



Australian Government
Australian Skills Quality Authority

ASQA Compliance Policy

Consultation Draft November 2020



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Glossary of terms and acronyms

AAT means the Administrative Appeals Tribunal (AAT). The AAT is an entity that conducts independent merits review of administrative decisions made under Commonwealth laws.

ASQA refers to the Australian Skills Quality Authority.

Audit is compliance monitoring in the form of a performance assessment (see performance assessment). ASQA may conduct an audit to assess whether a provider continues to comply with the VET Quality Framework and the Education Services for Overseas Students (ESOS) Framework.

Case management is the term used by ASQA to describe processes related to management and monitoring of a provider following a finding of non-compliance.

Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) is the official Australian Government website that lists all Australian education providers that offer courses to people studying in Australia on student visas and the courses offered. Refer to <https://cricos.education.gov.au/>

Compliance monitoring is a broad term referring to any form of information collection, or contact with a provider or providers, by ASQA for the purposes of determining systemic issues relating to the quality of vocational education and training, monitoring compliance with the legislation, the VET Quality Framework and the Education Services for Overseas Students (ESOS) framework, or for the purposes of assessment of a provider's performance.

Continuous improvement refers to a systematic, ongoing effort by a provider to raise an organisation's performance to provide quality VET and improve outcomes for students under the applicable standards.

Decision maker means the CEO of ASQA or an employee of ASQA who is delegated to make decisions, and exercise regulatory functions and powers under the relevant legislation

Legislation means the *National Vocational Education and Training Regulator Act 2011* (NVR Act) and the *Education Services for Overseas Students Act 2000* (ESOS Act).

National Register means the website found at www.training.gov.au which details information on training packages, qualifications, accredited courses, units of competency and registered training organisations (RTO), including information about a provider's scope of registration and history of regulatory decisions.

Performance assessment is a compliance monitoring activity involving the process of collecting evidence, making judgements, and preparing a report on whether the provider is complying with the applicable standards. A performance assessment may vary in the scope of standards assessed.

Provider includes providers that provide VET courses (also known as Registered Training Organisations or RTOs) as well as those listed on CRICOS that deliver VET courses and English Language Intensive Courses to Overseas Students (ELICOS).

Regulatory response refers to the broad approach ASQA may take when responding to non-compliance and includes any combination of regulatory tools used by ASQA to address the non-compliance.

Regulatory tools refer to the specific actions available to ASQA to encourage and enforce compliance with the legislation. This includes information, education, administrative actions and enforceable actions.

Review refers to reconsideration as that term is used in the NVR Act and internal review as that term is used in the ESOS Act.

Standards mean the *Standards for Registered Training Organisations (RTOs) 2015*, *English Language Intensive Courses for Overseas Students (ELICOS) Standards 2018*, the *National Code of Practice for Providers of Education and Training to Overseas Students 2018* and/or the *Standards for VET Accredited Course 2012*.

Systemic risk refers to risks that are identified as affecting a whole group of providers or the market as a whole.

1. Purpose and context

The draft ASQA Compliance Policy focuses on the ways that the Australian Skills Quality Authority (ASQA) monitors compliance with the relevant legislation and standards, and takes action in the event of non-compliance.

This draft policy will support communication with providers, industry stakeholders, the community and ASQA staff. In particular, this draft policy will assist industry and regulated entities to understand what to expect from ASQA as we exercise our regulatory functions. ASQA is undertaking sector-wide consultation on the draft policy with it to come into effect in April 2021.

ASQA's role is to ensure quality vocational education and training (VET) so that students, employers, the community and governments can have confidence in the integrity of qualifications issued by training providers.

ASQA contributes to the quality of the sector through the regulation of:

- providers that deliver VET qualifications and courses (i.e. RTOs)
- providers that deliver VET courses to overseas students
- accredited VET courses
- certain providers that deliver English Language Intensive Courses to Overseas Students (ELICOS).

ASQA acknowledges that, through its regulatory functions, we cannot remove all risks or contributing factors impacting on provider non-compliance. We know we are part of a system with many influences on quality. We seek to actively engage with stakeholders and the regulated community to work collaboratively to enhance VET quality.

ASQA's Regulatory [Framework](#) sets out ASQA's regulatory approach using a proportionate, risk-based approach to focus on sector-wide (systemic) and provider risks. This includes education, engagement, compliance and enforcement activities and partnerships with other industry and government entities to support our regulatory objectives.

The purpose of this draft policy is to describe ASQA's approach to compliance monitoring and enforcement, and explain how we:

- apply compliance monitoring and enforcement activities to promote providers' understanding of their obligations, including effective self-assurance of VET quality and continuous improvement of student outcomes
- use intelligence and data to inform compliance monitoring activities
- monitor provider compliance and assess performance
- apply proportionate responses if non-compliance is identified (designed to return committed and capable providers to compliance as quickly as possible)
- share information and work with other agencies to ensure efficient and effective actions within respective roles to enhance ASQA's regulatory outcomes and reduce unnecessary regulatory burden for providers.

2. Regulatory commitments

We are committed to being a best practice regulator and aim to provide nationally consistent, risk-based regulation of VET that contributes to an informed, quality VET sector that meets Australia's needs.

To achieve this, we are committed to demonstrating consistency, collaboration and continuous improvement in all that we do.

2.1 What this means in our regulatory practice

We have identified the behaviours and actions that the sector can expect from us. These behaviours and actions are our 'regulatory commitments'. These commitments apply to all aspects of our internal and external interactions, and our policies, practices and priorities reflect this.

