



Australian Government

Australian Skills Quality Authority

Consultation Paper:

# Draft ASQA Compliance Policy and undertakings to remedy

November 2020

# Context

From April 2021, ASQA will be implementing changes to our monitoring and assessment activities and the tools we use to address non-compliance. The *Draft ASQA Compliance Policy* (the Draft Policy) is the overarching policy that describes ASQA's principled and risk-based approach to identifying and responding to non-compliance.

The Draft Policy describes what a provider can expect from ASQA if we identify a non-compliance, and the range of regulatory tools we will use to ensure the provider addresses the non-compliance and has systems to monitor and ensure ongoing compliance.

Much of the content of the Draft Policy will be familiar to stakeholders, as it reflects ASQA's existing regulatory tools and approach to managing non-compliance. However, implementing recommendations of the *Rapid Review of the Australian Skills Quality Authority's Regulatory Practices and Processes*, March 2020, we are expanding the types of regulatory tools used to respond to non-compliance.

The purpose of this consultation paper is to:

- a) Introduce the *Draft ASQA Compliance Policy* as a key document to describe our approach to compliance. It sits beneath the ASQA Regulatory Risk Framework (which will be updated to reflect some changes to our approach).
- b) Explore a new component of our regulatory toolkit that we are introducing from April 2021 namely, 'undertakings to remedy'. We propose working with the sector to co-design the implementation of this component and the guidance that will support its use. This discussion paper describes the proposed features of our approach to undertakings to remedy, and seeks stakeholder feedback on some key questions.

## SECTION A

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# Draft ASQA Compliance Policy

The Draft Policy describes how we:

- promote and facilitate a culture of provider self-assurance
- monitor provider performance
- apply proportionate responses in the event that non-compliance is identified (designed to return committed and capable providers as quickly as possible to compliance)
- share information and work with other agencies to ensure a coordinated approach to delivering outcomes.

# Improvements in applying compliance monitoring and enforcement functions

While much of the content of the Draft Policy may be familiar to stakeholders, it forecasts some different approaches to commence from April 2021, including:

## 1. Broader range of compliance monitoring and assessment activities

A performance assessment (audit) will be one of the ways that ASQA monitors compliance. Performance assessments may be narrow or broad in scope and may involve assessment of performance against some or all of the relevant standards. We may also use other activities to monitor compliance. For example, depending on the circumstances, we may undertake surveys (of students and/or other stakeholders), interview providers, or request data and documents from providers.

## 2. Education and engagement as a critical part of our regulatory approach

We will use education and engagement in a range of different ways. For example, to support providers to understand their legislative requirements and critically examine their performance (in line with the legislation), and to communicate sector wide issues. If we identify non-compliance, we will engage with the provider, clearly communicate our concerns (including outlining where the provider is falling short), and work with the provider so that the provider can identify the best way to remedy the non-compliance and achieve sustained compliance.

## 3. Greater focus on self-assurance and continuous improvement

The Draft Policy signals that we will actively encourage providers' to develop systems for self-assurance and continuous improvement. In our treatment of non-compliance, we will consider the provider's commitment and capability to continuously improve when deciding what regulatory actions to take. We are actively consulting with the sector on building a shared understanding of self-assurance.

## 4. Describing the regulatory pyramid

ASQA will continue to use a graduated approach to our use of regulatory responses to ensure compliance. We respond to non-compliance in a way that is proportionate to the level of risk and considers the provider's capability and commitment to providing quality VET. The Draft Policy sets out the range of regulatory tools and outlines what a provider can expect from ASQA when we respond to non-compliance.

## 5. Undertakings to remedy

In addition to describing ASQA's existing regulatory tools, the Draft Policy also describes the new component ASQA is developing – undertakings to remedy. An undertaking to remedy is an agreement voluntarily entered into by a provider where they agree to remedy the non-compliance identified by ASQA within a certain time period. This allows a provider to build their capacity for compliance, including continuous improvement systems, in a systemic way to ensure enduring changes are made to the way they operate and perform. (See [Section B](#) of this paper).

### Consultation questions

1. Do you have any concerns about the *Draft ASQA Compliance Policy*? Please provide a brief outline, if applicable.
2. Is the *Draft ASQA Compliance Policy* clear on what to expect from ASQA in our monitoring activities? If not, please provide a brief outline of what needs clarifying.
3. Is the *Draft ASQA Compliance Policy* clear on what to expect from ASQA in our approach to dealing with non-compliance? If not, please provide a brief outline of what needs clarifying.
4. Do you have any other suggestions to improve the *Draft ASQA Compliance Policy*? Please provide a brief outline, if applicable.

