

Regulatory Risk Framework



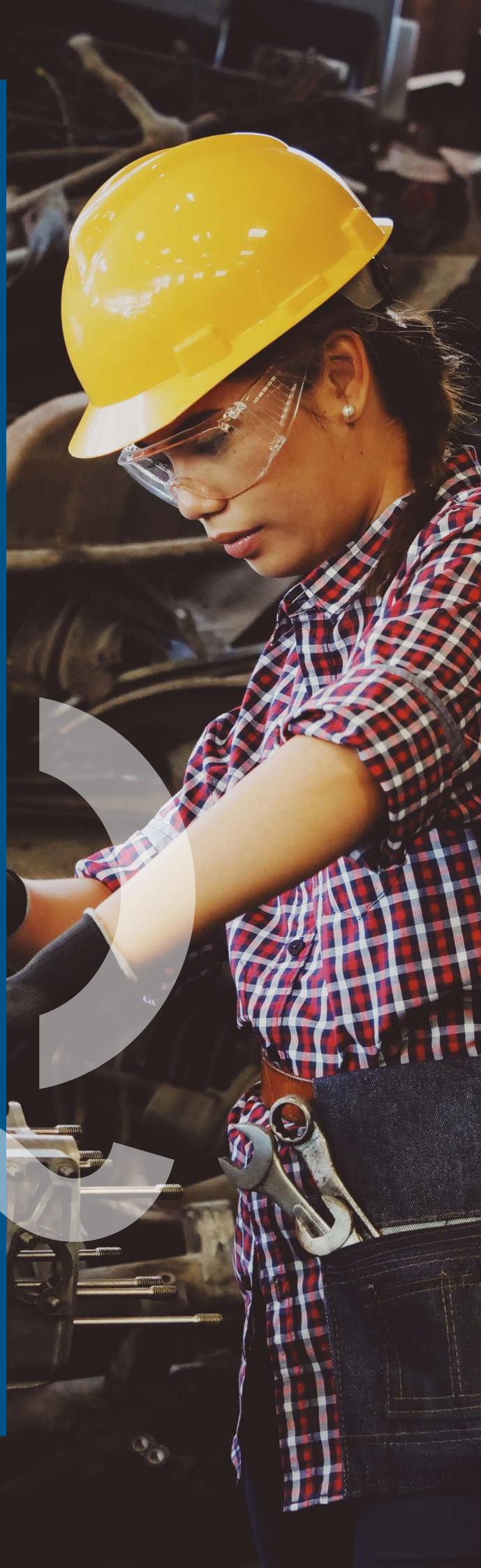
**Effective and integrated
management of risk**

Version 1
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Australian Government
Australian Skills Quality Authority

ASQA



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Introduction

Purpose of this Regulatory Risk Framework

This document sets out the Regulatory Risk Framework for ASQA's management of sector and provider vocational education and training (VET) risk.

Effective, integrated management of risk is critical to the successful delivery of ASQA's strategic objective to deliver quality training outcomes for students. Increasingly, regulators are expected to deliver better outcomes, while minimising the regulatory burden on regulated entities. This means that ASQA must also operate within a framework that enables it to maximise effectiveness and efficiency.

This framework does not eliminate the risk of poor regulatory outcomes. Its purpose is to use:

- a risk-based approach to prioritise effort in assisting compliance, and identifying and taking enforcement action in response to instances of non-compliance
- an outcomes-based approach to assess both the efficiency and effectiveness of regulatory actions and outcomes respectively and to continuously improve.

This framework forms part of our broader Risk Management Framework. It has been developed with reference to the Department of Finance *Commonwealth Risk Management Policy – Guidance*, 2016¹, and also acknowledges material drawn from the NSW Department of Finance, Services and Innovation *NSW Guidance for regulators to implement outcomes and risk-based regulation*.²

¹ Department of Finance *Implementing the Commonwealth Risk Management Policy – Guidance*, 2016 <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-commonwealth-risk-management-policy-rmg-211>, last accessed 05.02.21

² Department of Finance, Services and Innovation Department of Finance, www.finance.nsw.gov.au/better-regulation, 2016. [http://productivity.nsw.gov.au/sites/default/files/2018-05/Guidance for regulators to implement outcomes and risk-based regulation-October 2016.pdf](http://productivity.nsw.gov.au/sites/default/files/2018-05/Guidance%20for%20regulators%20to%20implement%20outcomes%20and%20risk-based%20regulation-October%202016.pdf) Last accessed 05.02.21

A. Strategic and organisational context

1 Regulatory purpose

On 9 August 2019, the Council of Australian Governments (COAG) endorsed the Skills Ministers' Vision for VET, as one that is focussed on maintaining a responsive, dynamic and trusted VET sector that:

- delivers an excellent standard of education and training
- supports strong economic and social outcomes
- supports millions of Australians to obtain the skills they need to participate and prosper in our modern economy.

