- ensure the course duration is suitable and that the amount of training being offered is appropriate to a learner's English language capabilities and their existing skills, knowledge and experience

- document the training and assessment strategy, including developing timetables to structure face-to-face delivery

- have approval from ASQA to deliver the course in the manner described in the training and assessment strategy and timetable.

The training and assessment actually delivered by the provider must reflect the documented strategy. That is, a provider must ensure that training is delivered over a minimum of 20 scheduled course contact hours per week, as per timetabling, and maintain face-to-face instruction. For students to develop the knowledge and skills required, before assessment, they must actively participate in the learning. Providers must retain evidence they are implementing their strategy including the delivery of face-to-face classes, which could include retaining attendance records, to be able to demonstrate compliance with the legislative frameworks.

This is a complex set of requirements, however it is imperative that providers meet all of these obligations. These requirements also show that, in order to monitor and manage a student's course progress, providers must ensure their overseas students are regularly attending classes. If they are not attending class, they are unable to develop the skills and knowledge required—in the manner specified and approved in the training and assessment strategy—to achieve skill-based competency.

Compliant providers promote and maintain active student participation. From a regulatory perspective, compliant providers seek to meet the requirements of the Standards for RTOs and the National Code (and related legislation) at all times, and retain evidence and records to demonstrate they have achieved this. These providers regard requiring and recording student attendance as part of their standard educational practice and do not regard it as an unnecessary imposition.

The general acceptance of the need for this practice is reinforced by recent decisions of the Administrative Appeals Tribunal. In the matter of the *Australian Institute* of *Technical Training Pty Ltd and Australian Skills Quality Authority*[112], relating to a stay order which imposed a condition to monitor student attendance, the Senior Member noted:

> *'….it seems hard to accept that a student would have a valid cause of action against the Applicant (on the material that is currently before the Tribunal) for breach of contract by simply insisting that the student attend the courses they are enrolled in for tuition. For instance, how does this constitute a breach of the contract?'[113]*

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[112] Administrative Appeals Tribunal of Australia decisions - https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2018/5392.html?context=1;query=%22australian%20institute%20of%20technical%20training%22%20;mask_path= and https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2018/1281.html?context=1;query=%22australian%20institute%20of%20technical%20training%22%20;mask_path=

[113] Paragraph 78

'Surely, it is hardly an unreasonable imposition on a student to require them to sign a class roll. It does not affect the quality of the tuition. It has absolutely no bearing on the course content or any other aspect of the tuition rendered.'[114]

'It has on occasion in the course of submissions on behalf of the Applicant been compared with attendance obligations at a university. The Tribunal cannot accept this analogy. A university is a different form of institution and is not a private enterprise organisation, being a company, dependent upon and subject to the licensing, registration and regulatory regimes prescribed in the way that they are in the NVR Act and the ESOS Act.'[115]

From a student-support perspective, quality providers also understand that the best protection for overseas students is to maintain active engagement in full-time study. These providers regularly monitor student attendance to ensure learners are developing the skills they desire, they are getting the most out of the study experience, and that they are meeting their student visa obligations. These providers know who their students are, and can identify when additional support is required both to support learning and address broader welfare issues.

Imposing conditions on a provider's registration

Where ASQA is concerned that a provider's students may not be attending their scheduled course contact hours, it can impose conditions on that provider's registration requiring them to monitor minimum attendance. These conditions are designed to ensure students engage in their scheduled full-time education and that the provider monitors student attendance and is able to intervene and support them to attend. If students are unwilling to attend their classes, then the provider is required to report them to the Australian Government Department of Home Affairs for breach of their visa.

Between 1 January 2018 and 31 May 2019, ASQA has imposed attendance monitoring conditions on 13 providers. In addition, the AAT has imposed attendance monitoring conditions on a further 23 providers as part of ongoing and completed Tribunal matters. Decisions to impose these conditions are reviewable and, of the 13 providers where ASQA has imposed attendance monitoring conditions, 11 providers have sought a review of ASQA's decision at the AAT.

Imposing these conditions on individual providers is designed to change the culture of attendance at that provider. When imposed, the provider is required to develop new policies and processes to monitor, intervene and assist their overseas students to attend their scheduled classes. Once developed, the provider must notify its overseas students of the revised requirements, processes and procedures and then must implement the processes, and collect evidence to demonstrate compliance with the conditions.

For new overseas students enrolled with the provider, they commence their studies with an explicit understanding of their obligation to attend scheduled classes and of the provider's obligation to monitor and assess student attendance to confirm they are meeting minimum attendance requirements.

The revised policies and procedures also apply to overseas students currently studying and, as part of implementing the processes, the provider must ensure that these students have been given adequate

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[114] Paragraph 82
[115] Paragraph 82

notice of the changes to its policies and procedures. For this reason, attendance monitoring conditions for current students commence on the first day of their next period of study.

ASQA has now had experience in imposing student attendance monitoring conditions and has found the wording of the National Code to be complex. The drafting of the National Code has caused the AAT to comment on its clarity.

Imposition of student attendance monitoring conditions – National Code terminology

The National Code is unclear in relation to Standard 8. For example, in the recent interlocutory decision *Business Institute of Australia Pty Ltd and Australian Skills Quality Authority[116]* while not making any findings, the Tribunal raised a concern:

> *'…whether the condition requiring monitoring of attendance must be over the whole course or part of the course and whether if it is part of the course, whether that in itself is inconsistent with clause 8.11 of the Code. The difficulties in determining such requirements with precision were considered in Zou v Minister for Immigration and Multicultural and Indigenous Affairs [2002] FCA 1126; (2002) 124 FCR 289 at [23] – [24]. There is also a finding that the 80% attendance requirement cannot be tested until the particular course of a student is concluded: see Nong v Minister for Immigration and Multicultural Affairs [2000] FCA 1575; (2000) 106 FCR 257 at [36] – [38].'[117]*

ASQA has found that imposing these conditions to be resource intensive. ASQA is required to gather sufficient evidence, through multiple site visits to determine that students are not attending, to support the imposition of conditions. Where providers seek a review of this decision in the AAT, the activity obliges ASQA to collect evidence to ensure the Tribunal has contemporary material concerning compliance. To be an effective deterrent, ASQA must also devote significant resources to monitoring single-provider compliance including through ongoing site visits.

Furthermore, it does not address similar practice by other providers that have not been detected by ASQA. In fact, these undetected providers are likely to receive a benefit if students seeking to avoid their attendance conditions move to alternative providers.

Providers' (mis)understanding of student attendance

Many of these providers, who do not require student attendance, have been open with ASQA in their views that their students are not required to attend class as they are a 'student progress monitoring' provider, which is a selective interpretation of the National Code focusing on Standard 8 and excluding all other obligations. There is anecdotal evidence that this view and terminology is widespread. Some providers

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[116] Administrative Appeals Tribunal of Australia decisions - https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2019/699.html?context=1;query=%22business%20institute%20of%20australia%22%20;mask_path=
[117] Paragraph 57

appear to have formed the view that, unless ASQA has imposed an attendance monitoring condition, they are free to inform students that attendance at their scheduled classes is not required.

These providers have openly expressed concerns to ASQA about the impact on their businesses should their students be required to comply with attendance monitoring conditions. They appear to consider limited or no attendance of scheduled classes as a legitimate 'business model' to promote to students who seek to spend their time in Australia undertaking activities other than for the purpose of undertaking VET.

Imposing conditions provider-by-provider also allows other providers that have not had a condition imposed on them, to profit from the movement of students seeking to avoid full-time study. This can be facilitated by education agents and other providers using misleading recruitment strategies.

ASQA recognises that imposing conditions on a provider's registration to monitor student attendance, while effective in monitoring an individual provider, can create distortions in the market. This form of regulatory monitoring impacts a limited number of businesses only, creating a piecemeal approach to stopping this practice and allowing other providers to continue a non-attendance business model until they are 'caught'.

As a risk-based regulator with limited resources, ASQA must focus its efforts on areas of most concern across the VET and ELICOS sectors—and focus on RTOs as well as CRICOS providers. It is simply unable to identify all providers, existing and prospective, who may be allowing, or intending to allow, students to avoid undertaking full-time study according to the course structure and in line with student visa requirements and still enter and remain in Australia on a full-time study visa.

Student protection by course attendance

While some overseas students may deliberately seek out these poor-quality providers, other students may unknowingly enrol with a provider who seeks to encourage student non-attendance. Either way, ASQA has found that overseas students are less likely to complain about their provider in these circumstances, making it more difficult to identify these providers.

Overseas students who are allowed and even encouraged not to attend classes are at significant risk of not only poor VET outcomes but a broader range of welfare concerns. Overseas students who do not attend scheduled classes do not develop the skills required for the qualification. Any assessment conducted on these students is likely not valid, sufficient or authentic.

Students who are left unsupported in a foreign country can become isolated and overwhelmed. As articulated in the student surveys conducted as part of the strategic review regulatory activities, students value the classroom environment to develop English language capabilities, develop friendships and obtain support—outcomes in addition to developing the knowledge and skills for their course.

Further, overseas students who use their time to undertake additional work hours risk breaching their visa conditions. Employers who are aware that students have breached their visa conditions can exploit this knowledge to offer lower wages or poor conditions.

Ensuring students attend their classes may act as a powerful protective measure for students' VET outcomes and their wellbeing and may help guard against exploitative practices.

The National Code requires amendment

The National Code contains requirements which can be interpreted in a contradictory manner. The structure of the National Code's requirements has given rise to the misconception that student attendance is not a requirement for VET courses unless ASQA has imposed the requirement of course attendance. Even when these conditions are imposed, the structure of the National Code leads to confusion as to when the conditions may begin.

Providers that do not require students to attend class clearly do not incur the operational costs associated with the provision of classes. Students who are not encouraged to attend are unlikely to receive a quality education and can assume that attendance is not mandatory which can lead them to work more, in breach of their visa conditions. Students who do the wrong thing can be at risk of exploitation and, without a real and genuine connection to their education provider, their welfare can be compromised.

Mandatory student attendance at scheduled course contact hours for full-time study, allowing limited online or distance delivery, offers the best protection for the quality of the training and assessment, student experience and outcomes. It helps ensure that students meet their student visa conditions and do not breach the work limit of 40 hours a fortnight and offers the best chance of ensuring students do not become victims of exploitative work practices. It ensures that students have the opportunity to receive the support they need with their studies and with any welfare concerns more generally.

Recommendation 4

That the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* be amended to remove the distinction between course progress and attendance requirements in Standard 8 to clarify that all VET courses require student attendance in a full-time program of study of a minimum of 20 scheduled course contact hours per week, with up to one-third of the units being delivered by online or distance delivery at any time, unless specified by an accrediting authority.

Overseas student English language capabilities

ASQA's regulatory work also raised the vulnerability of students enrolled in VET courses from an English language perspective. As mentioned in chapter 2, the top source markets for VET courses are India, China, Brazil, Nepal and the Republic of South Korea. These are all countries where English is not the primary spoken language.

When enrolling overseas students into VET courses, providers are required to meet the specific English language requirements of the National Code and also the enrolment and support service requirements of the Standards for RTOs.

- National Code:
  - Standard 1—the marketing accurately describes English language proficiency requirements for entry into the course

- – Standard 2—the recruitment process involves an assessment of the student's English language proficiency and that it is sufficient to enable them to enter the course.

- Standards for RTOs:

  - – Standard 5—as part of the enrolment process, the RTO considers a student's existing competencies and offers advice about a course that is appropriate to the student's needs

  - – Standard 1—the RTO determines the support needs of each individual learner and provides access to the educational and support services necessary for the learner to meet the requirements of the course in which they are enrolled.

These regulatory obligations require a provider to ensure that, before enrolment, a student is sufficiently proficient in the English language to complete the course in which they are enrolling in and, during their enrolment, they are provided with any additional support they require to assist them in their English language comprehension to complete the course. These requirements remain the obligation of the provider even if the enrolment process was completed by an education agent.

In conducting its regulatory activities, ASQA found instances of students who were enrolled in VET courses where their English language capabilities were limited.