## SECTION B

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# Undertakings to remedy

## What is an undertaking to remedy and when would it be used?

Currently, providers have 20 working days in which to address any non-compliances identified by ASQA. While non-compliance can often be addressed in this timeframe, sometimes significant changes are required across the organisation to implement a more systemic response to the non-compliance.

Where a provider has demonstrated they are committed and capable (and the non-compliance is such that an undertaking is appropriate), they may be given the option of entering into an undertaking to remedy.

Undertakings to remedy enable providers to acknowledge the non-compliance and to enter into an agreement with ASQA to remedy the non-compliance within an agreed time period (for example, up to 6 months).<sup>1</sup> This approach:

- encourages providers to consider their response to non-compliance in a more systemic and sustained way (consistent with the strengthened focus on self-assurance and systemic controls)
- supports providers to self-identify actions that will contribute to addressing non-compliance
- permits a longer period in which to make sustainable and long-term changes to systems.

When deciding whether an undertaking to remedy is appropriate in the circumstances, ASQA will take into account:

- the nature and seriousness of the non-compliance, including whether the non-compliance is systemic and the potential harm that arises from the non-compliance
- the profile and behaviour of the provider, including whether the provider is co-operative or willing to engage in addressing the non-compliance and whether there is a history of non-compliance
- other relevant matters, including the likelihood of the undertaking to remedy being effective in returning the provider to sustained compliance.

There will be times when a provider will not be given an opportunity to enter into an undertaking to remedy by ASQA – for example, if the provider has a long history of poor compliance (or failure to address such non-compliance), or if the provider does not have a genuine commitment and capability to deliver quality VET (see also considerations outlined under ‘3.4 Determining the appropriate regulatory response’ in the *Draft ASQA Compliance Policy*).

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<sup>1</sup> Undertakings to remedy are an administrative process. This is distinct from enforceable undertakings. ASQA intends to consult with the sector to determine how to best use enforceable undertakings as a regulatory tool in the future

### Consultation questions

5. What are some of the benefits of undertakings to remedy?
6. What are the key risks associated with an undertaking that would require management by providers and/or ASQA?
7. Under what circumstances would it be inappropriate for ASQA to enter into an undertaking to remedy with a provider?

## What are the features of an undertaking to remedy?

If a provider is given the opportunity by ASQA to enter into an undertaking to remedy, a template would be given to the provider and the provider would complete the template detailing the nature of their proposed undertaking. For example, the provider would:

- acknowledge the non-compliance described by ASQA
- detail the specific actions they propose to take in order to address the non-compliance
- detail the timeframes within which the agreed actions will be completed and the evidence that will be provided to ASQA to demonstrate these actions

If satisfied by the proposal, ASQA would accept the undertaking and monitor the provider's return to compliance.

It is proposed that providers will be given up to six months within which to resolve non-compliance under an undertaking to remedy.

### Consultation questions

8. What type of guidance would assist providers to develop an undertaking to remedy?
9. Is six months a reasonable maximum timeframe? If not, what would be a reasonable maximum timeframe in which to expect a provider to remedy issues through an undertaking (noting the risks to students and the reputation of the sector while non-compliance remains unaddressed)?

## What happens once an undertaking to remedy has been accepted by ASQA?

Accepting an undertaking to remedy means that ASQA has confidence in the provider's ability to remedy the non-compliance within the agreed timeframes and that the provider has been able to demonstrate their willingness to take effective actions to efficiently resolve the matter.

While the scope of actions will vary in each case, actions may include, but are not limited to:

- making changes to systems and practice
- conducting audits and reviews of student files
- revising policies to align with the legislation and standards
- ensuring trainers and assessors undertake professional development, and
- creating new compliance processes.

*ASQA is committed to continued engagement with providers during the period of an undertaking to remedy as part of our case management approach to dealing with non-compliance.*

If during the period of the undertaking ASQA is not satisfied the actions identified in the undertaking are being taken, we may take other regulatory action (refer to 4.3 and 4.4 in the *Draft ASQA Compliance Policy*).

No further action would be taken if, at the end of the specified period, the issues have been addressed.

ASQA may take regulatory action if, at the end of the specified period, we are not satisfied that the issues have been addressed (refer to 4.3 and 4.4 in the *Draft ASQA Compliance Policy*).

#### **Consultation question**

10. What type of engagement with providers would be appropriate for ASQA to undertake during the period of an undertaking to remedy?
11. In addition to any information provided in this document, what kinds of guidance would be helpful to understand the operation of an undertaking to remedy?

## **SECTION C**

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# **Have your say**

Your feedback will inform the design of the undertaking and how ASQA will use undertakings to remedy to build a culture of effective self-assurance and compliance in the sector.

To submit your feedback, access our online [submission form](#).