Regulatory commitment	Behaviours
Promote a culture of self-assurance and continuous improvement	<ul style="list-style-type: none">● We will provide information and education to support providers to understand the requirements of the legislation and standards, critically examine their performance and outcomes (including their compliance with the standards) on an ongoing basis, and to continuously improve.● We consider the provider's commitment and capability to continuously improve when we decide what regulatory actions to take.● We will review our own processes, seek feedback from the sector and continuously improve.
Be risk based	<ul style="list-style-type: none">● In delivering efficient and effective risk-based regulatory activity, we will apply a systematic, structured and consistent approach to assessing risk in the sector and of individual providers.● We will use data and intelligence to help inform our monitoring activity, including to help identify sector-wide priorities that we will communicate to the sector and to identify individual providers for compliance monitoring.● Our response to non-compliance will be based on the level of assessed risk, namely the nature, scale and impact of the non-compliance and the characteristics and behaviour (conduct) of the provider.
Be proportionate	<ul style="list-style-type: none">● We focus on assessing the essential quality requirements that underpin confidence in student competency rather than focusing on minor deficiencies that may have limited impact on quality.● We will draw on a range of different regulatory responses to manage identified non-compliance proportionately, based on the level of risk and the most effective response for different circumstances.
Be fair and impartial	<ul style="list-style-type: none">● We will exercise our regulatory powers in accordance with the principles of good administrative law decision making, including principles of procedural fairness.● We will treat providers fairly and impartially.● We will listen to concerns and feedback about ASQA's practice.

Regulatory commitment	Behaviours
Maintain constructive and respectful relationships	<ul style="list-style-type: none"> • We maintain and adhere to the APS Code of Conduct. • We seek constructive, positive relationships with providers and the sector, based on mutual respect for our respective roles and responsibilities. • When we identify non-compliance we will clearly communicate with the provider and provide them with the opportunity to ask us questions about our findings. • We will adhere to the ASQA Service Standards. • We share information with other government regulators, licensing bodies and funding agencies as authorised by legislation, in recognition of our shared commitment to and respective roles in quality VET outcomes.

3. Our compliance monitoring and enforcement approach

To understand risks to the performance of the sector, we draw on data and intelligence from many sources. We determine the most significant systemic and provider risks, and use this information to inform our compliance monitoring and enforcement priorities. The ASQA [Regulatory Strategy](#) outlines our regulatory priorities for the next two years, based on our identification of sector-wide risks to the quality and outcomes of VET, which left untreated could be detrimental to confidence and quality outcomes in the sector. These priorities help determine education priorities and which providers and products to include in our compliance monitoring activities.

ASQA actively **promotes and supports a provider culture and systems for self-assurance and continuous improvement**. We do this through our sector engagement and education and in how we respond to non-compliance. We promote sector-wide learning and continuous improvement by using the outcomes of compliance monitoring activities to communicate with providers about risks and areas of non-compliance. This will assist providers to critically examine and continuously improve their performance and to assist other government agencies and funding bodies to identify and respond to strategic risk.

We **apply a range of compliance monitoring activities** to enable us to monitor the performance of the sector, efficiently and effectively respond to systemic issues relating to the quality of vocational education and training, and monitor individual provider compliance with the legislation, the VET Quality Framework and the ESOS framework.

Where we find that a provider does not meet the requirements of the legislation and/or the standards, we will **respond to non-compliance in a way proportionate to the level of risk**. When we respond, we will use a range of regulatory tools, which aim to ensure the provider addresses the non-compliance and has systems to monitor and ensure ongoing compliance. In all circumstances, our response to non-compliance will be proportionate to the seriousness of the non-compliance and extent of the provider's commitment and capability, and focused on ensuring sustained compliance.

ASQA recognises that most providers are committed to and capable of delivering quality training and will be continuously reviewing their performance and taking action to ensure ongoing compliance. This means that in circumstances where these providers, who we believe are committed and capable, do not comply with the legislation and/or standards, we will generally give them the **opportunity to remedy the problems** themselves. We will take this approach based on the nature and impact of the non-compliance, the conduct of the provider and the provider's understanding of the problem, commitment to continuous improvement, and willingness to take action to ensure the solution is systemic and sustained.

In cases where the provider does not demonstrate a commitment or capability to delivering quality training or to making necessary changes in response to identified non-compliance, our response will be to compel a provider to take action using an **escalating range of regulatory tools to enforce compliance**.

3.1 Provider self-assurance and continuous improvement

Providers are responsible for meeting the requirements of the legislation and standards. Quality VET should result from the efforts of providers themselves in monitoring and continuously improving the quality of training and assessment and outcomes for students. Students, industry, the community, governments and ASQA expect providers to comply with their obligations and to have mechanisms to self-assure the quality of their VET. This is a core part of a provider's good business practice and is central to maintaining and improving the quality of VET.

Self-assurance describes the measures a provider puts in place to make sure that it is and continues to meet its obligations and deliver quality outcomes for students and industry. Self-assurance enables providers to identify and address early, any deficiencies in their compliance to limit or prevent harms to students or the sector. The types and frequency of the measures implemented will vary from provider to provider based on the characteristics of the provider and the risk of non-compliance.

Critical self-evaluation by a provider of its training and assessment and student outcomes in order to continuously improve is also required under the Standards for RTOs. Providers must include systematic monitoring of training and assessment strategies and practices and should take immediate action when an issue is detected to make sure it is not systemic and that it does not recur. In our treatment of non-compliance, ASQA will consider the provider's commitment and capability to continuously improve when we decide what regulatory actions to take. Providers should demonstrate their self-assurance practices, including the action taken in response to any issues of concern.

ASQA actively promotes and supports a provider culture and systems for self-assurance and continuous improvement. ASQA will provide information and education to support providers to understand the requirements of the legislation and standards, critically examine their performance and outcomes (including their compliance with the standards) on an ongoing basis and to continuously improve. We engage with peak bodies representing providers, state and territory training authorities and other VET stakeholders about key issues in the sector. This engagement informs a range of education and communication activities promoting self-assurance.

The Annual Declaration on Compliance is an opportunity for providers to share with ASQA, areas of identified non-compliance. ASQA can use this information, along with other data and intelligence, to identify common areas of non-compliance and emerging risks and provide advice and guidance to support ongoing compliance and self-assurance through critical reflection.