In one example, the student, who was interviewed during a site visit of a provider, had to use non-verbal gestures to articulate basic statements and requested others to translate so the student could respond to questions. In this example, the student had been enrolled in a business qualification for more than 12 months, having been accepted with an English test type of 'other form of testing which satisfies the institution'. It is clear this student did not have an appropriate level of English language capability either on enrolment or developed during study[118].

In another example, students interviewed during a site visit of a different provider were unable to answer the questions *'When did you start the course?'* and *'What course are you studying?'*. These students were enrolled in the *BSB40215 Certificate IV in Business* qualification and it is appropriate for students, at this level, to be able to understand and respond to simple questions such as these[119].
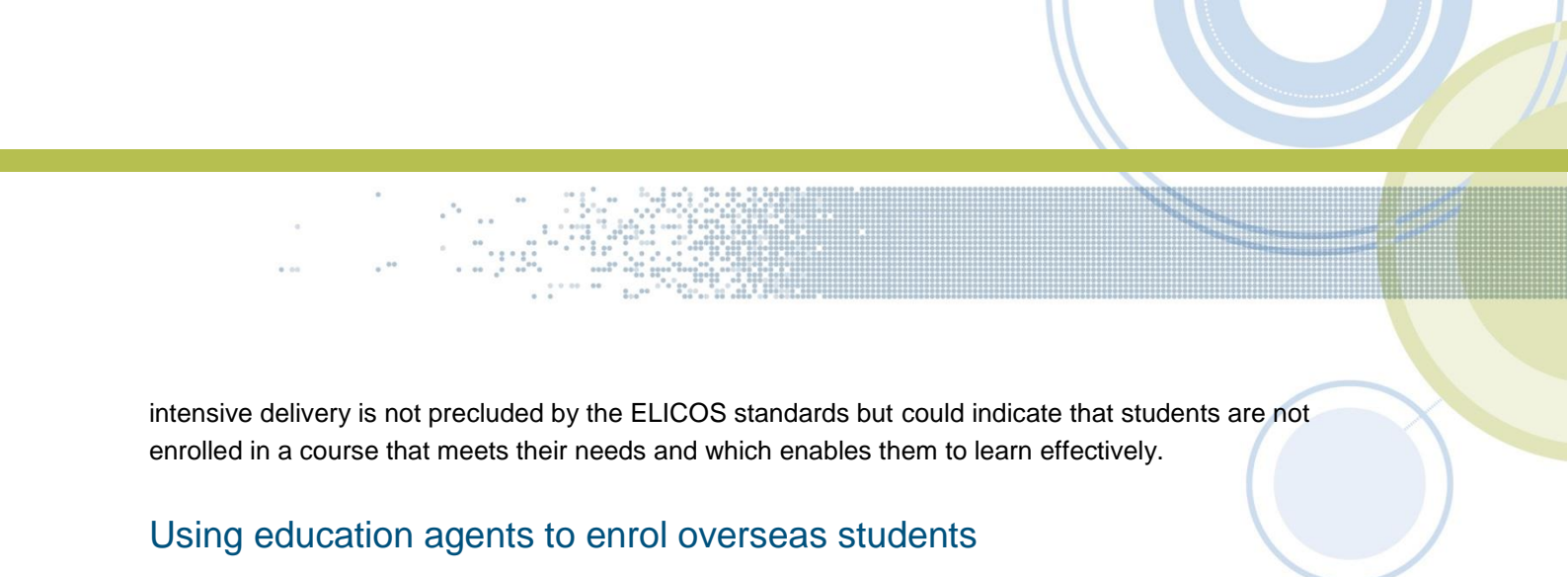
While the obligations are on the provider to ensure students have a sufficient level of English to complete the course they seek to enrol in, there is an opportunity for poor-quality providers to overlook limited English capability when enrolling a student to maximise their student enrolments inappropriately.

It is noted that the regulatory activities on ELICOS providers did not find practices that were as concerning. Overseas students in these classes have enrolled for the primary purpose of developing English language capabilities, and commit to full-time classroom study to develop these skills.

It is known before students enrol that their English capabilities need to be developed and they attend classes to do this. Some stakeholders have expressed concerns about the delivery of ELICOS in highly intensive time frames however—that is delivery over eight–ten hours in a day, over two–three days. This

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[118] ASQA has cancelled the registration of the provider that enrolled this student.
[119] ASQA has cancelled the registration of the provider that enrolled these students.

intensive delivery is not precluded by the ELICOS standards but could indicate that students are not enrolled in a course that meets their needs and which enables them to learn effectively.

Using education agents to enrol overseas students

The regulation and function of education agents has been addressed in chapter 3. Briefly, education agents are an unregulated sector that is not separately monitored by a government agency. Providers are responsible, however, for all actions taken by their education agents to enrol a student—including the marketing, recruitment and enrolment process—meaning the actions of an education agent are required to be monitored.

Education agents play a critical role in the marketing and recruitment of overseas students, with almost 75 per cent of international students using an education agent as part of the enrolment process. This reliance on education agents in the industry does place a high obligation on providers to ensure their agents are applying appropriate practices.

Managing risk in overseas education

As a risk-based regulator, ASQA utilised the strategic review to identify the risks, in addition to ASQA's primary risk, that may impact on the reputation and quality of the VET and ELICOS sectors. Although the overall levels of provider compliance in the overseas student market are comparable to the sector more generally, ASQA recognises that some providers are not delivering compliant training and assessment – either deliberately or unintentionally.

Taking a risk-based approach means ASQA cannot mitigate all risks in overseas education, but must focus effort on the most significant risks identified. While the provision of quality training and assessment remains at the forefront, there are other risk areas which can negatively influence how providers deliver courses to overseas students.
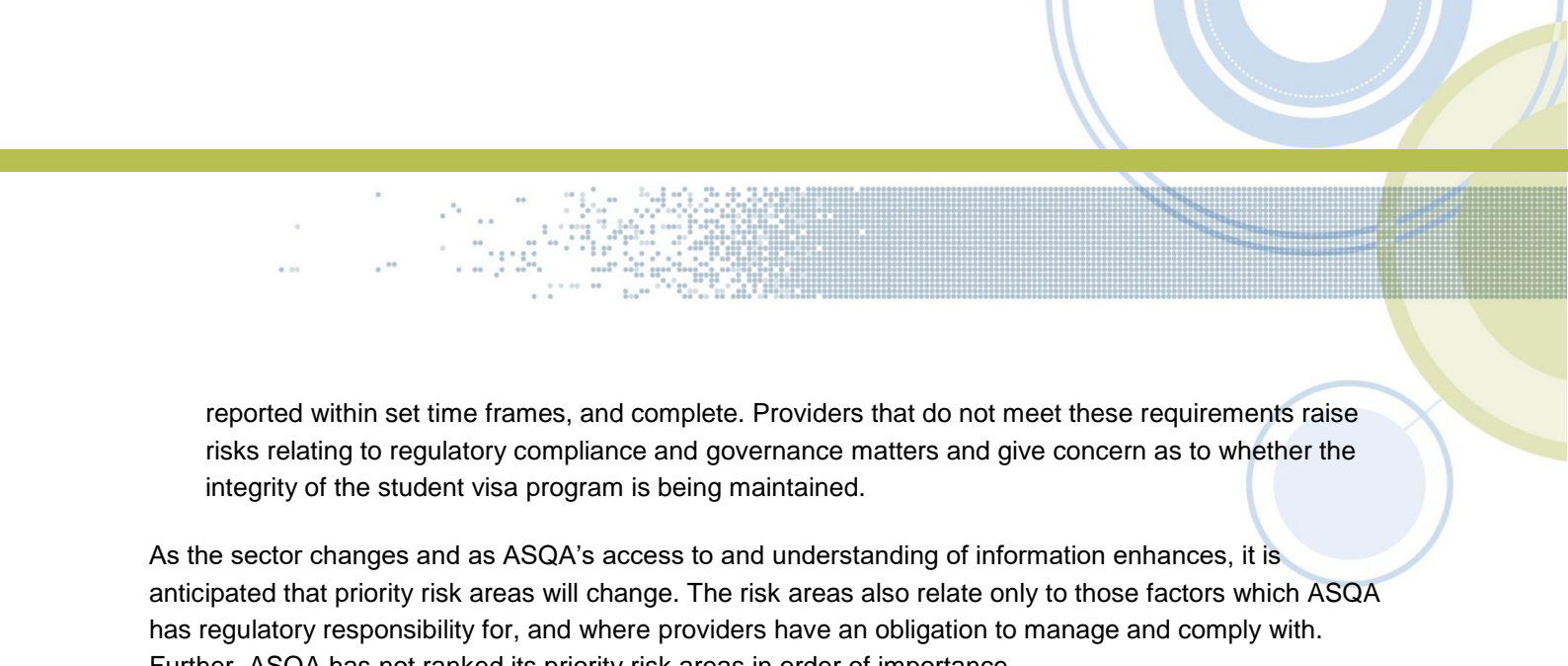
The strategic review identified seven priority risk areas, specific to overseas VET and ELICOS delivery to overseas students. The risks were identified following assessment of regulatory activities conducted since 1 January 2018 and relate to key phases of the student journey. The risk areas are in addition to the primary VET quality risk that ASQA manages through its normal regulatory activities. Some of these have been described in more detail in this report, and relate to recommendations to improve the legislative or regulatory framework. They are also reported below for completeness, and to recognise that ASQA's regulatory work will continue to assess these risks on an individual-provider basis.

1. **Student growth:** An increase, especially if it is rapid, in student enrolments, either as a total, at a specific location, or in a specific course, indicates risks as to a provider's preparedness to deliver to the number of students enrolled. Preparedness includes ensuring prospective students are suitably informed about the course they are enrolling into, that providers have sufficient staff to support students and assist them to progress, that there are adequate resources and facilities to deliver to the number of students, and that training and assessment practices meet provider strategies.

2. **English language capabilities:** While there are minimum English language proficiency requirements to enrol in a course, risks in English language capabilities extend to a provider ensuring prospective students have the capacity to understand information provided prior to enrolment, that students are supported adequately through learning, and that students are provided with quality training and assessment that meets their individual needs.

   This risk relates to overseas student delivery in the VET sector where students are required to have minimum English language proficiencies to enrol, rather than for ELICOS courses where the focus is on developing a student's English language capabilities through full-time and face-to-face classroom delivery. The risk may also be minimised for providers that enrol graduates of ELICOS courses, as these students have further developed their understanding of the English language and can apply these skills when undertaking further study.

3. **Student non-attendance:** This risk relates to student's participation in their scheduled course contact hours. Providers that apply to register VET courses on CRICOS are required to demonstrate, as part of that application, that the course will be delivered on a full-time basis of a minimum of 20 scheduled course contact hours per week. No more than one-third of the units being delivered can be done so by distance or online delivery. A provider's training and assessment practices must align with its training and assessment strategies. Providers delivering to overseas students are also required to ensure that students are progressing through their course by participating in training and assessment.

4. **Education agents:** ASQA does not regulate education agents but providers are required to ensure that, if they use an education agent, the information given by the agent to the prospective student is comprehensive, accurate and factual. Given that most overseas students obtain the assistance of an education agent for research, enrolling and applying for a visa in Australia, risks in ensuring the accuracy of marketing and enrolment information are evident.

5. **Student onshore enrolments:** This risk considers the motivators of students to transfer to another provider during enrolment. While it is recognised that students enrol onshore for various reasons, providers that focus on recruiting students who are already onshore may indicate a risk of poor-quality marketing practices and training and assessment. The risk relates to concerns as to the accuracy of information provided to students about study requirements and attendance, or offering other incentives which may mislead students into seeking enrolment with an alternate provider.

6. **Multiple providers:** Multiple providers presents two different risk factors. The first is of a person/legal entity owning more than one training organisation yet operating the businesses under the same banner and structure. The second is of multiple providers that are owned and operated as separate training organisations but use the same facilities and resources to deliver training. In both instances, the risk relates to a student's understanding of which provider they are enrolled with and from whom they can seek out assistance with training, assessment and support services. Providers that operate under these models must ensure that there are adequate facilities, resources and staff at all times for each registered provider to deliver on a full-time basis to their approved student capacity.