To contribute to the achievement of the vision and align with government's intent for VET, ASQA's purpose is **to ensure quality VET, so that students, employers, governments and the community can have confidence in the integrity of national qualifications issued by training providers.**³

To achieve this, we are focused on embedding a regulatory approach that is recognised as best practice, underpinned by an operating model that is characterised by:

- effective use of data, information and gathered intelligence
- integrated, contemporary approaches across ASQA's regulatory processes, including in relation to:
 - applications
 - performance assessment (audit)

- compliance
- education,
- and internal review, and
- the achievement of outcomes in the sector as a result of our regulatory approach. In particular, improving culture and the capability of providers to self-assure the outcomes they are achieving for students and employers.

The success of this approach will enable our stakeholders to recognise and value our contribution to quality VET and lead to better informed consumers.

This applies across our regulation of:

- providers that deliver VET qualifications and courses and providers that issue qualifications or statements of attainment for VET courses (i.e. registered training organisations [RTOs])
- providers that deliver VET courses to overseas students
- accredited VET courses
- certain providers that deliver English Language Intensive Courses to Overseas Students (ELICOS).

³ Noting that ASQA's purpose is currently articulated in our Annual Report as providing "nationally consistent, risk-based regulation of VET that contributes to an informed, quality VET sector that meets Australia's needs", recent refinements to the agency's mission and purpose statements have formed part of ASQA's overarching strategic approach, and reflect the organisation's evolving role, purpose, mission and values as the national regulator. These changes have been communicated to the Minister and subsequent changes to ASQA's PBS outcome statement are also under consideration.



(2) Legislative and regulatory practice context

ASQA is subject to the Public Governance, Performance and Accountability Act 2013 (PGPA Act) along with delegated legislation such as the Public Governance, Performance and Accountability Rule 2014, the Commonwealth Procurement Rules and the Commonwealth Risk Management Policy.

The Australian Government seeks that all regulators are models of best practice regulator performance, capability and culture. Regulators should be committed to ensuring Commonwealth regulation is implemented and administered with the least regulatory burden while maintaining essential safeguards. These two goals are complementary in providing for balanced, fair and proportionate regulatory outcomes. This expectation is articulated in the Minister's Statement of Expectation of ASQA, 2021⁴ and the Commonwealth Regulator Performance Framework (2014).⁵

The Standards for VET Regulators 2015⁶, made under section 189 of the *National Vocational Education and Training Act 2011* (the NVR Act), also require us to implement a risk-based approach to regulation in order to reduce regulatory burden for high-performing providers and focus regulatory attention on those providers considered higher risk.

The recommendations of the Rapid Review of ASQA's Regulatory Practices and Processes, 2020⁷ (Rapid Review) aim to shift, over time, our regulatory approach from prescriptive and process-based compliance to a broader focus on self-assurance by training providers and excellence in training outcomes. This will promote and support providers to continuously improve, without undue regulatory intervention.

4 <https://www.asqa.gov.au/sites/default/files/2020-12/Statement%20of%20Expectations.pdf>

5 https://pmc.gov.au/sites/default/files/publications/Regulator_Performance_Framework.pdf

6 <https://www.legislation.gov.au/Details/F2017C00444>

7 Rapid Review of ASQA's Regulatory Practices and Processes, 2020 MPC Consulting <https://www.asqa.gov.au/working-together/rapid-review-recommendations>



(3) Commitment to risk management

Our Risk Management Policy Statement⁸ defines our commitment to effective risk management in relation to our strategic deliverables, management approaches and day-to-day operations. We want to ensure that risk management becomes integral to regulatory best practice including how we:

- innovate in key areas such as self-assurance
- engage and partner with our stakeholders
- meet our obligations to our stakeholders and drive continuous improvement within ASQA and across the sector.

We acknowledge that, through our 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.

We accept that, despite best efforts and robust risk management practices, things will go wrong. We are committed to a positive risk culture based on the premise that we will review the reasons for failure, and use our learnings to further strengthen our systems, processes and controls, reducing the likelihood of reoccurrence. Achieving this positive risk culture will rely on the individual and collective contribution of everyone working in ASQA, as well as relationships with stakeholders that are based on mutual respect and learning.