3.2 Risk identification and analysis using intelligence and data

As a regulator, ASQA has systems in place to detect possible risks of failure to meet the applicable standards, respond to information about provider performance and to be alert to issues in the VET sector more broadly that may impact on quality outcomes for students.

We use data and intelligence from a broad range of sources to help inform our monitoring activities and to understand the performance of the sector. For example:

- environmental scanning for key risks and issues
- analysis and problem definition through strategic review of priority areas for regulatory focus
- provider enrollments and completions data
- issues that have been raised with us from consumers, employers or the community about a VET provider or other entity
- referrals, data and information from other government bodies and regulators
- annual declarations, quality indicator and activity data, surveys and applications
- performance information collected during assessments and other monitoring activities such as surveys, and requests for information
- information collected through investigative powers under the legislation
- information through engagement with the VET sector (including through the Provider Roundtable and Stakeholder Liaison Group meetings)
- information from broader industry / employer end users of training for occupational licensing and employee skills
- information collected through investigative powers under the legislation.

We use this risks-based information to inform:

- the scope, frequency and types of our monitoring activities
- the scope, frequency and types assessment undertaken to determine applications for change in scope or renewal of registration, and
- the nature of our regulatory response in relation to non-compliance by a provider non-compliance.

3.3 Compliance monitoring activities

We use data and intelligence to inform analysis of systemic and individual provider risk and to detect possible failure by providers to meet the requirements of the legislation and the standards. This informs our selection of the most appropriate compliance monitoring activity and targeted sampling of providers to:

- understand performance
- identify areas of non-compliance and
- hold providers to account to make changes to their systems and practices to ensure the requirements of the legislation and standards are met.

ASQA uses a range of compliance monitoring methods to efficiently and effectively understand performance and determine a regulatory response for identified non-compliance.

For example, depending on the circumstances we may:

- undertake surveys (of students and/or other stakeholders)
- interview providers, students, trainers/assessor, and/ others RTO personnel
- request data and documents from providers
- request data or documents from other government entities
- undertake a performance assessment of one or more providers.

An assessment of performance against the standards may be limited or broad in scope and may or may not involve a site visit. The profile of the provider and the identified risk factors will inform the scope and conduct of a performance assessment.

3.4 Determining the appropriate regulatory response

When we identify non-compliance, we respond with a range of regulatory tools to encourage, assist, deter or enforce compliance with the legislation, including the standards. These tools and measures may be used individually or in combination, to respond in a way that is risk-based and proportionate.

Our regulatory response aims to:

- ensure that the provider promptly addresses non-compliance and remedies any harm caused by the non-compliance, including to students
- promote continuous improvement and ensure future compliance is achieved and sustainable
- encourage ongoing compliance by raising awareness of the obligations under the legislation and consequences of non-compliance
- address non-compliance in the most efficient way
- increase accountability and transparency of performance in the sector.

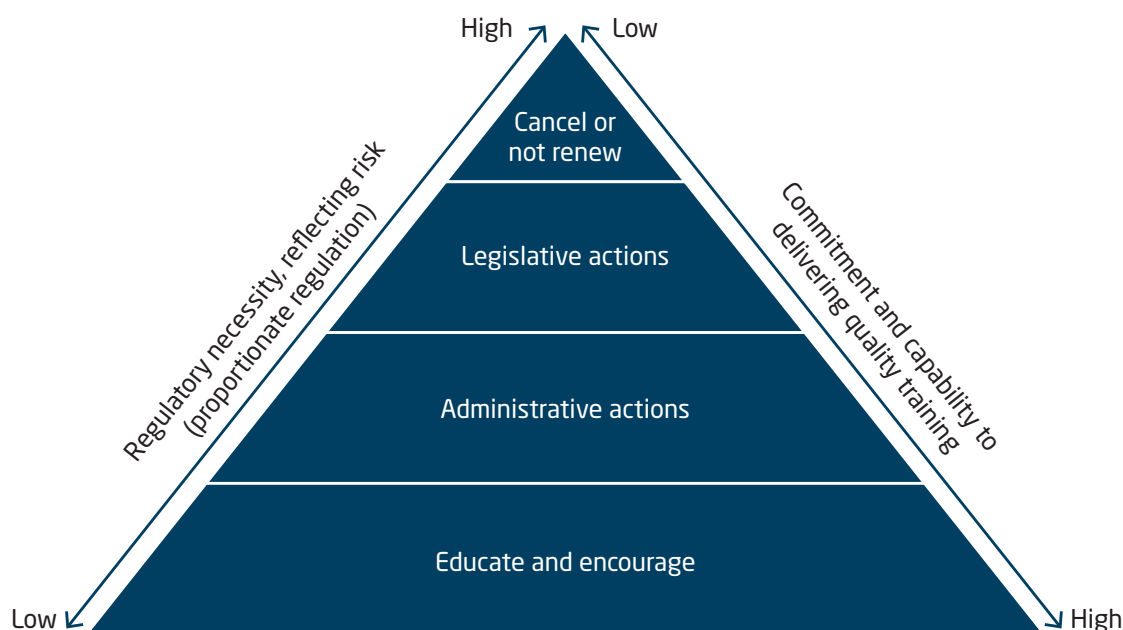
When we decide what action to take, our response will be based on the level of risk (the nature and seriousness of the non-compliance), the profile and behaviour of the provider, and any other matters relevant to the decision. Considerations can include:

- **the nature and seriousness of the non-compliance:**
 - whether the non-compliance is systemic (repeated, or widespread) across the providers practice
 - the potential harm (the impact on students and the community, the integrity of VET qualifications, and confidence in the VET sector)
- **the profile and behaviour of the provider:**
 - whether the non-compliance was intentional or an oversight
 - whether the provider is committed and capable to address the non-compliance
 - whether there is a history of non-compliance
- **other relevant matters:**
 - the likelihood of the response being effective in returning the provider to sustained compliance
 - whether there are any circumstances that may mitigate or aggravate the matter
 - whether it is in the public interest to take the action in the circumstances
 - the regulatory priorities of ASQA

- whether the matter is better addressed by another regulator or body
- the most appropriate response to ensure an effective deterrent against non-compliance (for the non-compliant party and more broadly).