7. **PRISMS data issues:** It is a requirement of providers to ensure information relating to a student's enrolment and education agents used by the provider are entered and maintained on PRISMS, in accordance with the requirements of the National Code. The information entered must be accurate,

reported within set time frames, and complete. Providers that do not meet these requirements raise risks relating to regulatory compliance and governance matters and give concern as to whether the integrity of the student visa program is being maintained.

As the sector changes and as ASQA's access to and understanding of information enhances, it is anticipated that priority risk areas will change. The risk areas also relate only to those factors which ASQA has regulatory responsibility for, and where providers have an obligation to manage and comply with. Further, ASQA has not ranked its priority risk areas in order of importance.

ASQA's future regulatory work

In recent years, ASQA has implemented several regulatory strategies as it develops its risk-based regulatory model. These strategies promote quality education and training by providers.

Through its strategic review, ASQA has developed an enhanced ability to detect risks specific to the overseas student market and to respond in a proportionate and more agile manner. The activities conducted since 1 January 2018 show that ASQA can identify and respond to concerning practices to ensure the quality of training and assessment provided to students.

ASQA's previous regulatory experience shows that providers that actively seek to be non-compliant and evade detection will adapt to ASQA's regulatory activities. While this may be a small component of the sector, the actions of non-compliant providers can result in unfair competition and put downward pressure on quality across the sector. They can also have a damaging impact on students and the reputation of Australian VET and ELICOS.

ASQA recognises the need to place a continued focus on CRICOS providers of interest, beyond the strategic review, in response to ongoing concern about systemic risks and student welfare. ASQA will continue to apply targeted regulatory scrutiny to VET and ELICOS providers delivering to overseas students, for 2019-2020, where priority risk areas identify the need to ASQA.

The regulatory strategy will also consider ASQA's wider risk remit, including the primary VET quality risk that ASQA manages and other relevant ASQA priorities. The regulatory strategy will encompass activity that is proportionate to the risks identified and will continue to evolve to ensure that it is effectively targeting the changing risks in the VET and ELICOS sectors.

ASQA Action 2

That ASQA continue to place a priority on the scrutiny of CRICOS providers' compliance using the risk factors established by this review and enhanced regulatory strategies designed to detect non-compliant behaviour.

Summary

In recent years, ASQA's risk-based approach to regulation has evolved to enable it to respond proportionally to the most significant risks in vocational education and training. ASQA's capabilities to access and interpret relevant and real-time data has guided its risk-assessment and regulatory work.

To regulate providers approved on CRICOS, ASQA requires more complete access to detect complex trends and patterns of provider behaviour. ASQA can use PRISMS data to effectively monitor the activity of individual providers but is constrained in its ability to interrogate larger data sets. ASQA has been working with the Australian Government Department of Education to enhance its ability to access a greater range of PRISMS data.

The regulatory activities conducted on providers as part of the strategic review found that, overall, the student experience is positive for overseas learners of VET and ELICOS courses. However, the work also identified specific risks to the overseas student market which can impact on the quality of training and assessment provided.

In particular, ASQA found a number of instances of providers who are not requiring overseas students to attend scheduled classes but who are still determining that these students are progressing in their course, in breach of their regulatory obligations. The National Code contains requirements which can be interpreted in a contradictory manner, and ASQA has made recommendation that the National Code requires amendment to clarify that all VET courses require student attendance in a full-time program of study of a minimum of 20 scheduled course contact hours per week.

To continue to address CRICOS risks and providers of concern, ASQA will apply ongoing regulatory scrutiny of the sector by focusing on key risk areas.

5. Offshore delivery—ASQA's regulatory approach

ASQA-regulated RTOs deliver AQF qualifications to offshore students through a variety of delivery modes, including by face-to-face classes offered by standalone operations or through partnerships with third parties and consortia, or through online delivery platforms from offshore or an Australian delivery location. RTOs also provide assessment-only services to offshore students, some of which are licensed by Trades Recognition Australia (TRA).

This chapter focuses on the challenges of regulating the delivery of VET to offshore students across these various modes and builds on the earlier discussion of the trends in activity and the risks associated with offshore delivery.

It discusses important differences in how the VET regulatory framework applies to offshore activities and the findings of NCVER research commissioned by ASQA to assess the quality and the availability of VET activity data.

The chapter also looks at other emerging forms of delivery outside of the AQF framework (the regulation of which are beyond ASQA's jurisdiction) by ASQA-regulated RTOs and discusses how risks associated with non-regulated training might be mitigated.

Regulatory Framework

Under the NVR Act, ASQA is responsible for the regulation of RTOs and is empowered to audit their offshore operations. This power arises from the Object of the NVR Act to protect and enhance Australia's reputation for VET nationally and internationally.

Section 15 of the NVR Act states that the Act extends to acts, omissions, matters and things done outside Australia in relation to all or part of a VET course or VET qualification and both of these terms are defined under the NVR Act. Wherever an RTO conducts nationally recognised training and assessment and, as a result, issues a qualification or statement of attainment, the RTO is subject to the Act and must comply with the conditions of its registration as set out in sections 21 to 29 of the NVR Act.

Section 35 of the NVR Act states that the National VET Regulator, ASQA, may at any time, conduct a compliance audit of an RTO to assess whether the organisation continues to comply with the Act or the VET Quality Framework. Given the extraterritorial application of the NVR Act, this power to conduct compliance audits extends to the offshore operations of RTOs.

Chapter 3 provided a detailed overview of the VET Quality Framework and RTOs' compliance obligations, which also apply to their delivery offshore. There are, however, some important matters to be aware of when considering how the regulatory framework applies in practice to offshore VET delivery.

RTOs are required to notify ASQA of their delivery locations, including any offshore delivery locations:

- as part of any initial application for registration, applicants must include any intended offshore delivery locations

- once registered to deliver, RTOs are required to advise ASQA of any offshore delivery by qualification and delivery location.

Upon receipt of an initial application for registration, ASQA undertakes an assessment of the RTO's capacity to deliver at the locations nominated in the application, including offshore, based on the information included in the application. All successful initial VET applicants are now registered for only a two-year period. During this period, a compliance audit is conducted to assess the RTO's actual delivery practices.

Existing RTOs that seek to deliver offshore must inform ASQA of this change by adding a delivery location through a notification process. The notification process applies whether the additional delivery site is in another State or Territory or country not previously notified. RTOs are required to notify ASQA of these changes as soon as practicable after they happen and within 90 calendar days. Under the NVR Act, there is no requirement for ASQA to approve that an RTO can deliver from an offshore location.

RTOs use asqanet to notify ASQA of changes to delivery sites whether they be in Australian States and/or Territories or offshore. Once processed, the information is uploaded from asqanet onto training.gov.au (TGA), the National Register on VET in Australia. TGA provides public information on:

- Nationally Recognised Training which consists of training packages, qualifications, units of competency, accredited courses, and skill sets

- RTOs who have the approved scope to deliver Nationally Recognised Training, as required by national and jurisdictional legislation within Australia.

Once delivery activity has commenced, RTOs are required to report their total offshore VET delivery activity to the National VET Provider Collection in accordance with the National VET Data Policy. This data of student demographics, enrolments, academic outcomes and certification issuance must comply with the Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS).

Total VET activity (TVA) is sourced from the National VET Provider Collection (and National VET in Schools Collection) and covers domestic and offshore VET delivery to all students. TVA data is made available to ASQA, albeit after a time lag, at the individual VET provider entity level and to the public through NCVER's Total VET student and courses publications.

RTOs delivering to offshore students are not subject to any additional legislative requirements over and above the VET Quality Framework. This differs from the additional requirements placed on providers seeking to deliver to overseas students under the ESOS legislative framework.

To deliver VET to overseas students in Australia:

- RTOs must apply to, and be approved by, ASQA to become CRICOS providers

- in applying to register a full-time course at a location, a provider must seek approval from an ESOS Agency for the following:

  - the course duration, including holiday breaks

  - modes of study, including online, distance or work-based training

  - number of overseas students enrolled at the provider, within the limit or maximum number approved by the ESOS Agency for each location

  - arrangements for other education providers, including partners, in delivering a course or courses to overseas students, and

- once registered, CRICOS providers must comply with the National Code, in addition to the VET Quality Framework.

As discussed in chapter 3, these additional requirements afford overseas students important more protections in keeping with their vulnerability and obligations under their student visas. These providers and their delivery details are recorded on PRISMS, which provides real-time data on provider and student activity to ASQA.

Unique student identifier

Another important difference in the regulatory framework for offshore delivery is the exemption from the requirement to issue offshore students with a Unique Student Identifier (USI). The USI was introduced in 2014 and provides eligible students with an online record of all recognised training competencies achieved since January 2015. Since its introduction, USIs have been issued to more than 98 per cent of eligible applicants.

The USI is a reference number that:
- creates a secure online record of recognised training and VET qualifications gained with Australian VET providers

- gives students online access to their training records and transcripts which is an important protection in the event of provider closure, and

- allows students lifelong access to their record of learning.

The USI scheme operates as a digital service and relies on the whole of government Document Verification Service (DVS) to perform a name verification against identity documents linked to a set of databases generated and warranted by Australian government authorities at the national and state levels. As the DVS recognises the validity of visas, overseas students studying on a student visa are required to be issued USIs by CRICOS providers.

Providers that enrol offshore students are allowed an exemption[120] from the assignment of a USI if the students are not Australian citizens or visa holders and have completed all the requirements to be issued

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[120] *Student Identifiers (Exemptions) Instrument 2018*

the VET qualification or VET statement of attainment outside of Australia. The rationale to date for this exemption is unavailability of the DVS to perform a name verification for offshore students. As a result, offshore students are not issued a USI and are not afforded its benefits and protections.

Timeliness and quality of data

As a risk-based regulator, ASQA relies on data and intelligence to inform its approach to regulation. The timeliness and quality of data available to ASQA pose particular challenges to the regulation of offshore VET delivery. As discussed in chapter 3, in regulating under the ESOS framework, ASQA has access to real-time data through PRISMS, which records student visa data, to monitor provider activity.

This is not the case for offshore delivery, and the data available to ASQA is affected by a considerable time lag arising from the collection and reporting cycles. The quality of the data is also affected by challenges in accurately determining delivery details, such as offshore delivery sites.

Timeliness of data

TVA relies on RTOs reporting Nationally Recognised Training data to the NCVER for the previous calendar year by the end of February, although RTOs may report earlier should they choose. This data is then released publicly through the NCVER in July, with ASQA being provided with data at the RTO level around the same time.

As a result, the data available to the regulator on RTO activity is subject to a considerable time delay. For example, the latest data available to ASQA at this time (June 2019), is data collected for 2017. This issue applies equally to the TVA for domestic and offshore VET delivery.

Australian Government initiative: Access to real-time data

Professor Braithwaite raised the broader challenge faced by ASQA concerning lack of timely VET activity data in *All eyes on quality*[121]. In her report, Professor Braithwaite observed:

> *'In order to assess risk in real time, ASQA ideally requires real-time data.'*

The report recommended that:

> *'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.'*

The Australian Government has supported this recommendation and has committed to:

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[121] Valerie Braithwaite, *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011 report*, (Canberra: Australian Government, 2018) p. 75

'... exploring ways to facilitate near real-time upload of data from RTOs through a systematic submission interface that will streamline the frequency of VET data collection for the sector. The Government is also exploring a virtual real-time data-sharing platform for cross-government and regulator use, with an aim to implement by 2020. Along with better collection, this enhanced disclosure of VET information between VET related bodies will ensure data currency, and enable the regulators of VET to identify emerging risks and issues in VET quality.'

ASQA is strongly supportive of this reform as real-time data would be a 'game changer' in terms of allowing ASQA to detect and respond to risk in a more agile and effective manner. The implementation of this recommendation is being undertaken as part of a broader suite of initiatives known as the Performance Information for VET (PIVET) project, under the direction of the COAG Industry and Skills Council (CISC).