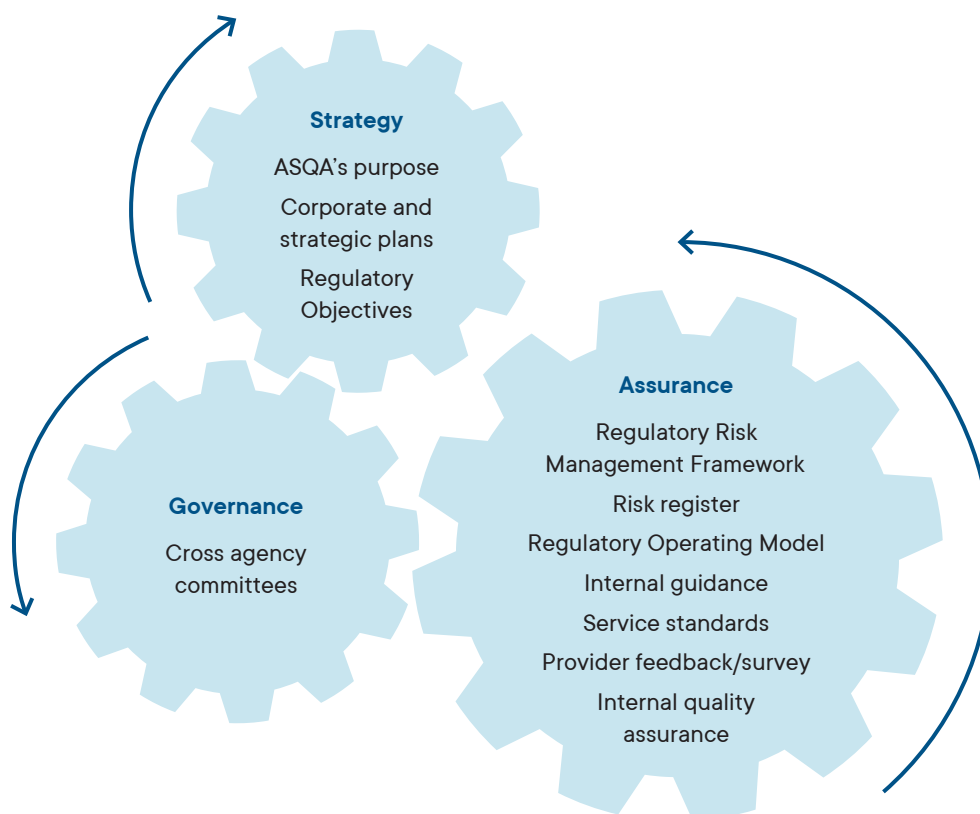
⁸ https://www.asqa.gov.au/sites/default/files/2021-01/ASQA_Risk_Management_Policy_Statement.pdf

4 Planning and governance

The Regulatory Risk Framework is embedded in our annual corporate planning process, and accountabilities to ensure delivery is developed and implemented through this process. This framework is operationalised through our Regulatory Operating Model and our published regulatory priorities⁹. It is the primary risk treatment for our Regulatory Risk Register addressing VET sector and provider risk. Our Regulatory Risk Framework is supported by our internal governance structure.

Figure 1, (below) shows elements of the Regulatory Risk Framework as they form part of our broader strategy, governance and assurance arrangements.

Figure 1. Integrated Elements of ASQA's Regulatory Risk Framework



⁹ See ASQAs 2020-11 Regulatory Priorities <https://www.asqa.gov.au/about/how-we-regulate/regulatory-strategy>



(5) Implementation benefits

The benefits to ASQA and our stakeholders will derive from the successful implementation of our risk management program are many and include:

- increased likelihood of achieving objectives
- encouraged proactive management
- awareness of the need to identify and treat risk throughout ASQA
- improved identification of opportunities and threats
- compliance with relevant legal and regulatory requirements
- improved mandatory and voluntary reporting

- improved governance
- improved stakeholder confidence and trust
- establishment of a reliable basis for decision making and planning
- improved controls
- effective allocation and use of resources for risk treatment.