Applying this approach means that ASQA will adopt a graduated approach to its uses of regulatory tools in response to non-compliance.

Figure 1. ASQA's graduated approach to its use of escalating regulatory tools to respond to non-compliance



3.5 Decision making

Decision makers are subject to requirements and limitations established by legislation and general administrative law when making regulatory decisions.

The types of evidence that we are required to consider varies depending on the decision being made. Our decision makers consider relevant information and evidence when making a decision in good faith, and provide written reasons for their decision. This enables a provider to understand the reasons, evidence and facts on which the decision maker has relied.

When making a decision that adversely affects a provider, our decision makers apply procedural fairness, the form of which depends on the type of decision we intend to make, for example:

- if we intend to make an adverse decision relating to a provider's registration, we will notify the provider of our intention to do so; the reasons, facts and evidence relied upon; and invite the provider to respond
- if we intend to issue an infringement notice, we may conduct an interview with the person or provider who purportedly engaged in the alleged conduct or otherwise request a response to the allegation
- if we intend to commence civil or criminal proceedings, we may invite the person or provider who purportedly engaged in the alleged conduct to participate in a formal record of interview.

An affected party may request reconsideration or external review of certain regulatory decisions when a decision is made that has adversely affected them (see [Avenues of review](#)).

4. Our tools to address non-compliance

4.1 Educate and encourage

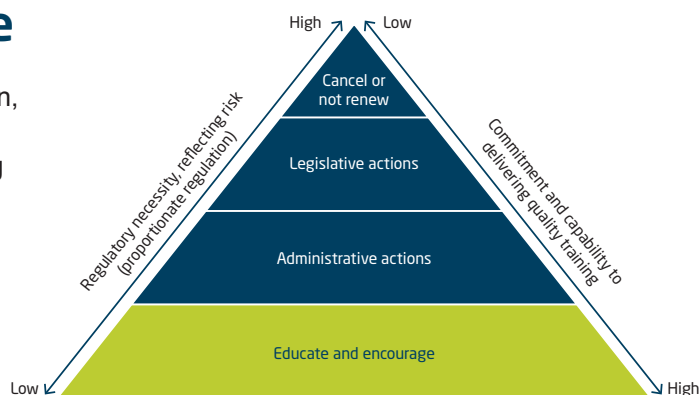
ASQA encourages compliance through information, education and advice available to all providers. For providers committed and capable of delivering quality outcomes, our education and engagement activities will reduce the need for regulatory intervention.

4.1.1 Information, education and advice

Our broad-based education and engagement functions have a sector-wide reach and are available to all providers. We use information as often as possible when it is likely to achieve the desired outcomes. Where we find patterns of non-compliance across multiple providers, we provide education and advice material for the sector that assists providers to understand the requirements, assure themselves that they managing these risks, and take action to address areas identified as not compliant.

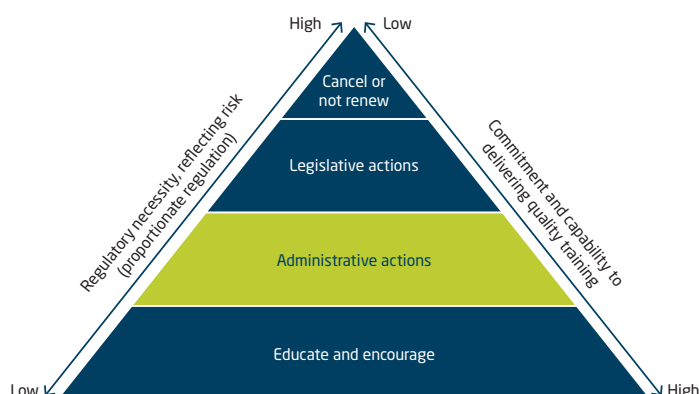
Irrespective of what regulatory tools we use when we identify provider non-compliance, we will clearly communicate this information in a way that supports the provider to understand what is required. While it is not our role to tell providers how to remedy non-compliance, we will explain the requirements of the relevant legislation and applicable standards, and why we consider the provider has fallen short. The provider also has the opportunity to ask us questions about our findings.

In some cases, non-compliance will be relatively minor and easily fixed. Where the provider does not have a history of non-compliance and demonstrates an understanding of the concern and a willingness to act, we may choose not to use enforcement powers but instead raise the matter with the provider with an expectation that they voluntarily address the issue. We may then follow this up through a subsequent monitoring activity to ensure the issue has been addressed.



4.2 Administrative actions

For providers committed to delivering quality training outcomes, but not understanding what is required or not always capable of doing so, ASQA uses regulatory tools to provide a more directed pathway requiring the provider to build capability to address the non-compliance and to continuously improve. In some circumstances where the nature and circumstances of the non-compliance are low risk, ASQA may decide to take administrative action by offering the provider an opportunity to enter into an undertaking to remedy the non-compliance or to direct the provider to make necessary changes to its systems and practices to ensure compliance. ASQA will not advise providers what changes are necessary, though we will explain the requirements of the relevant legislation and applicable standards, and why we consider the provider has fallen short.



4.2.1 Undertaking 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.

An undertaking to remedy will:

- describe the non-compliance and seek the provider's acknowledgement of this undertaking
- describe the actions the provider proposes to address the non-compliance
- set out the timeframes within which the agreed actions will be completed
- include a statement acknowledging ASQA may use other regulatory tools if there is non-compliance with the undertaking.