Quality of data

As part of earlier work to develop its approach to regulating offshore delivery of VET, ASQA analysed the data available to it and liaised with relevant Australian and foreign government agencies, to determine which RTOs and delivery sites should be audited.

This earlier preparatory work identified issues with the quality and accuracy of the data being collected through the two primary data sources available to ASQA—TGA and NCVER's TVA. Discussion with other government agencies confirmed further inconsistencies between the data available to ASQA and host countries' governments.

As a result of these concerns, ASQA commissioned the NCVER to analyse the offshore delivery data for this strategic review. Using data from the National VET Provider and VET in Schools Collections, as reported in Total VET students and courses 2017 (TVA 2017), the project was conducted in two parts:

- **Part 1: Completeness of data**
  A gap analysis to identify any discrepancies between offshore training data reported to the National VET collections (TVA) and that sourced from the National Training Registrar (TGA) for the 2017 calendar year was undertaken. The purpose of this analysis was to identify providers who reported offshore training activity to NCVER but were not listed on TGA as having the scope to deliver training offshore, and to identify those providers with the scope to deliver offshore but who did not report any offshore training activity to NCVER.

- **Part 2: Comprehensiveness of data**
  An assessment of the quality of data reported to the National VET Collections on international training activity compared with domestic activity was undertaken. The student and training characteristics of offshore delivery were compared with those of overseas and domestic onshore students to determine whether the data quality, defined as the proportion of missing values, differed.

The major findings of the NCVER analysis, their impact on ASQA's ability to effectively analyse delivery risks, and work underway to improve the offshore data is discussed below.

Completeness of data

One of ASQA's primary concerns in commissioning the review by the NCVER was to determine whether the two data sets available to it through TVA and TGA provided a complete set of accurate data to inform its regulatory activities.

As outlined above, ASQA has access to the delivery sites for each qualification on an RTO's scope of registration that are registered as being delivered offshore through TGA (and linked with asqanet). ASQA has access to an RTO's record of actual delivery activity for each calendar year through TVA.

In comparing these two data sources, the NCVER review made three main findings:

1. There are significant inconsistencies between ASQA data extracted from TGA and TVA reported by NCVER. In 2017, 109 RTOs[122] reported offshore program enrolments to NCVER compared to 364 RTOs identified by ASQA as having listed an offshore delivery site and/or the details of a qualification being delivered offshore on TGA in 2017.

2. Of these 109 RTOs, 75 could be matched to TGA records, with 34 RTOs reporting offshore delivery to NCVER in 2017 but not identified by ASQA as having notified it of an offshore delivery site or delivery of a qualification at an offshore location, and 289 RTOs identified by ASQA as having notified it of an offshore delivery site or the delivery of a qualification offshore but who did not report offshore delivery to NCVER in 2017 (refer Figure 14).

3. This suggests that the ASQA data is incomplete and that there is potentially significant under-reporting of offshore VET activity to the NCVER.

Figure 13: Match of TVA 2017 offshore provider data to ASQA offshore provider data

TVA 2017 offshore provider = 34   75   ASQA offshore provider = 289

n=109   n=364

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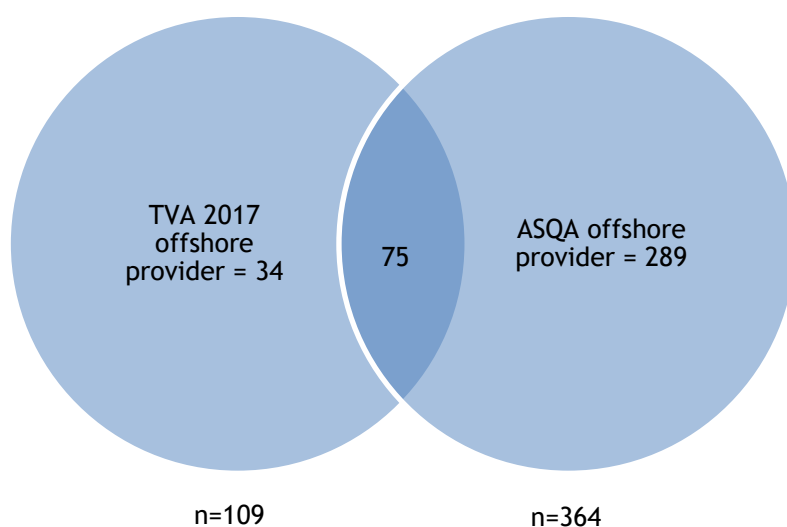
[122] This analysis covered the reported delivery by RTOs that delivered in offshore locations to all students, both domestic students and international students.

It is clear from the NCVER analysis that neither the TGA nor TVA data sets may be providing a comprehensive and accurate picture of offshore delivery activity. There may be a range of reasons for this, including RTOs notifying ASQA of an intent to deliver offshore but then not actually delivering VET in the reporting period, or not fully understanding the notification and reporting requirements for offshore delivery.

ASQA will conduct further analysis of the underlying causes of the differences in the data sets. This further research will assist ASQA to determine an appropriate response, including the development of support material to better explain the requirements and assist RTOs to meet their notification and reporting obligations fully.

Comprehensiveness of data

ASQA had concerns that the level of specificity of offshore delivery sites required through the National VET Collections was not providing enough detail as to the actual delivery site as opposed to the country of delivery. The NCVER analysis considered this issue along with a range of other fields to determine whether the data being collected was comprehensive.

The NCVER compared the level of data provided in relation to domestic VET delivery to offshore VET delivery and made the following findings:

- Offshore data on country of delivery was of high quality; however, data on delivery location was poor. While most subject enrolments (96 per cent) reported a suburb name, over half (56 per cent) of the suburb names were populated with the country of delivery names.

- In assessing overall TVA data quality, in general, the level of missing/unknown data was low (less than 10 per cent) and consistent with overall TVA activity, with the notable exception of unknown Labour Force status for offshore students, which was 58 per cent compared to 23 per cent overall.

- In addition to the above, reported offshore activity included a significantly higher proportion of continuing subject enrolments of 40 per cent compared to 18 per cent overall. The corollary of this is that the proportion of competency achieved/passed is significantly lower at 53 per cent compared to 66 per cent overall.

  - Based on NCVER management audits, it is thought that this high rate of continuing subject enrolments may be because RTOs are incorrectly coding subjects that have yet to commence as a continuing enrolment, on the basis that the student is still enrolled and continuing in the qualification that has yet to be completed.

- While the quality of data submitted for offshore students is comparable with that of overall TVA data, NCVER has no way to determine whether offshore data is comprehensive or complete.

The NCVER analysis shows that some elements of the data collection could be clarified to assist RTOs to report activity correctly. These issues are likely to arise out of a lack of understanding of what is required by RTOs that could be addressed through enhanced guidance and communications.

The NCVER has already taken action to address the concern about a significantly higher proportion of continuing subject enrolments by introducing 'two outcomes codes as part of the AVETMISS Release 8.0, effective from 2018 to allow submitters to report 'not yet commenced' activity or activity that had ended due to a training organisation's closure. As a result, the number of enrolments reported with continuing enrolment outcomes for all students across offshore and domestic VET activity should all decrease.'

Of particular concern to ASQA, as noted earlier, is the lack of detail around the actual delivery location as opposed to the country of delivery. NCVER uses Australian postcodes to verify domestic delivery locations. This is not suitable for offshore delivery and, as a result, the location data is not sufficient for ASQA's regulatory purposes. In some cases, data submitters are reporting training delivered offshore and populating the 'Address - Suburb, locality or town' field with the country in which the training occurred rather than providing the more specific locality information.

To improve the quality of data submitted and to assist ASQA in identifying locations of offshore training within a country, NCVER suggested the addition of the following text in the National VET Provider Collection Specifications to help clarify proper use of the field for users:

> *'For overseas delivery locations, populate with suburb/locality or town of the training organisation overseas delivery location.'*

Members of the VET Provider Technical Reference Advisory Committee have endorsed the addition of the text mentioned above to the National VET Provider Collection Specifications.

The NCVER analysis found that offshore VET students had a high rate of missing/exempted USIs, compared with overseas and domestic students. For offshore students, USIs were exempted for 92 per cent of subject enrolments (compared with four per cent overall) and missing for seven per cent of subject enrolments (compared with six per cent overall).

The NCVER finding in relation to missing/exempted USIs is not unexpected given the legislative exemption discussed earlier. The NCVER commented that the lack of USIs impacts on its ability to de-duplicate student counts, where a student has attended more than one training provider in the collection period.

It also limits the NCVER's ability to understand student pathways, where an offshore student may, at some point, undertake training as an overseas or domestic student in Australia. The exemption also has implications for the NCVER's ability to fully analyse student data, including tracking student pathways from offshore locations to onshore Australian locations.

Regulatory risks

Ensuring the quality of the delivery of VET in offshore locations presents challenges to RTOs and regulators alike. The sheer distance between the RTO and their operations can introduce logistical issues to ensuring the quality of their offshore operations. Similarly for ASQA, the organisation of site audits requires greater administrative resources and oversight, including the need to negotiate permission and processes with overseas governments to conduct the audits.

Offshore activity is often undertaken through a partnership arrangement between an RTO and another organisation or institution located in the host country. RTOs can struggle with the implementation of governance arrangements across their offshore locations in the face of economic imperatives, challenges in recruiting suitable local staff or domestic staff that are prepared for the cultural/political environment, poor managerial oversight by third parties, cultural issues within the host country, and students' English proficiency.

Some training package qualifications may not be suitable for delivery offshore, especially where the work placement is required to be undertaken in premises licensed by an Australian body.

Compounding the data limitations outlined in the previous section, the delivery of VET at offshore locations means that ASQA does not have ready access to the intelligence generated by student complaints and/or employer and industry feedback about the quality of graduates. There are also practical constraints in terms of the distances and spread of delivery locations and the associated additional costs and time required for audits.

Offshore students are vulnerable if providers fail to comply with their obligations. They have no effective recourse to the protections offered by the Australian VET system and may have little recourse to consumer and student protections in their home countries. Given their vulnerability, it is not equitable that these students are exempted from the requirement to be issued a USI.

The USI exemption introduces an increased risk that offshore student identities are not verified adequately, potentially undermining the confidence in the validity of AQF qualifications issued by these RTOs. In addition, ASQA also notes that there are important student protections in having a USI, including providing students with electronic access to their records across their lifetime. Access to electronic records is an essential protection in the event of provider closure.

Considering the recent decision to extend the USI to the higher education sector, it is timely to consider ensuring that all VET students are eligible for these same protections.

Recommendation 5

That the existing exemption from the requirement to issue a Unique Student Identifier to offshore VET students be removed.

Online delivery

As briefly discussed in chapter 2, online learning is viewed as a potential area of growth in VET delivery to students offshore. The online delivery of VET to offshore students is promoted as a way to increase the reach of RTOs to new markets, given the flexibility of delivery can make it attractive to students.

While full online delivery may be appropriate for certain qualifications and certain student cohorts, it is essential that RTOs ensure the quality of the training and assessment, including the support offered to students, is not diminished by this mode of delivery.

ASQA does not have a predetermined position on particular modes of delivery, including online delivery. RTOs need to demonstrate that their training and assessment strategies are compliant with the VET Quality Framework, rather than ASQA prescribing particular requirements or seeking to restrict innovative and student-friendly modes of learning. RTOs notify ASQA if they use online as a mode of delivery.

A particular focus for ASQA is on how RTOs comply with the requirement to conduct effective assessment through online courses. Clause 1.8 of the Standards for RTOs requires that RTOs implement an assessment system that ensures that assessment (including recognition of prior learning):

- complies with the assessment requirements of the relevant training package or VET accredited course

- is conducted in accordance with the Principles of Assessment and the Rules of Evidence.