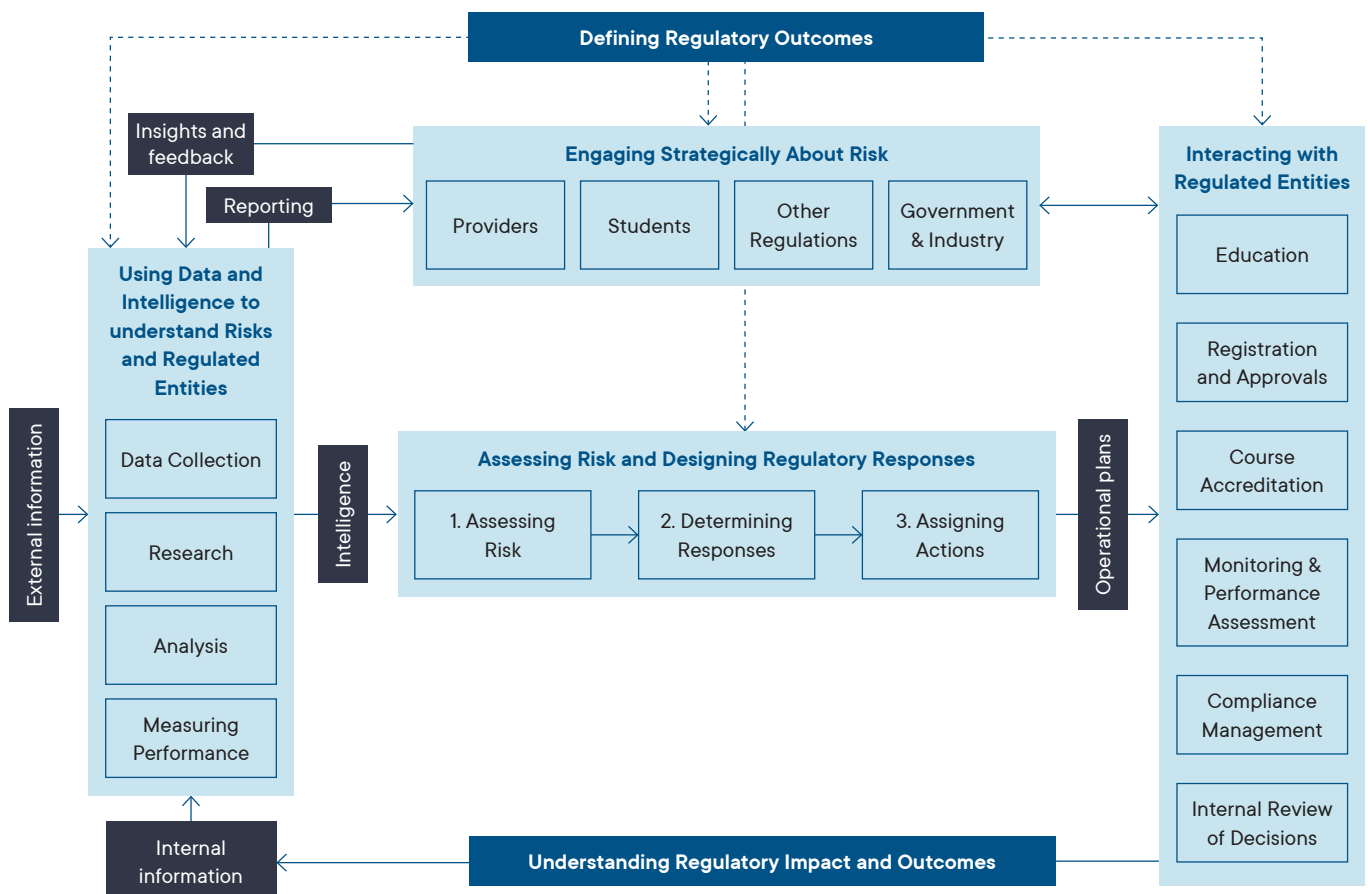
These benefits will form part of the overall benefits management approach for this program of work. Planning, measuring and tracking against this work to report on the efficacy of our efforts as part of our commitment to continuous improvement, transparency and accountability, will be undertaken from April 2021.

B. ASQA's Regulatory Operating Model

1 Overview

This framework is activated through ASQA's Regulatory Operating Model. We have aligned our operating model (Figure 2) with best practice and improvements consistent with the recommendations of the Rapid Review. This is to ensure that we achieve our strategic objective and manage risks to confidence in the integrity of national qualifications issued by training providers.

