

General Direction—third party arrangements for training and/or assessment of VET courses

This is a General Direction made under section 28(1) of the [National Vocational Education and Training Regulator Act 2011](#) (the NVR Act).

A General Direction may be given by the Australian Skills Quality Authority (ASQA), as the national vocational education and training (VET) regulator, on how registered training organisations (RTOs) must comply with the VET Quality Framework and other conditions defined in the NVR Act.

It is a condition of registration that an ASQA registered RTO must comply with any such General Direction.

Purpose

The NVR Act restricts the conduct of non-RTOs in the delivery of VET training and/or assessment. This means there are limitations on the nature and extent of third party arrangements that RTOs can enter into with non-RTOs. For example, non-RTOs cannot, on their own behalf or in their own name:

- advertise or offer all or part of a VET course
- provide training and/or assessment for all or part of a VET course
- issue a qualification or statement of attainment for a VET course.

An RTO may only advertise, offer, provide or issue a qualification or statement of attainment for a VET course if the RTO has that VET course on its scope of registration.

ASQA has become aware of uncertainty and confusion as to the extent to which RTOs may permissibly enter into third party arrangements with other RTOs and non-RTOs as determined by these restrictions.

This uncertainty and confusion has also led to inconsistency in the use of third party arrangements.

Some current third party arrangements may not comply with the restrictions imposed by the NVR Act.

It is also difficult for student consumers to identify which RTO they are enrolled with and hence which organisation is delivering and responsible for their training and/or assessment.

This General Direction provides clarity and guidance on third party arrangements permitted under the NVR Act.

It also identifies third party arrangements requiring ASQA's prior approval to:

- advertise or offer

- provide training and/or assessment
- issue a VET qualification or statement of attainment

for a 'VET course of concern' as identified by ASQA.

This guidance is set according to section 28 of the NVR Act and Clause 2.3 of the *Standards for Registered Training Organisations 2015* (the Standards for RTOs).

Commencement

For new third party arrangements, this General Direction will come into effect on 1 September 2019.

For existing third party arrangements, this General Direction will come into effect on 1 November 2019.

Terms and definitions

The following terms used in this General Direction have the meaning as described in the [Standards for Registered Training Organisations 2015](#) (the Standards for RTOs) or the NVR Act.

The Standards for RTOs:

- define any party that provides certain services on behalf of an RTO as a third party but does not include a contract of employment between an RTO and its employee
- set out requirements and conditions for RTOs using third parties, including the requirement to have a written agreement.

In the NVR Act:

VET course means:

- a) the units of competency of a training package that is endorsed by the Ministerial Council; or
- b) the modules of a VET accredited course; or
- c) the modules of a course accredited by a VET Regulator of a non-referring state.

VET qualification means a testamur relating to a VET course, given to a person confirming that the person has achieved learning outcomes and competencies that satisfy the requirements of a qualification.

VET statement of attainment, in relation to units of competency or modules of a VET course, means a statement given to a person confirming that the person has satisfied the requirements of units of competency or modules specified in the statement.

In addition:

VET course of concern means any VET course where ASQA has assessed that non-compliant training and/or assessment poses a particularly significant risk to the quality, integrity and reputation of the VET sector.

For certainty, the VET courses that ASQA considers pose such a risk are contained in Schedule 1, which may be amended from time to time.

Principles underpinning the General Direction

Section 2A provides for the Objects of the NVR Act as:

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

Section 27 of the NVR Act says that an RTO must cooperate with ASQA, at least to the extent that:

- a) it is necessary for ASQA to perform its functions; or
- b) it is necessary to facilitate ASQA performing its functions.

Section 93 of the NVR Act says that an RTO commits an offence¹ if

- (a) the organisation provides all or part of a VET course; and
- (b) the VET course, or part of the VET course, is not within the organisation's scope of registration.

Section 116 of the NVR Act says that a person commits an offence² if;

- (a) the person provides, or offers to provide, all or part of a VET course in a referring State or Territory; and
- (b) the person is not an RTO.

Clause 2.3 of the Standards for RTOs says that an RTO must ensure that, where services are provided on its behalf by a third party, the provision of those services is subject to a written agreement.

¹ Section 94 of the NVR Act provides for a corresponding civil penalty contravention

² Section 117 of the NVR Act provides for a corresponding civil penalty contravention

Principal RTO is responsible for all activity by third parties

The existence of a third party agreement does not absolve the principal RTO of responsibility for compliance with relevant regulatory obligations. In all circumstances, the principal RTO is fully accountable for the actions of the third party as they relate to the delivery of relevant services, regardless of any part of a third party agreement that may suggest otherwise.

RTO must have VET course on its scope of registration to deliver all or part of that VET course

Section 93 of the NVR Act means that an RTO (the principal RTO) may only enter into a third party arrangement with another RTO (the third party RTO) to advertise, offer or deliver all or part of a VET course if **the third party RTO has** the VET course on its scope of registration.

The arrangement must be in writing and identify that all issuance of qualifications and/or statements of attainment is under the name of the principal RTO.

Section 93 of the NVR Act does **not** permit arrangements under which a third party RTO offers or delivers all or part of a VET course on behalf of the principal RTO if the third party RTO does not itself have the VET course on its scope of registration.

To deliver all or part of a VET course the third party RTO must apply to ASQA to add the course to its scope of registration, and have that application approved, prior to entering into such an agreement.

RTO may engage non-RTO third parties to deliver all or part of a VET course

Section 116 of the NVR Act permits an RTO (the principal RTO) to engage a non-RTO (the third party) to deliver training and assessment of all or part of a VET course on behalf of the principal RTO where the principal RTO has the VET course on its scope of registration. The non-RTO may be either a natural or a corporate person (for example, a sole director/share holder company) but cannot be another RTO.

The engagement must be in writing and comply with all other requirements as to third party arrangements under the Standards for RTOs.

Similarly, a non-RTO third party may provide other services on behalf of the principal RTO because the non-RTO third party is acting as an agent (on behalf of) of the principal RTO.

The two main features of such a relationship are:

- one party (the agent) acts on behalf of the other (the principal)
- the agent is acting under the control or direction of the principal.

These arrangements must also be in writing and comply with the requirements of the Standards for RTOs.

Arrangements between an RTO and a non-RTO third party that do not exhibit the features of a principal/agent relationship may be in breach of section 116 of the NVR Act.

Third party arrangements for VET courses of concern

An RTO must obtain prior approval in writing from ASQA to enter into an arrangement with a non-RTO (the third party) in relation to the 'VET courses of concern' listed in Schedule 1 to this General Direction to provide the following services on behalf of the RTO:

- advertise or offer a VET course of concern
- deliver training and/or assessment in a VET course of concern
- issue a VET qualification or statement of attainment for a VET course of concern.

This is to ensure compliance with the limitations in the NVR Act as to conduct by non-RTOs and so that ASQA may exercise proper regulatory oversight of the delivery of these courses.

Once approved, under the written agreement, the third party non-RTO must only provide the above services on behalf of and in the name of the RTO. The RTO is responsible for ensuring the services delivered by the third party comply with the Standards for RTOs at all times.

Schedule 1

VET courses of concern

- TAE40116 Certificate IV in Training and Assessment
- TAE50216 Diploma of Training Design and Development
- TAE50116 Diploma of Vocational Education and Training
- TAESS00013 Enterprise Trainer—Mentoring Skill Set
- TAESS00015 Enterprise Trainer and Assessor Skill Set
- TAESS00014 Enterprise Trainer—Presenting Skill Set
- TAESS00011 Assessor Skill Set.