Compliance with the Rules of Evidence requires that the evidence used to make a decision about competence must be valid, sufficient, authentic and current. Ensuring the authenticity of the evidence used to assess competence can be challenging in an online learning environment. ASQA provides the following advice to support compliance in its *Users Guide to the Standards for RTOs 2015*:

- ensure that evidence gathered 'belongs' to the learner being assessed and provides evidence of that person's skills and knowledge

- verify that the person you are enrolling, training and assessing is the same person that will be issued with a qualification or statement of attainment. This can be particularly challenging if you deliver distance training, including through online methods, where there are more opportunities for learners to submit the work of others than there are in a 'traditional' classroom setting. This does not remove your responsibility to verify the identity of a learner enrolled in a face-to-face course, but it is clearly easier to do this through direct interaction with the learner. Regardless of the delivery method, you must be able to demonstrate that you have verified the identity of the learner

- if substantial portions of the evidence submitted are gathered through independent study (for example, assignments or projects) rather than direct observation, consider using online systems to check work submissions for plagiarism and identical content in other submissions.

Another challenge for online learning is the need to ensure there are sufficient learning resources and appropriate support to meet the needs of individual students who do not attend physical classes. For example, offshore students may need language support and orientation to new study approaches.

Clause 1.7 of the Standards for RTOs requires RTOs to determine the support needs of individual learners and provide access to the educational and support services necessary for the individual learner to meet the requirements of the training product as specified in the relevant training package or VET accredited course.

ASQA's *Users' Guide* advises RTOs that to maximise the chance of students successfully completing their training, they need to:

- identify any support individual learners need prior to their enrolment or commencement (whichever is earliest)

- provide access to that support throughout their training.

This may include providing:

- language, literacy and numeracy support

- assistive technology

- additional tutorials

- other mechanisms, such as assistance in using technology for online delivery components.

Delivery of assessment-only

RTOs engaged in assessment-only services (including Recognition of Prior Learning (RPL)[123]), at offshore locations, can present a heightened risk. Offshore assessment-only services often have a link to migration outcomes. Formal skills assessments to inform consideration of visa applications are undertaken through Trades Recognition Australia (TRA), which engages RTOs to assist with these assessments.

TRA is a business unit located in the Australian Government Department of Employment, Skills, Small and Family Business that provides applicants with skills assessments under the Temporary Skill Shortage (TSS) Skills Assessment Program (TSS Program), the Offshore Skills Assessment Program (OSAP) and the Trades Recognition Service (TRS)[124].

The TSS Program provides skills assessments for applicants for the TSS visa. The TSS Program supports successful applicants in licensed occupations to access licensing once they are in Australia.

The OSAP is a pathway for applicants seeking a skills assessment to support a permanent migration visa application. The program is compulsory for applicants from nominated countries, Special Administrative Regions (SARs) and occupations listed on the TRA website[125], and applicants applying for permanent migration in four identified licensed trades[126]. The OSAP is also available to applicants choosing to undertake a skills assessment in a non-licensed occupation where the applicant is willing and able to travel to Australia or an offshore assessment centre for their skills assessment.

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[123] Recognition of prior learning means an assessment process that assesses the competency/s of an individual that may have been acquired through formal, non-formal and informal learning to determine the extent to which that individual meets the requirements specified in the training package or VET accredited courses.
[124] The TRS provides skills assessments across a range of trades to Australian residents who have gained their skills outside a formal apprenticeship pathway and/or who have undertaken their trade training overseas. Given it does not provide offshore assessment-only services, it is not discuss further in this report.

[125] https://www.tradesrecognitionaustralia.gov.au/programs/offshore-skills-assessment

[126] Airconditioning and Refrigeration Mechanic, Electrician (General), Electrician (Special Class) and Plumber (General)

TRA is a skills-assessing authority under the Migration Regulations 1994. The current list of occupations for assessment through TRA is available in the *Migration (IMMI 18/051: Specification of Occupations and Assessing Authorities) Instrument 2018*.

TRA skills assessments are principally for migration purposes and are intended to ensure that a successful applicant is able to work at the required level for their nominated occupation. Skills assessments also assure government, employers, and individuals that the training and experience is relevant and appropriate for the Australian labour market.

TRA recently completed a Request for Tender (RFT) to obtain skills-assessment services from Australian RTOs for its TSS Program, OSAP and TRS (the TRA RTO Assessment Services). These programs use a skills-assessment model based on recognition of prior learning (RPL) against established Australian standards.

Panel Members must have the capability and capacity to deliver skills assessments as part of the TSS Program and OSAP Program to applicants both in Australia and offshore. A description of the activity levels is set out below:

- Based on 2017–18 data for TSS programs, there were 1,426 skills assessments completed, and the countries with the highest number of assessments were Philippines (887), India (175), Nepal (172), Vietnam (53) and South Africa (35). The occupations in most demand for assessments were cook (405), motor mechanic (general) (286), chef (165), diesel motor mechanic (125) and welder (first class) (119).

- Based on 2017–18 data of the OSAP program, there were 2846 skills assessments completed and the countries with the highest number of assessments were India (1031), the UK (712), South Africa (253), Ireland (154), and Nepal (121). The occupations in most demand for assessments were cook (610), chef (394), electrician (general) (303), motor mechanic (general) (241), and carpenter (173).

Given the purpose of TRA skills assessments, it is vital that RTOs' practice comply with the VET Quality Framework, where relevant, and that there is appropriate information exchange between ASQA and TRA to detect any emerging risks.

TRA and ASQA share relevant information about RTOs of interest, including in support of TRA's decision-making process. This is an important protective measure for both ASQA as the regulator and TRA as the assessing body, as it ensures that relevant activity and risk information is routinely shared allowing both bodies to improve their oversight of RTOs.

Delivery of non-AQF programs

There is a range of offshore delivery arrangements that involve RTOs delivering bespoke training outcomes outside of the Australian Qualifications Framework (AQF) in response to local demand, just as there are domestically. The regulation of the delivery of non-AQF qualifications is outside of ASQA's jurisdiction.

In response to the growing offshore demand for non-AQF qualifications, the Australian Government has committed to supporting the development of innovative training products and service delivery that respond to market demands.

The Australian Government Department of Employment, Skills, Small and Family Business International Skills Training (IST) courses program provides one mechanism for expanding alternative cost-effective models of training products offshore, relevant to local labour markets and industry contexts, particularly in countries with emerging VET sectors.

The IST courses program is managed by the Australian Government Department of Employment, Skills, Small and Family Business and the courses and all course material were developed by the department in consultation with the VET sector and industry. Australian RTO's must apply to the Australian Government Department of Employment, Skills, Small and Family Business for a licence to deliver the IST courses.

ASQA does not regulate the IST courses program or have a role in overseeing the quality of delivery. To be eligible to be an IST provider, however, an applicant must have held registration as an ASQA-regulated RTO for at least two years prior to application and must maintain that registration for the duration of delivering IST courses as an 'Approved RTO'.

Considering the explicit eligibility requirement relating to ASQA registration, it is essential that any emerging regulatory risks associated with the Approved RTOs, through either their delivery of AQF qualifications or IST courses, are known to both ASQA and the Australian Government Department of Education as the administrator of the program.

Regulatory strategies

To date, ASQA has conducted two rounds of in-country audits of offshore delivery by RTOs (in China and Hong Kong). ASQA released a report into the pilot audit program[127] involving the first round of audits in China. This report summarised the strengths of the offshore programs audited, including that each of the RTOs audited demonstrated compliance with the Standards for RTOs by the end of the audit process.

The report also documented opportunities for improvement with the issues identified similar to those found commonly in audits of domestic delivery in Australia. Issues identified included:

- record keeping—ensuring that auditors had access to records of student achievement, and of trainer and assessor qualifications, experience, industry experience and professional development

- assessment tools—ensuring these satisfied the principles of assessment and rules of evidence

- partnership agreements—ensuring that partnership agreements specified the requirements for complying with the Standards for RTOs

- satisfying local cultural values—without compromising with the Standards for RTOs.

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[127] Regulating offshore delivery of VET: ASQA's 2015 pilot audit program
https://www.asqa.gov.au/sites/default/files/Regulating_offshore_delivery_of_VET_-_ASQAs_2015_pilot_audit_program.pdf?v=1508135481

A second round of offshore site audits was conducted in 2016 of both public and private RTOs in China and Hong Kong. The results for the second round of offshore audits were broadly consistent with the outcomes from the first round.

ASQA is committed to undertaking a third round of audits of RTOs delivering VET in China, subject to the support of the Chinese Ministry of Education and the China Education Association for International Exchange (CEAIE). Discussions with these agencies are currently underway with this regulatory activity expected to occur in 2019.

ASQA is currently planning for compliance-monitoring audits of RTOs offering assessment-only services to offshore students in a range of countries, including those contracted by TRA. Other assessment-only services operate outside of the TRA program, including RTOs and non-RTOs advertising migration outcomes linked to RPL for international students.

ASQA is consulting with TRA to gain a more in-depth risk understanding of its refreshed panel of RTOs offering these services across a range of countries. ASQA will identify providers of assessment-only and RPL activities to determine providers of interest for regulatory scrutiny in 2019.

ASQA also audits RTOs that have delivered training offshore as part of its standard practice. ASQA uses a sampling approach to consider training and assessment practices via desk-based reviews. ASQA will continue to focus on ensuring that offshore delivery, including through online delivery, is compliant with the VET Quality Framework as part of its ongoing risk-based approach to regulation.

ASQA's risk-based approach to regulation has identified the need for further scrutiny of these RTOs because of the regulatory risks identified through its previous audits of offshore delivery and the particular risks associated with the delivery of online and assessment-only services which are compounded by their delivery to offshore students.

ASQA Action 3

That ASQA assess the compliance of VET providers operating in key offshore markets including in China, offering assessment-only services in foreign countries, and offering 100 per cent online delivery to offshore students.

ASQA included six IST course providers in its program of compliance audits undertaken in conjunction with this strategic review. ASQA has shared the outcomes of this regulatory program with the Australian Government Department of Employment, Skills, Small and Family Business to assist in the administration of the IST courses program. The department will continue to seek intelligence from ASQA on those RTOs applying for a licence to deliver the IST courses.

ASQA will continue to work collaboratively with Australian government agencies more broadly to share relevant data and information about systemic risks in the offshore VET sector and individual RTO compliance information, as appropriate, to inform any broader licensing, funding, promotional and/or trade facilitation initiatives.

ASQA also continues to pursue opportunities to collaborate and share information with its overseas counterparts. To date, ASQA has executed Memorandums of Understanding with the following international stakeholders with the equivalent responsibility for VET regulation:

- China Education Association for International Exchange (CEAIE), China

- Council for Private Education Singapore (CPE), Singapore

- SkillsFuture Singapore, Singapore

- Hong Kong Council for Accreditation of Academic and Vocational Qualifications (HKCAAVQ), Hong Kong

- Korean Skills Quality Authority, Korea

- New Zealand Qualifications Authority, New Zealand

- QAPHE—Institution for Accreditation and Quality Assurance of Professional Higher Education, Japan.

Summary

Delivering and regulating VET offshore poses significant challenges. ASQA does not have access to real-time data, and there are limitations to the quality of the data available to ASQA. Some of these quality limitations may be addressed through improved specification and communication of data reporting requirements and ASQA will improve how it communicates these requirements. Other issues, including a lack of timely data and the impact of the USI exemption, are more systemic issues.

It is not equitable that international students are not afforded the protections associated with the USI. Given the potential for delivery in this area to grow through non-traditional delivery methods, for example online and assessment-only, it is timely that the current exemption be removed.

It appears that the demand for the offshore delivery of AQF qualifications through traditional delivery methods may be declining. While there is anecdotal evidence that there will be increasing demand for non-AQF courses, there is a lack of firm data to support this assertion. These forms of delivery raise risks that will need to be well managed to ensure unregulated delivery does not impact on the broader international reputation of Australian VET.

Several Australian Government agencies are involved in the management of programs that engage ASQA-regulated RTOs to deliver courses and services. ASQA continues to identify these programs and offer assistance to these agencies to ensure any emerging risks are detected and managed through regular and structured sharing of information.

ASQA will focus its regulatory efforts over the next 12 months on a further round of regulatory scrutiny of RTOs delivering VET to offshore students in China and RTOs, including those contracted by TRA, offering assessment-only services to offshore students.