If a provider fails to comply with an undertaking to remedy, we may consider escalating our regulatory response.

Example (provided for illustrative purposes only)

Following a performance assessment, ASQA found that a provider was delivering non-compliant assessment in relation to one of three sampled qualifications. The provider acknowledged it was non-compliant, and that it needed to update the assessment tools for all units of competency in the qualification and identify if any students needed further training and assessment. ASQA agreed to enter into an undertaking to remedy with the provider for a period of three months while it undertook this rectification work.

4.2.2 Written directions

Written directions under the NVR Act may require a provider to:

- rectify a breach of a condition of registration, and retain evidence that this has occurred
- give written notification to its students of a particular matter set out in the direction.

Written directions are generally used when the non-compliance is not extensive. Written directions may also be used where matters reach the AAT and a provider remains non-compliant but has expressed willingness to return to compliance and address the non-compliances within a specified period.

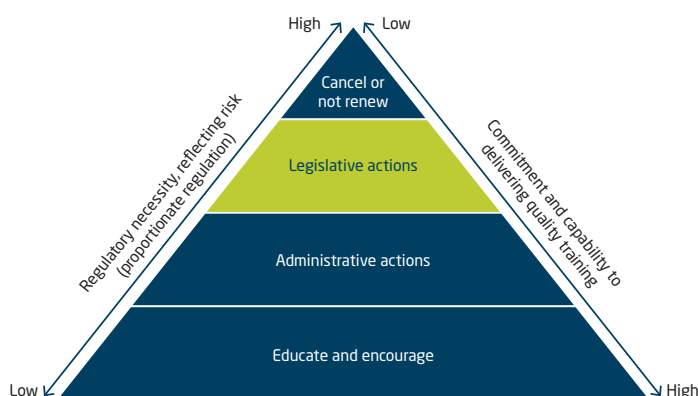
Example (provided for illustrative purposes only)

Following a performance assessment, ASQA found that a provider was delivering non-compliant assessment in relation to one of three sampled qualifications, in breach of the condition of registration to comply with the Standards for RTOs. ASQA agreed to enter into an undertaking to remedy with the provider for a period of three months. Following the period of the undertaking to remedy, the provider had demonstrated it had reassessed all affected students and updated its assessment tools for 10 out of 13 units of competency in the qualification; the provider had a plan to update the remaining assessment tools over the next month. In determining what action to take, ASQA considered the provider's commitment to rectifying the non-compliance and the risk to future students and issued a written direction to the provider to rectify the breach.

ASQA will monitor the provider's compliance with the written direction through future compliance monitoring activities. If a direction to rectify a breach of condition is not complied with, ASQA may consider applying other regulatory tools as appropriate.

4.3 Legislative actions

For providers not delivering quality training outcomes, where the nature of the non-compliance is moderate to significant, ASQA has available a broad range of regulatory tools to limit the risk of non-compliance until that non-compliance has been rectified, and to deter future non-compliance by the imposition of fines. These regulatory tools may be used by ASQA where lower-level options are not sufficient relative to the harm associated with the non-compliance, or where lower-level actions have not been successful.



4.3.1 Requirements to do, or not do, specified actions

Conditions on registration

In order to address unresolved non-compliance or to limit the risk of future non-compliance, ASQA may impose conditions on a provider's registration and/or vary any existing conditions.

Common conditions include requirements to:

- keep assessment records for a certain period of time
- not accept recognition of prior learning
- not add to the registration scope
- not accept enrolments beyond a set maximum cap
- monitor student attendance
- implement a plagiarism policy
- notify ASQA when commencing the delivery of training and assessment
- submit specific information to ASQA on a determined regular basis
- provide ASQA with specific data or information on a regular basis.

Example (provided for illustrative purposes only)

As part of a renewal of registration assessment activity, ASQA determined that a provider had widespread non-compliance issues and issued it with notice that its registration would not be renewed and an opportunity to respond. In its response, the provider showed that it took swift action by replacing the management team, engaging experts to overhaul its training and assessment tools and practices, and providing further training to its staff. After considering the response, ASQA decided to renew the provider's registration for a limited period and impose a number of conditions including requiring regular external validation of training and assessment and limiting the number of new enrolments it was allowed to accept.

Conditions are imposed for a specified period of time. However, providers can request that ASQA remove conditions prior to their nominal expiration if they believe they have rectified the issues or no longer present a risk (see [Vary or revoke conditions and suspensions](#)).

Suspensions

ASQA may suspend a provider's registration in some situations. During a period of suspension, ASQA can require a provider to either undertake or refrain from certain actions. In most cases, the effect of suspension is that while the suspension remains in place, the provider cannot enrol a student or commence a student who has not yet begun their course. The provider can continue to deliver training products to students who commenced their course before the suspension took effect.

Imposing these limitations on a provider during the period of suspension limits the risks created by the non-compliance while giving the provider an opportunity to rectify the non-compliance in a systemic way to ensure enduring changes are made to the way they operate and perform.

A provider can request ASQA lift a suspension once they have rectified the issues identified by ASQA as being the reason for the imposition of the suspension (see [Vary or revoke conditions and suspensions](#)).

Example (provided for illustrative purposes only)

Following a complaint by a member of the public, ASQA conducted a regulatory activity to examine whether a provider had access to sufficient work placements for students enrolled in its courses. ASQA determined, and the provider agreed, that it had not made sufficient arrangements for the students in one of its Certificate III courses. The provider indicated that it was quickly working towards remedying this deficiency. ASQA decided to suspend the provider's registration and, while suspended, not allow it to make new enrolments in that Certificate III course. After a number of months, the provider requested ASQA lift the suspension, producing evidence that it now had sufficient arrangements for its current and proposed enrolments. ASQA undertook a reassessment and agreed to lift the suspension.

Vary or revoke conditions and suspensions

When ASQA makes decisions to impose conditions or to suspend a provider's registration, we may identify issues that the provider needs to address before ASQA will be satisfied that it is appropriate for:

1. the condition(s) imposed to be varied or revoked
2. the suspension to be lifted.