ASQA will also continue to apply a risk-based approach to scrutinising RTOs that deliver online to offshore students and those that advertise assessment-only services in conjunction with migration outcomes.

6. Recognising and supporting quality international education

ASQA's risk-based approach to regulation is recognised for targeting its limited resources towards the greatest risks while reducing the regulatory burden and costs on compliant providers.

While there is support for ASQA's focus on removing poor quality providers from the market, it does mean that the public debate can also become dominated by discussion of poor provider practice. This can lead to the perception that poor practice is more widespread than is actually the case. It can also lead to the view that there is not enough recognition of providers that seek to do the right thing and deliver quality student outcomes.

ASQA continues to evolve and build a more sophisticated risk-based approach to achieve a reasonable balance between the responsibility to deliver protection to the community and the burden imposed by external intervention. In 2017, ASQA began exploring strategies to recognise and support compliant providers and positive pathways in the VET sector.

In responding to the *All eyes on quality* report, the Australian Government has supported recommendations that seek to improve the outcomes for students, including recommendations for ASQA to adopt a more consistent and transparent regulatory posture and provide incentives for providers to be compliant at all times and to go beyond minimum requirements.

Exploring what steps ASQA could take to improve its regulatory practice and better support providers to strive to deliver high-quality VET and ELICOS outcomes have been important considerations for this strategic review. This chapter looks at the positive student outcomes that are achieved in these sectors. It considers what other initiatives ASQA can undertake to improve the information available to providers to support their compliance and how this information might be used more broadly by other agencies to inform overseas students and education agents of what to expect from compliant providers.

Finally, this chapter considers the New Zealand vocational education sector as a case study, to understand how the Australian sector compares to a similar market and to identify models which can be used to promote and support compliant provider practice.

## Student outcomes and experience

Most overseas students offer positive feedback about their study and choice of provider which reinforces Australia's reputation for high-quality of VET and ELICOS education and increases our appeal as destination of choice for these students.

Every two years since 2010, the Australian Government has funded a national survey[128] of overseas students across Australia's major education sectors. The 2018 survey is the most comprehensive to date, with over 80,000 overseas students participating.

The main 2018 survey covers overseas students in higher education, vocational education and training, ELICOS and secondary schools. The survey found that 89 per cent of overseas students were satisfied or very satisfied with their living and learning experience in Australia.

Compared to other countries, Australia also ranked very high. The survey found that 88 per cent of respondents were satisfied with the learning provided, compared to the International Student Barometer of 87 per cent. Of note, overall satisfaction has also grown within Australia in comparison to the 2016 survey (refer figure 14 below).

Figure 14: Overseas student satisfaction
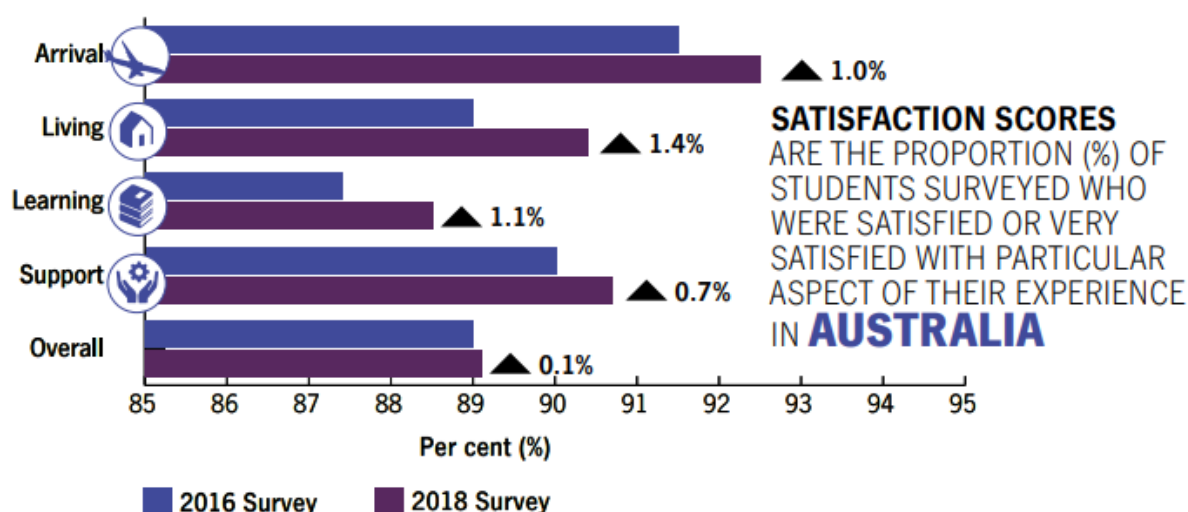
Specific to the VET sector, the 2018 survey results[129] for VET overseas students show:

- 89 per cent were happy with their provider

- 90 per cent were satisfied with the teaching, learning and support strategies offered by their provider

- 94 per cent were satisfied with the support from their provider's career advisory service

- 86 per cent were satisfied with their employability

- 94 per cent were satisfied with the level of personal safety.

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[128] Australian Government Department of Education and Training, 2018 International Student Survey Results, Vocational Education and Training (VET)
[129] 2,432 students responded to the 2018 survey, which is a 21 per cent response rate.

The 2018 survey results[130] for ELICOS overseas students show:

- 90 per cent were satisfied with their learning

- 93 per cent were satisfied with their support.

These results are consistent with the positive student feedback that was gathered by ASQA through the compliant audits associated with this strategic review (documented in chapter 4). Student feedback on the key elements of their experience is an integral part of ASQA's student-centred audit approach.

ASQA's approach to recognising and supporting quality

In considering how ASQA can better recognise and support providers demonstrating consistent compliance, consultation has been undertaken by ASQA as part of this review and more broadly on how it can better recognise and support these providers. Specific to the review, and CRICOS delivery, ASQA undertook detailed consultation with peak bodies[131] to consider how good provider practice could be identified and, consequently, recognised.

Suggestions for indicators of good practice by providers include:

- having a systematic focus on student support and outcomes

- displaying high levels of industry engagement

- investing in professional development for trainers and assessors

- having good business or governance systems

- holding recognition by industry accreditation schemes, for example NEAS[132].

Progressing this work to recognise and support providers that strive to be consistently compliant more broadly across the VET and ELICOS sectors is a priority for ASQA in 2019-20 and will continue beyond this strategic review through the *Recognising and supporting quality in the VET sector* initiative.

Communications strategy

Findings from the regulatory activities undertaken as part of this strategic review have identified specific provider obligations which are not being adequately addressed by some providers. In particular, non-compliance has been found relating to obligations about student attendance, English language course entry requirements and information reported about overseas students on PRISMS.

While findings demonstrated a small number of providers had a clear disregard for meeting obligations, others showed there is a level of confusion in understanding provider requirements, particularly in meeting

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[130] 15,662 students responded to the 2018 survey, which is a 66 per cent response rate.

[131] The peak bodies that were involved in the consultation were TAFE Directors Australia, Independent Tertiary Education Council Australia, and English Australia.

[132] NEAS is a globally recognised body that provides quality assurance services to ELT and vocational providers in Australia and internationally.

dual legislative requirements. There is a clear role for ASQA to publish information in an integrated and cohesive way to support providers to meet all of their compliance obligations.

Given the additional requirements of the National Code that CRICOS providers need to meet beyond the VET Quality Framework and the interplay between the regulatory requirements documented in chapter 3, there is merit in developing more tailored information for these providers. In keeping with ASQA's objective to encourage and support compliance, these materials should focus on how the requirements across all legislative frameworks are relevant to the provider at each phase of the student journey.

Similarly, although there are higher levels of compliance for ELICOS providers due, in part, to the explicit requirements, more bespoke educative materials tailored to the specific circumstances of the ELICOS Standards and National Code requirements are warranted.

Improving the information available to providers can reinforce the requirements that apply under both the VET Quality Framework and the National Code and address areas of misunderstanding. One of the objects of the NVR Act is to facilitate access to accurate information relating to the quality of VET and ASQA plays a key role in providing VET and ELICOS providers with information about their compliance obligations.

Improved compliance material and support that focuses on reinforcing these compliance obligations has the combined benefit of reducing non-compliance and simplifying audit processes, enabling the sector to focus on delivering quality VET and ELICOS courses and student outcomes.

ASQA recognises that in developing these materials, it needs to be informed by the regulated community as to how best to make this information available. As part of its efforts to support quality in the sector, ASQA undertakes surveys of providers and stakeholders to ascertain the most appropriate types of communication material to encourage engagement and use of the information. From this, ASQA understands the benefit in publishing easy to access fact sheets, as well as producing targeted webinars and videos when appropriate.

ASQA will review the material currently available and develop new and revised content for CRICOS VET and ELICOS providers that is informed by the findings of this review. ASQA has commenced this work and has developed a fact sheet setting out the student attendance requirements and the interplay of provider obligations under the Standards for RTOs and the National Code.

ASQA will also look to enhance the support and guidance available for RTOs that deliver VET to offshore students. The audits that ASQA has undertaken to date have provided valuable insight into what is working well in offshore delivery, including the characteristics that are valued by foreign governments. ASQA has also been able to document some of the delivery and compliance challenges.

The analysis undertaken by the NCVER on behalf of ASQA has provided some insights into where the quality of data reporting could be improved. ASQA will develop improved guidance material informed by these findings to support VET providers to meet their compliance and reporting obligations.

ASQA Action 4

That ASQA develops information for VET and ELICOS providers delivering to overseas students, and providers delivering VET offshore, to support a positive approach to compliance by clearly explaining all the requirements specific to these delivery arrangements, and that the development of this material be prioritised on the basis of the risk factors identified in this review.

Supporting broader awareness

The material developed by ASQA to support providers to meet their compliance obligations can also play a role in informing the broader VET and ELICOS international education community, including students and education agents, on what to expect from compliant providers.

To do this, ASQA will continue to work with relevant government agencies and other stakeholders to promote the information it develops to support provider compliance and support them to tailor their own communication material to reinforce the messages about compliant provider behaviour. Improving the material available to students, education agents and others about the obligations of providers will reinforce the requirements that apply under the National Code (and Standards for RTOs and ELICOS Standards, as appropriate) and address areas of misunderstanding.

In this way, improving communication with providers serves a dual purpose:

1. ASQA can communicate its expectations, including the requirement to comply with all legislative obligations and be able to demonstrate this compliance if requested, to all providers and not just those subject to regulatory activity. For many providers that seek to be compliant but struggle with the complexity of the requirements, providing additional information and support will assist them to meet their obligations in a cost-effective and non-punitive manner.

2. Other government agencies can also use ASQA's published information to develop targeted information for prospective and current students and education agents of their rights and responsibilities. This ensures that the requirements of the Australian system are better understood, and students are better able to hold their providers to account.

Recommendation 6

That government agencies, including the Australian Government Department of Education, Australian Government Department of Home Affairs, Australian Government Department of Employment, Skills, Small and Family Business, Austrade, the Office of the Commonwealth Ombudsman (who is also the Overseas Student Ombudsman), and state and territory government trade agencies, use the provider information released by ASQA to develop complementary materials targeted to students, education agents, and other third parties, to assist them to recognise compliant behaviours.

Information sharing with stakeholders

ASQA has established relationships with the Australian Government Department of Education and Australian Government Department of Home Affairs, and TEQSA, both individually and collectively through the formation of ERIC. ASQA has also executed a Memorandum of Understanding with the Office of the Commonwealth Ombudsman which includes a commitment to share appropriate information and hold regular liaison meetings. These relationships support important formal information-sharing practices.

ASQA also has well-established mechanisms for communicating with state and territory training authorities in relation to the delivery of VET to domestic students, with formal arrangements to share information and to notify these agencies of regulatory decisions. Formal communication protocols have been executed at ministerial level to support these arrangements.

ASQA has received positive feedback from these authorities about how strongly they value their engagement with ASQA under these protocols, especially in relation to the relationships that have been formed and the information exchanged through regular meetings. To date, however, these arrangements have largely focused on matters relating to the domestic delivery of VET.

ASQA's relationships with government agencies involved in the promotion of VET and ELICOS courses to international students are less established. Many of these state and territory government agencies provide or fund the provision of a range of support services for overseas students in their jurisdictions.

An overview of the main promotional and student information and support activities of these authorities is set out below.

International education: state and territory government initiatives and resources

Study Queensland—represents Queensland's international education and training providers and the quality education and training they offer.

The Study Queensland brand is managed by the International Education and Training Unit (IETU)—a unit within Queensland Government's global business agency, Trade & Investment Queensland. IETU provides leadership and support to Queensland's international education and training industry to enhance the experience international students have before, during and after their study in Queensland.

Services offered by Study Queensland:

- 1800QStudy

- The Cairns Student Hub

- The Gold Coast Student Hub

- The Brisbane Student Hub.

Website: https://www.studyqueensland.qld.gov.au/

StudyNSW—established by the New South Wales government to increase the number of international students studying in Sydney and the state or with New South Wales-registered education providers operating overseas, to improve the quality of the student experience while in the state and to recognise overseas student contributions to New South Wales communities.

StudyNSW is responsible for delivering a 10-year international education strategy to position the State in key markets as a leader in international education that launches global careers.

StudyNSW has four main functions:

1. marketing, promotion and research

2. development of policy and advocacy to enhance the competitiveness of international education in New South Wales

3. delivery and evaluation of strategies and programs to improve the experiences of international students in New South Wales

4. identification and generation of international market development opportunities and new technology-enabled models of delivery.

Services offered by StudyNSW:

*   Redfern Legal Centre—students, both domestic and overseas, can access legal advice about housing problems, fines, debts, car accidents, employment, discrimination, family law, domestic violence, and complaints about colleges or universities. The Centre can also provide advice in relation to student visas.

Website: https://www.study.sydney/

Study Melbourne— a Victorian Government initiative providing support and information to the community of international students, helping them have the best possible time while studying and living in Victoria.

Services offered:

*   Study Melbourne offers a year-round program of free events and confidential support services provided by the Study Melbourne Student Centre.

*   The Student Centre also offers free legal advice about workplace rights for students.

Website: https://www.studymelbourne.vic.gov.au/

StudyAdelaide—promotes Adelaide as a centre of education excellence and highlights the advantages to overseas students in choosing to live, work and study in South Australia.

StudyAdelaide's key marketing activities include targeted global digital campaigns, country specific websites and social media channels, attendance at offshore roadshows and events and agent familiarisation tours to Adelaide.

Services offered:

- year-long calendar of events for students

- Get Work Help Desk

- mentor program

- employability workshops

- part-time job seminars

Website: https://studyadelaide.com/

StudyPerth—provides a leadership role in building the profile of international education in Western Australia and overseas. It is also the first point of contact for anyone wishing to obtain information on studying and living in Perth.

StudyPerth is supported by the Department of Jobs, Tourism, Science and Innovation. The website provides information for prospective students about studying, living and working in Western Australia, and of the social activities available.

Website: https://www.studyperth.com.au/

StudyNT—Study in Australia's Northern Territory (#StudyNT) promotes the Northern Territory as a study destination for international education and training.

StudyNT works with education providers and the business and local communities to welcome international students to achieve academic success and discover new pathways to their future in Australia's Northern Territory.

Website: https://studynt.nt.gov.au/

Study Canberra—a portal of information for students wishing to study and live in Canberra.

The Study Canberra website offers information about linking in with Student Ambassadors. The Student Ambassador program was developed to tell the stories of just some of the individuals who choose to study in Australia.

Website: https://www.studycbr.com.au/

Government Education & Training International (Study Tasmania)—a State Government organisation, operating within the Department of Education, representing Tasmanian Government education and training providers internationally. GETI Tasmania specialises in connecting international students and businesses with flexible education, skills and qualifications from local government education providers.

Services offered:

- international student advisors—all Tasmanian Government Schools and TasTAFE campuses have dedicated student advisors to support students throughout their studies

- language and learning support

- buddy system

- study facilities.

Website: https://study.tas.gov.au/

This strategic review has afforded the opportunity to consider how arrangements with state and territory governments, in particular, might be strengthened in relation to the international education sector. The state and territory governments all play important roles in promoting their jurisdictions as attractive destinations for overseas students, providing support services and outreach activities to overseas students, and promoting their local international education providers to compete on the world stage.

These activities provide state and territory government agencies with access to significant intelligence about student concerns and provider behaviour in their local markets. These authorities also have a critical understanding of local economic policies, including temporary and permanent migration growth strategies, operating in their jurisdictions.

ASQA is conducting a review of the existing protocols it has with state and territory government agencies to continue to support the effective and efficient regulation of VET. This review is intended to ensure that protocols remain current and attuned to the changing conditions and risks in the VET sector. ASQA will use this review as an opportunity to explore how these arrangements might be expanded to support ongoing relationships with the state and territory government trade agencies.

The strategic review has also fostered the establishment of a stronger relationship between ASQA and Austrade. Austrade plays a key role in the promotion of Australia as a destination of choice for overseas students and supporting Australian businesses to compete globally.

International education—Austrade

The Australian Trade and Investment Commission (Austrade) delivers international marketing and promotion services to the Australian education sector. Austrade highlights the global relevance, practicality and quality of Australian institutions, along with their innovation, creativity and focus on the future.

Austrade also supports Australian education providers through a range of information, advice and tailored services to support their international education engagement strategies. This includes the delivery of accurate and timely market intelligence and opportunities through the Market Information Package, an online portal available on a subscription basis to eligible institutions.

Website: https://www.studyinaustralia.gov.au/

Austrade is also responsible for supporting education agents in accessing agent training, and for networking with agents on market trends and development. It publishes a list of education agents (depending on market) that have undertaken EATC course through the Study in Australia website and its Austrade Global Network facilitates agent-provider linkages and recruitment activities, including supporting high-quality agent/government initiatives.

ASQA will establish information sharing arrangements with Austrade to ensure there is a mutual understanding of the priorities and issues affecting the international VET, both onshore and offshore, and ELICOS sectors.

ASQA Action 5

That ASQA expand the existing information-sharing protocols with state and territory governments to include agencies with responsibility for international education and establish an agreement with Austrade to facilitate the exchange of information in relation to CRICOS providers, overseas student issues and the delivery of VET offshore.

The New Zealand international student sector

Australia's VET and ELICOS sectors are robust and well-respected on a global scale. This regard is demonstrated by many factors, including the level of interest and desire by people to come to Australia to study. However, international education is a highly competitive, globalised sector, which has an impact on the strategies Australian providers use to promote their course offerings and recruit overseas students.

As part of the strategic review, to understand how the Australian VET sector compares to a similar market, ASQA reviewed the make-up of one of its closest neighbours. Australia and New Zealand have similar features – both countries provide a safe and welcoming environment, a great lifestyle, and can provide a strong foundation for ongoing careers.

The intent of this analysis was to consider whether the fundamentals that drive VET delivery to overseas students vary between each country and how each country responds to these requirements to ensure a reputable sector. ASQA considered key factors which can influence how students decide which country to study in, the expectations of students, and—ultimately—how providers operate to provide VET to overseas students.

Understanding the New Zealand structure

New Zealand's *Education (Pastoral Care of International Students) Code of Practice* 2016 (the Code) is a legislative instrument made under the New Zealand (NZ) *Education Act 1989*. The Code prescribes 10 outcomes and related key processes required of providers to support the well-being, achievement, and rights of international students. Education providers must be approved signatories to the Code to enrol international students. The Code is binding on all parties who are signatories.[133]

The New Zealand Qualifications Authority (NZQA) is the Code Administrator. Signatories must attest annually to NZQA that they have completed a self-review against the required outcomes and processes of the Code. Self-review reports and evidence may be requested for evaluation by NZQA as part of routine monitoring.

Quality provisions

The analysis made a high-level comparison between the respective codes of practice of Australia and New Zealand in relation to the education of overseas students, with a specific focus on:

- VET student attendance requirements

- education agent requirements

- student protection in relation to Tuition Protection Schemes

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[133] Parliamentary Counsel Office, New Zealand Legislation
http://www.legislation.govt.nz/regulation/public/2016/0057/latest/DLM6748147.html

- student protection in relation to dispute resolution services

- provision of information to students.

The analysis focused primarily on the codes themselves and did not include a detailed review of related legislation. The findings are summarised below.

VET student attendance requirements

Australia's National Code is more detailed than New Zealand's in relation to student attendance requirements, and New Zealand's Code does not set out specific requirements for providers in relation to different types of programs, nor specific attendance requirements for students in different types of programs.

However, New Zealand publishes a set of guidelines for tertiary providers that provide more specificity than the Code and references the obligation of providers to meet Immigration NZ requirements. The guidelines do not, however, have a regulatory status.

Education agent requirements

The Australian and New Zealand codes are broadly similar in relation to the provisions regarding education agents.

Some differences in the codes include:

- Australia's Code sets out what must be included in a written agreement with education agents.

- Australia's Code is more detailed with respect to the steps a provider must take in the event of poor conduct, although New Zealand's recent amendments, which shortly come into force, now provide more detail.

- New Zealand requires that providers carry out and record reference checks on potential education agents.

- New Zealand appears to give more force to the London Statement of Principles through a specific reference to education agent obligations in the Guidelines for providers and in requiring all agents in the ENZRA program to abide by the Principles and related Code of Conduct.

The key difference between the Australian and New Zealand approaches relates to the way each country relates to education agents. New Zealand has adopted a program of strategic engagement with education agents, the ENZRA. While this does not function as a regulatory tool to deal with poor conduct, it may act as an incentive for education agents to build quality and help drive market changes through more informed consumers.

Overall Australia appears to provide more information to inform students directly about education agents to enable them to understand the role and make careful choices, whereas New Zealand information tends to focus on providers and education agents.

Student protection in relation to Tuition Protection Schemes

The Tuition Protection Schemes appear similar, although the details are contained in instruments external to the respective codes.

Key differences include:

- New Zealand's Fee Protection Rules protect the interests of both domestic and overseas students, whereas Australia's TPS covers international students only (however, it is noted that both Australia and New Zealand have additional requirements covering fee protection administered by ASQA and NZQA respectively).

- In New Zealand, student fee protection requires preservation of student tuition and homestay fees/living expenses paid to the provider and the Fee Protection Rules provide very detailed formulae for amounts to be preserved. Whereas in Australia, fee protection relates to tuition fees only.

- In New Zealand, there are different obligations placed on providers depending on whether they are private or public institutions.

New Zealand's code provides for a specific dispute resolution scheme which Australia's does not (see the section below).

Student protection in relation to dispute resolution services

Both Australia and New Zealand advise students to try to resolve any concerns about their provider or agents directly with the provider first.

New Zealand has a specific dispute resolution service for international students, but this covers disputes in relation to financial and contract matters only. Other matters must go first to the NZQA for assessment and possible investigation or referral.

Australia's complaint-handling mechanism for overseas students is different depending on whether the student is enrolled at a private or a public provider in comparison to New Zealand's one-stop shop.

However, the range of disputes which can be addressed by the Office of the Commonwealth Ombudsman is broader than those covered by the New Zealand dispute resolution service.

It appears that the New Zealand dispute-resolution service provides remedies that are more readily enforced than those of the Office of the Commonwealth Ombudsman although such remedies are in relation to a narrower range of disputes.

Because both the New Zealand and Australian dispute resolution options cover 'former' students, it appears that students who have completed a program but have subsequently found their certificates are not valid would have the capacity to make a complaint to the respective dispute-resolution services.

It is likely that one of the benefits of the New Zealand scheme is its visibility through a single point of contact for students with clear branding (iStudent Complaints) in comparison to Australia's process which is different for public versus private providers and less visible because it is incorporated in a body with a much broader complaints mandate.

The fact that New Zealand's dispute-resolution service is limited to contractual and financial disputes may not be such an issue as that country's Office of the Commonwealth Ombudsman notes in a fact sheet for providers on 'written agreements, fees and refunds' that 'we investigate more disputes about fees and refunds than any other issue.'