When a provider is satisfied they have addressed these issues it can apply to ASQA for a reassessment of the condition(s) or suspension.

Following a request for reassessment, ASQA will review any available evidence, including that provided by the provider, and decide whether it is appropriate to vary or revoke the condition(s) or lift the suspension.

ASQA may also reassess the appropriateness of any condition(s) or suspension as part of the case management of a provider.

Enforceable undertakings

An enforceable undertaking is a legally binding agreement between ASQA and a provider obliging the provider to meet the undertaking. It is a means by which ASQA and a provider can reach a settlement, as well as a means by which providers may satisfy ASQA about their future compliance with the legislation.

Enforceable undertakings are valuable regulatory tools because they can provide, among other things:

- a tailored and flexible resolution of issues of concern to ASQA
- an opportunity for providers to be involved in the resolution of the matter
- a more cost-effective and timely outcome compared to litigation
- opportunities for sector-wide learning and continuous improvement from undertakings where such undertakings are published.

Whether ASQA will, in the exercise of its discretion, accept an enforceable undertaking will depend on the facts of the matter. ASQA may not, for example, accept an enforceable undertaking if the conduct constitutes a criminal offence and it is more appropriate for the courts to determine the appropriate sanction.

Unlike undertakings to remedy, an enforceable undertaking is enforceable by a court. Where the enforceable undertaking is breached, ASQA may apply for a court order from the Federal Court.

Example (note provided for illustrative purposes only)

A provider was referred for further assessment following identification of misleading statements on its website concerning guaranteed jobs upon completing its courses; a statement the provider had no basis to make. ASQA notified the provider that making misleading statements in relation to nationally accredited training was a serious breach of its obligations and could incur a civil or criminal penalty and sought a response. After considering the provider's response, ASQA agreed to enter an enforceable undertaking instead of taking further action. The undertaking required the provider to remove the statements from its website, make a statement on its website acknowledging the non-compliance and the actions they were taking in relation to affected students, and contact its affected students and offer them a refund. In considering its response, ASQA took into account the circumstances and seriousness of the breach, the need for deterrence, and ensuring that restorative measures were taken in relation to the affected students.

Injunctions

An injunction is an order granted by a court that restrains a person from engaging in conduct of a particular kind (restraining injunction) or requires a person to do an act or thing (performance injunction).

Injunctions are rarely sought but may be used where a provider refuses to comply with its obligations, past regulatory tools have not been sufficient to deter serious non-compliance or a provider's conduct presents an urgent risk to the public.

ASQA may seek an injunction, for example, to prevent a person from delivering training and assessment they are not authorised to deliver.

Example (note provided for illustrative purposes only)

Following its cancellation, a former provider refused to take down its website that was continuing to advertise its VET courses. ASQA notified the provider that it was a serious breach of the NVR Act to offer courses while not being registered to do so and sought a response. The provider again refused to take down its website. ASQA referred that matter for consideration of prosecution and sought an injunction from the Federal Court requiring the provider remove its website. The provider was forced to remove its website and pay ASQA's costs of seeking the injunction.

4.3.2 Shorten a period of registration

Where non-compliance by a provider has been significant ASQA may shorten the period for which the provider is registered as an RTO.

The period of registration defines the period for which the provider is approved to deliver VET. ASQA may shorten the period of registration where it does not have full confidence in the provider to remain compliant over an extended period of time. This, in effect, will mean that the provider is subject to a higher level of regulatory monitoring by limiting the time before they must reapply for registration as a training provider.

Example (note provided for illustrative purposes only)

Following a performance assessment, a provider was identified as not meeting the requirements of the Standards. This was the third time the provider had been identified by ASQA as falling short of its requirements within a five year period. Following an undertaking to remedy the provider was identified as compliant with most, but not all of its requirements. In addition to imposing conditions on the provider's registration, ASQA determined that it was appropriate to shorten the provider's registration so that a review of the provider's registration would occur with its renewal application within two years.

4.3.3 Fines or penalties

Infringement notice

An infringement notice recognises and penalises a breach of the legislation by imposing a fine. Infringement notices are issued as an alternative to prosecution on the basis the breach may not be serious enough to warrant prosecution and are viewed as a significant deterrence to individual providers and the sector more generally.

Infringement notices may, for example, be issued in response to a failure to lodge an annual declaration of compliance, providers issuing qualifications for courses not on their scope of registration and providers not complying with marketing requirements.

Example (provided for illustrative purposes only)

During a routine monitoring activity, ASQA detected that a provider was delivering qualifications outside its scope of registration in breach of s96 of the NVR Act to a number of students. After notifying the provider and considering its submission, ASQA decided to issue infringement notices in relation to the breaches, which carried significant penalties, and required rectification of the non-compliance. The breaches carried significant penalties. In making this decision, ASQA considered the conduct of the provider and the circumstances which included that the student had received the correct training and the provider had similar qualifications on scope.

The amount of the penalty attached to an infringement notice varies depending on the conduct and relevant legislative provision breached.

Infringement notices are required to be paid within 28 days. If a person pays an infringement notice penalty, their liability in respect of the offence or contravention is discharged and no further proceedings can be taken against the person for the alleged offence or contravention.

If an infringement notice is not paid, ASQA may seek to commence civil or criminal proceedings to prosecute the breach.

For further information about infringements, refer to the [ASQA website](#).

Civil penalties

There are several civil penalty provisions in the NVR Act. Civil penalty provisions may be enforced through infringement notices where possible and available, but some circumstances may lead ASQA to commence civil proceedings to seek a civil penalty order.

In the past, ASQA has rarely needed to pursue civil penalty orders in respect of providers but rather have sought these in the case of non-regulated parties who:

- make false claims about holding registration and offer to provide or providing VET courses
- issue documents that purport to be genuine VET statements of attainment or genuine VET qualifications
- use and display bogus VET qualifications
- make false representations relating to VET courses.

ASQA does not commence court proceedings unless there are reasonable grounds for doing so, in line with our [model litigant obligations](#).

If a court determines that a person has contravened a civil penalty provision, the court can order the person pay a fine up to the maximum civil penalty amount specified in the legislation. The court may also order a person to pay ASQA's costs for the proceedings.

Example (provided for illustrative purposes only)

As part of regulatory activity, ASQA determined that a provider was issuing trade qualifications without providing its students adequate assessment and had received complaints internally from its quality assurance manager that this was a breach of its obligations. Apart from sanctioning the provider's registration, ASQA conducted an investigation and obtained statements from the provider's staff and students. Given the seriousness of the failure, ASQA decided to seek civil penalties against the provider in the Federal Court. The provider was required to pay a large fine and ASQA's court costs.

4.4 Cancel or not renew

Where providers are not committed and/or not capable of delivering quality training outcomes, and the nature and seriousness of the non-compliance is significant, ASQA may decide to remove the provider from the sector.

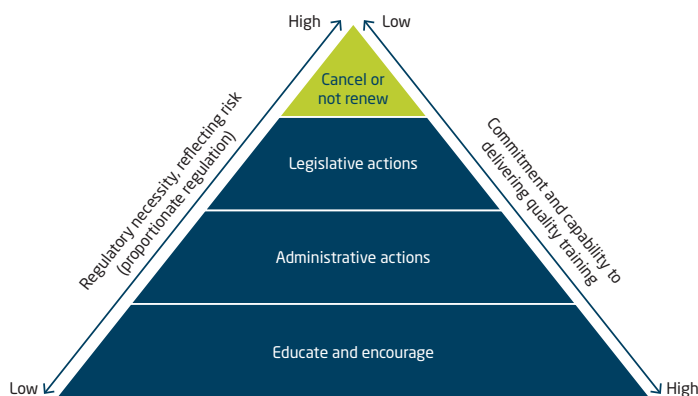
4.4.1 Cancellation of registration

Where non-compliance is significant or ongoing, and ASQA does not have confidence in the commitment or capability of the provider to rectify the non-compliance, we may:

- cancel part of a providers registration (also known as removing part of a providers scope of registration)
- cancel a providers registration in full.

The scope of registration defines the services, training package qualifications or units of competency competencies that a provider is approved to deliver. ASQA may amend the scope of registration (to, for example, remove a training product from the scope) where non-compliance relates to that training product in particular. The provider can no longer deliver the training product that has been removed (cancelled) from its scope of registration.

The effect of cancellation is that the provider can no longer offer or deliver the training products to students, and are removed from the register.



Example (provided for illustrative purposes only)

After receiving intelligence from a state government agency that a provider was administering poor training and assessment, ASQA conducted a regulatory activity of the provider. As a part of the regulatory activity, ASQA determined that the provider was providing training and assessment without the required resources and that it did not address many of the skills and competencies required by the training package. Given the risk posed to future students and the reputation of the sector, ASQA issued a notice of intention to cancel the provider's registration and sought a response. The provider refused to provide a response to ASQA's findings. ASQA decided to cancel the provider's registration.

4.4.2 Criminal proceedings

Criminal prosecutions are generally referred to the Commonwealth Director of Public Prosecutions (CDPP) and have, in the past, been initiated where providers or others are involved in producing and providing fraudulent information to ASQA in an attempt to demonstrate compliance with the standards or where people have falsely held themselves out as being registered providers. Examples include proceedings in relation to marketing, and issuing false statements of attainment.

If criminal proceedings are brought and a person is found guilty, a court can impose a penalty up to the maximum penalty specified in the legislation and/or record a criminal conviction.

Example (provided for illustrative purposes only)

As a part of an assessment of an initial application for registration, ASQA became concerned that the applicant had supplied fraudulent documents concerning trainer qualifications. ASQA conducted a formal investigation and the applicant's CEO admitted they had supplied false documents. ASQA referred the matter for prosecution and the applicant's CEO was convicted of providing false records to ASQA.

5. Avenues of review

When ASQA makes a decision, there are a number of options available to providers in the event they are not satisfied with the decision or they think the decision is no longer appropriate.

5.1 Review of a decision by ASQA

Certain actions that ASQA takes in the event of non-compliance are specified as reviewable decisions under the legislation. This means that a person affected by a reviewable decision can apply to ASQA for ASQA to review the decision. The review decision is required to be made by a person different from the original decision maker.

Upon application by an affected person, ASQA can review all reviewable decisions made under the legislation when that decision was made by a delegate. If the reviewable decision was not made by a delegate, and was made by the CEO, ASQA cannot review the decision.

When ASQA reviews a decision, the objective of the review is to consider the evidence available to the original decision maker **and any new evidence** that is now available to the decision maker, and determine whether the decision is the correct and preferable decision.

5.2 Merits review by the AAT

When ASQA has made a reconsideration decision under the NVR Act or a reviewable decision under the ESOS Act, a provider can appeal that decision to the AAT. The AAT will conduct a merits review of the application to determine whether the decision is the correct and preferable decision.

In making its decision, the AAT is not restricted to the evidence that was available to ASQA at the time it made its decision and will consider all evidence available to it.

ASQA's role in this process is to use our best endeavours to assist the AAT to make its decision in relation to the proceedings.

In all AAT proceedings, ASQA will act in line with our [model litigant obligations](#).

5.3 Other avenues of review

In certain circumstances, providers may also seek judicial review of a decision through the Federal Court.

The Commonwealth Ombudsman can investigate the administrative actions of Commonwealth Government officials or agencies, including those of ASQA. The Commonwealth Ombudsman will not make a fresh decision, but can consider the way the decision is made and make recommendations on how the decision or process could be enhanced.