Provision of information to students

Study in Australia/Study in NZ

Both Australia and New Zealand have dedicated websites for potential overseas students ('Study in Australia', 'Study in NZ'):

- Both websites are easy to navigate and engaging, but New Zealand's website includes two additional features—a 'guide for parents', which includes video presentations from parents in a number of countries as well as from host families in New Zealand, and a 'checklist to prepare your child' link.

- An interactive question and answer feature through a 'Chatbot'.

The Study in Australia website has clearer and more detailed information for students about education agents than the Study in NZ website, which focuses more on providing information for agents and providers. New Zealand's focus is on engagement with 'proven, committed and ethical agencies', to lift the quality of services.

Study in Australia includes a search function so students can find an education agent in their country, an explanation of what education agents do, and tips for choosing an education agent. There is also a clear explanation about the differences between education agents and migration agents and information on 'avoiding problems with Education Agents'.

The information about education agents on the Study NZ website appears limited to providing a search function for students to find agents in their country.

NZQA/Australian Government Department of Education (and related websites)

NZQA and the Australian Government Department of Education are the two key websites that provide information to students about the respective codes. Both websites provide a good range of links to relevant information, factsheets and brochures for students.

NZQA's page on 'caring for international students—the Code of Practice' is simpler and more concise, outlining the purpose of the Code, providing a link, advising what to do 'if something goes wrong' and providing links to NZQA and iStudent complaint pages. The website also gives information about student fee protection, although this is targeted at providers and not students.

The Australian Government Department of Education 'ESOS legislative framework' page provides a range of information about the National Code for providers and other provider-focused information. The site also has an 'information for students' section, that offers a link to a comprehensive fact sheet covering preparation for study in Australia, using an education agent, student rights and responsibilities, consumer rights and protections, making complaints and answers to frequently asked questions.

Overseas student ombudsman

The Office of the Commonwealth Ombudsman website has a dedicated overseas student's page, which outlines clearly what the office can help with and what is excluded. It provides a link to a comprehensive set of fact sheets on key topics such as student attendance, course progress, education agents, fees and refunds, written agreements and health cover.

Australia's Tuition Protection Service also has a student information page which provides a clear overview in both text and diagrammatic form and a link to a comprehensive fact sheet 'Are you an international student studying in Australia on a student visa?'

Overall, there are strong similarities between Australia's National Code and the New Zealand Code. It appears that both regulatory agencies see the benefit in developing additional information for providers to guide the provision of quality VET. Both agencies recognise that the additional information they give is not legally enforceable, however, can support the bulk of providers who are providing (or who are genuinely attempting to provide) quality training and assessment to improve practices.

Australia provides a range of clear brochures and fact sheets for students. However, not all of these brochures are easily found by students, as they are spread across many websites. While ASQA's role in providing information is, primarily, focused on providers, the need to make information readily available is pertinent.

ASQA is undertaking to make website improvements in 2019-2020 to improve the accessibility of information. ASQA's work with other agencies will also support a central source of complete information for students, to give students the ability to access clear and accurate information about how to select a quality provider.

Summary

This chapter has focused on the benefits of taking a more active approach to recognising and supporting quality in the international education sector. While there is much ASQA can do to strengthen the information and communication services available to the sector, working with stakeholders will greatly improve the impact of this work. By improving the quality of the information available to providers, ASQA aims to reduce non-compliance and encourage compliant behaviour.

By working with our stakeholders to share these materials, ASQA can support them to educate students, agents and others to choose quality providers and ensure that there are no misconceptions about provider obligations.

Enhanced stakeholder relationships with agencies who hold important intelligence about student, agent and provider behaviour along with market dynamics will help inform ASQA about the risks that can be local and unique to particular jurisdictions.

List of acronyms

Acronym	Definition
AAT	Administrative Appeals Tribunal
AQF	Australian Qualifications Framework
ASQA	Australian Skills Quality Authority
AVETMISS	Australian VET Management Information Statistical Standard
COAG	Council of Australian Governments
CRICOS	The Commonwealth Register of Institutions and Courses for Overseas Students
DSAs	Designated state and territory authorities
ELICOS	English Language Intensive Courses for Overseas Students
ERIC	Education Regulators and Immigration Committee
ESOS	Education Services for Overseas Students
GTE	Genuine Temporary Entrant
IST program	International Skills Training program
NCVER	National Centre for Vocational Education Research
NVR	National VET Regulator
OSAP	Offshore Skills Assessment program
OSO	Office of the Commonwealth Ombudsman (also known as the Overseas Student Ombudsman)
PRISMS	Provider Registration and International Student Management System
RPL	Recognition of prior learning
RTO	Registered Training Organisation
SSO	Skills Service Organisation

Acronym	Definition
SSVF	Simplified Student Visa Framework
TAC-WA	Training Accreditation Council Western Australia
TEQSA	Tertiary Education Quality and Standards Agency
TPS	Tuition Protection Service
TRA	Trades Recognition Australia
TSS Program	Temporary Skills Shortage Skills Assessment Program
TVA	Total VET Activity data
USI	Unique Student Identified
VET	Vocational education and training
VRQA	Victorian Registration and Qualifications Authority

Glossary

Term	Definition
AQF qualification	An AQF qualification type endorsed in a training package or accredited in a VET accredited course.
asqanet	asqanet is ASQA's online web portal for managing registration, applications and fee payment for RTOs and CRICOS providers. Students, and anyone else who wishes to make a complaint about a provider regulated by ASQA, can also use asqanet to submit a report/complaint. The portal also functions as ASQA's internal management system for RTO applications, recording and tracking of regulatory activities and performs reporting functions.
Assessment	The process of collecting evidence and making judgements on whether competency has been achieved, to confirm that an individual can perform to the standard required in the workplace, as specified in a training package or VET accredited course.
Australian Industry and Skills Committee (AISC)	The Australian Industry and Skills Committee is established by the agreement of the members of the Council of Australian Governments (COAG) Industry and Skills Council as an industry-led body that provides advice on the implementation of national vocational education and training policies. The Committee's role is to provide advice to ensure that the directions taken by ministers are informed by an industry-based perspective focused on the quality and relevance of the national training system. Where required, the Committee will be delegated the authority to approve industry-defined training qualifications. Source: https://www.aisc.net.au/
Australian Qualifications Framework (AQF)	The framework for regulated qualifications in the Australian education and training system, as agreed by the Commonwealth, State and Territory ministerial council with responsibility for higher education.
Competency	The consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
Course Duration	Term to describe the amount of time elapsing between commencement and completion of a training course.
CRICOS provider	See Provider.
Domestic student	Students whose citizenship is Australian, New Zealand or permanent resident for the purpose of undertaking education and training[134].
Education Agent	A person or organisation (in or outside Australia) who recruits overseas students and refers them to education providers. In doing so, the education agent may provide education counselling to overseas students as well as marketing and promotion services to education providers.
ELICOS-only provider	Providers that only deliver ELICOS and are therefore not governed by the VET Quality Framework.
ESOS Framework	The ESOS Framework is the legal framework for the provision of education services to overseas students, and sets out the registration requirements and the ongoing standards for education providers that offer courses to overseas students.

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[134] NCVER, *Total VET students and courses 2017*, page 23

Term	Definition
	The ESOS Framework comprises:
	• *Education Services for Overseas Students Act 2000* (ESOS Act)
	• *Education Services for Overseas Students Regulations 2001*
	• *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (National Code)
	• other legislative instruments that support the implementation of the ESOS Act by setting out specific detail about some of the information and requirements.
	The framework provides a consistent national approach to the registration of education providers so that the quality of the training, and the care of students, remains high.
Genuine Temporary Entrant	The Genuine Temporary Entrant (GTE) requirement is a legislative provision and a key integrity measure to ensure the student visa program is used as intended and not as a way for overseas students to maintain ongoing residency in Australia.
International education	The delivery of education across all sectors, including schooling, VET, English language and higher education to all international students regardless of delivery location or mode of delivery.
International student	Students who hold a student visa or a temporary visa in Australia, or who reside offshore, for the purpose of undertaking education and training.
Migration agent	A person registered as a migration agent as per section 286 of the *Migration Act 1958*.
National Register	The register maintained by the Australian Government Department responsible for VET and referred to in section 216 of the *National Vocational Education and Training Regulator Act 2011*.
National Strategy	The *National Strategy for International Education 2025* sets a 10-year vision for Australian international education and provides a framework of priorities to sustainably grow the sector, while maintaining Australia's reputation for high quality.
Offshore student	Non-domestic students enrolled in face-to-face (in whole or in part) VET programs at offshore locations or online with Australian VET providers.
Offshore VET	The delivery of VET courses either through face-to-face delivery in-country or online to non-domestic students residing offshore by ASQA regulated RTOs.
Overseas education	The enrolment of a student who holds a student visa in a course with a provider registered on CRICOS in Australia.
Overseas student	A person (whether within or outside Australia) who holds a student visa. This term is consistent with the definition under the ESOS Act[135].
Program	As defined by the NCVER a program is a qualification, course or skill set. Source: National Centre for Vocational Education Research - Support Document – Students and courses: terms and definitions https://www.ncver.edu.au/__data/.../Students-and-courses-terms-and-definitions.docx
Providers	Providers registered on CRICOS that deliver VET and/or ELICOS. A provider may also be a registered training organisation.
Recognition of Prior Learning (RPL)	An assessment process that assesses the competency(s) of an individual that may have been acquired through formal, non-formal and informal learning to determine the extent to which that individual meets the requirements specified in the training package or VET accredited courses.

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[135] *Education Services for Overseas Students Act 2000, section 5 Definitions*. Available at: https://www.legislation.gov.au/Series/C2004A00757 (accessed June 2019)

Term	Definition
	a. formal learning refers to learning that takes place through a structured program of instruction and is linked to the attainment of an AQF qualification or statement of attainment (for example, a certificate, diploma or university degree)
	b. non-formal learning refers to learning that takes place through a structured program of instruction, but does not lead to the attainment of an AQF qualification or statement of attainment (for example, in house professional development programs conducted by a business), and
	c. informal learning refers to learning that results through experience of work-related, social, family, hobby or leisure activities (for example the acquisition of interpersonal skills developed through several years as a sales representative).
Registered Training Organisation	Organisations registered under the NVR Act that are approved to deliver VET to domestic, overseas or offshore students.
Scheduled course contact hours	The hours for which students enrolled in the course are scheduled to attend classes, course-related information sessions, supervised study sessions, mandatory and supervised work-based training and examinations.
Strategic Review	Reviews conducted by ASQA under section 157(1)(e) of the NVR Act. These reviews are undertaken in response to strategic risks identified by ASQA in the VET training market. Usually guided by a reference committee drawn from key stakeholders from industry, employers, and government and chaired by ASQA.
Subject enrolment	As defined by the NCVER, the registration of a student at a training delivery location for the purpose of undertaking a module, unit of competency or subject. https://www.ncver.edu.au/__data/.../Students-and-courses-terms-and-definitions.docx
Training	The process used by an RTO, or a third party delivering services on its behalf, to facilitate learning and the acquisition of competencies in relation to the training product on the RTO's scope of registration.
Training and assessment strategies and practice	The approach of, and method adopted by, an RTO with respect to training and assessment designed to enable learners to meet the requirements of the training package or accredited course.
Training Package	The components of a training package endorsed by the Industry and Skills Council or its delegate in accordance with the Standards for Training Packages. The endorsed components of a Training Package are: units of competency assessment requirements (associated with each unit of competency) qualifications and credit arrangements. The endorsed components form part of the requirements that an RTO must meet under these Standards. A training package also consists of a non-endorsed, quality assured companion volume/s which contains industry advice to RTOs on different aspects of implementation.
Training Product	AQF qualification, skill set, unit of competency, accredited short course and module.
VET Quality Framework	Comprises: • the Standards for Registered Training Organisations • the Australian Qualifications Framework • the Fit and Proper Person Requirements • the Financial Viability Risk Assessment Requirements • the Data Provision Requirements • Quality Standards

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List of tables

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Appendix A – Reference committee members

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