6. Publication of decisions

ASQA is required by the legislation to publish many of the decisions we make on the National Register or CRICOS.

The legislation also gives ASQA the discretion to publish some decisions on the National Register, in circumstances where we are not otherwise required to publish that decision, including when we have entered into an enforceable undertaking.

Additionally, ASQA is authorised by the NVR Act to disclose information to the public if we are satisfied that the release of the information would:

- reasonably inform a person's choice to enrol as a VET student with a provider
- encourage improvement in the quality of VET services provided
- encourage compliance with the VET quality framework.

ASQA discloses such information to the public by publishing it on our website.

Where ASQA has the discretion to disclose information it will release only such information as is reasonably necessary to achieve the purpose behind releasing the information.

See [Annexure A](#) for further information on decisions published by ASQA.

7. Continuous improvement of regulatory practices

ASQA undertakes a range of activities to ensure we continuously improve our regulatory practices.

ASQA welcomes all feedback, positive or negative, this can be provided to ASQA by email feedback@asqa.gov.au.

Where a provider is dissatisfied, or feels they have been treated unfairly, they can lodge a complaint about ASQA. This can be completed by completing and submitting the Complaint about ASQA form. Complaints about ASQA are dealt with in accordance with the requirements of the Standards for VET Regulators 2015 by a dedicated team that is independent of the assessment and compliance teams.

ASQA reviews all feedback and complaints as part of its commitment to continuous improvement and being a best practice regulator.

8. Transparency and performance

As a statutory agency, ASQA is accountable for its actions and is committed to transparency in decision-making. ASQA undertakes an annual assessment against key performance indicators and also publishes the results of this assessment.

We also publish information on:

- the administration of functions
- de-identified information about the outcomes of monitoring, compliance and enforcement actions including past compliance monitoring activities
- priorities for the coming year
- decisions made in relation to specific providers.

This information can be found in:

- [ASQA's Annual Reports](#)
- [ASQA decisions table on ASQA's website](#)
- [Enforceable undertakings published on ASQA's website](#)
- [Strategic review reports](#)
- [ASQA's Regulatory Strategy](#).

9. Engagement with other bodies

ASQA acknowledges that we are part of a system with many influences on quality. Accordingly, we work collaboratively with other regulators and stakeholders, who share responsibility for quality, to regulate the VET and ELICOS sector including:

- Department of Education, Skills and Employment (DESE)
- Department of Home Affairs
- Victorian Registration and Qualifications Authority (VRQA)
- Training Accreditation Council WA (TACWA)
- Tertiary Education Quality and Standards Agency (TEQSA)
- VET Student Loans Ombudsman and Overseas Student Ombudsman in the Office of the Commonwealth Ombudsman
- Commonwealth, state and territory training funding bodies
- other industry regulators.

On some matters, we may refer issues of concern or non-compliance if they form part of conduct that other regulators may have an interest in, or otherwise work together to respond to non-compliance. Information is also shared between ASQA and these agencies, as authorised by legislation.

Annexure A - table of legislative provisions and approach to publications

Power	Act	Section	Published ¹	Referred to in section
Conduct an audit	NVR Act	35(1)	No	Glossary
Written directions	NVR Act	35A 36(2)(b)	Sometimes Yes	4.2.2
Power to issue infringement notices	NVR Act	148, 149	Sometimes	4.3.3
	ESOS Act	106	No	
Sections infringement notices can be issued in relation to	NVR Act	61A, 94, 96, 98, 100, 111(1), 111(2), 112, 115, 117, 119, 121, 123, 123B, 125, 127, 129	No	4.3.3
	ESOS Act	19(5), 20(6), 21(5), 21A(1A), 46E, 47F, 47G	No	
Conditions on registration	NVR Act	29(1)	Yes	4.3.1
	ESOS Act	10B, 83(3)(a)	No Yes	
Suspensions	NVR Act	36(2)(e), 38	Yes	4.3.1
	ESOS Act	83(3)(b)	Yes	
Enforceable undertakings	NVR Act	146, 147	Sometimes	4.3.1
	ESOS Act	110A	No	
Reassessment	NVR Act	41	Yes	4.3.1
Shorten period of registration	NVR Act	36(2)(c)	Yes	4.3.2
Amendment scope of registration	NVR Act	36(2)(d)	Yes	4.4.1
Cancellation of registration	NVR Act	36(2)(f), 39	Yes	4.4.1
	ESOS Act	83(3)(c)	Yes	
Injunctions	NVR Act	150, 151	Sometimes	4.3.1
Power to impose civil penalties	NVR Act	137	Sometimes	4.3.3
Civil penalty provisions	NVR Act	60, 61, 61A, 94, 96, 98, 100, 102, 104, 106, 108, 110, 111, 112, 115, 117, 119, 121, 123, 123B, 125, 127, 129, 130, 131, 211(4)	Sometimes	4.3.3

¹ Subject to change.

Power	Act	Section	Published ¹	Referred to in section
Criminal offence provisions	NVR Act	64, 71(3), 79(2), 93, 95, 97, 99, 101, 103, 105, 107, 109, 114, 116, 118, 120, 122, 123A, 124, 126, 128, 140(5), 211(3)	Sometimes	4.4.2
	ESOS Act	8, 19(5), 20(6), 21(5), 21A(1A), 32, 46E, 47F, 47G, 107, 108, 109(5), 120, 121, 122, 122A, 134, 135, 136	Sometimes	
ASQA review of decisions	NVR Act	201	Yes	5.1
	ESOS Act	169AE	Yes	
Provide assistance to the AAT	AAT Act	33(1AA)	No	5.2
Publication of decisions on the National Register	NVR Act	216	No	6
Release of information to the public	NVR Act	209	No	6
Publication of decisions on CRICOS	ESOS Act	14A	No	6
Information sharing with other government bodies	NVR Act	205A	No	9
	ESOS Act	175(1)	No	9