Figure 2: ASQA Regulatory Operating Model





Key characteristics of our Regulatory Operating Model are:

- acquisition, management and use of data and data methods as a key input to regulatory operations to strengthen analysis and the use of regulatory intelligence
- regulatory design activities that define a response to specific regulatory risk, making greater use of behavioural insights that are co-ordinated and makes the best use of regulatory tools across engagement, communication and regulatory operational activities
- engaging strategically about risks – communication and engagement as a key tool in the regulator toolkit, sharing information with stakeholders to better understand risk, and raising awareness and providing clear feedback and support for providers to self-assure and continuously improve
- through all our foundational risk treatments – education, registration and approvals, course accreditation, monitoring and performance assessment (audit), compliance management and internal review of decisions – we seek to apply risk-based principles, and proportionate, fit for purpose responses, and
- use of insights and outcomes from regulatory operations to report on provider performance and to understand the impact and effectiveness of regulatory activities and continuously improve regulatory design.

Our regulatory approach is underpinned by five best-practice principles:

- promoting a culture and system of self-assurance and continuous quality improvement – as a core component of provider operations
- risk-based and proportionate regulation – focusing on key risks to the integrity of qualifications and achievement of quality outcomes
- fairness and impartiality – making evidence-based decisions and applying procedural fairness when adverse decisions are made
- maintaining positive relationships with providers – engaging with providers and stakeholders in a responsive and educative way
- quality VET – regulating in a way that supports the objective of quality VET (noting that the Department of Education, Skills and Employment (DESE) is leading work to develop a shared understanding of what 'quality' and 'outcomes' look like, and how these should be reflected in outcomes-focused standards and performance assessed by ASQA).

These Regulatory Practice Principles are further detailed in Appendix.

② Defining regulatory outcomes

To contribute to the achievement of the Australian Government's vision for quality VET, ASQA's strategic objective is, *through our regulation and partnership with others, to ensure quality VET so that students, employers, the community and governments have confidence in the integrity of national qualifications issued by training providers.*

In defining our regulatory outcomes, we demonstrate that we understand our legislative mandate, core purpose to regulated entities, regulation beneficiaries and the strategic context. This includes the role of others in the broader VET architecture and the expectations of government for quality VET.

The regulatory outcomes we seek to achieve are defined in our Corporate Plan.¹⁰

③ Engaging strategically about risk

Effective stakeholder engagement is fundamental in achieving our strategic purpose. We undertake communication and engagement with providers and other stakeholders to:

- understand environmental risks and their context
- share information with stakeholders and engage to better understand issues and raise awareness of current and emerging risk
- co-design information and tools to support continuous improvement
- provide clear feedback and support for providers to self-assure
- communicate regulatory expectations
- consult on reforms to regulatory practices.

ASQA has established forums to support strategic engagement with stakeholders and providers.

The Provider Roundtable (the Roundtable) is an advisory group with the purpose of providing a consultative forum and feedback mechanism to ASQA on regulatory issues of mutual interest to provider peak bodies and ASQA. The Roundtable meets formally three times a year and is also convened as required between meetings.

The Stakeholder Liaison Group (SLG) has been established to engage and consult with providers (including VET consultants) on our approach to engagement and education, and to identify and respond to key issues facing providers.

We regularly engage with DESE to identify environmental risks and to ensure our regulatory approaches support the intent of our regulatory practices as set out in the Heads of Agreement for Skills Reform,¹¹ published in August 2020, including supporting reforms to strengthen quality standards and promote and support provider capacity and capability for continuous improvement.

¹⁰ <https://www.asqa.gov.au/about/reporting-and-accountability/corporate-plan>

¹¹ <https://pmc.gov.au/sites/default/files/publications/heads-of-agreement-skills-reform.pdf>

We engage strategically with State and Territory entities and training authorities on regulatory priorities and to share information about current and emerging risk. This is to enhance behaviour change and support the building of a culture and capability for provider self-assurance, and to inform our compliance monitoring activities for providers operating in their jurisdiction.

ASQA also has regular engagement with the Tertiary Education Quality and Standards Agency (TEQSA) particularly in relation to co-regulated providers, other VET Regulators (Victorian Regulations and Qualifications Authority (VRQA) and Training Accreditation Council Western Australia [TAC WA]), and a range of government agencies with roles in the VET Quality Architecture to support regulatory best practice. This includes the National Skills Commissioner, Education Regulators and Immigration Committee (ERIC), Commonwealth Ombudsman, Tuition Protection Service, VSL Compliance Program (under DESE), industry bodies and skills services organisations.

4 Using data and intelligence to understand risks and regulated entities

Data and intelligence provides a basis from which we can:

- **assess risks** to prioritise our effort in assisting compliance, and identify and enforce instances of non-compliance
- **assess outcomes** to understand both the efficiency and effectiveness of regulatory actions and outcomes respectively and to continuously improve our regulatory activities.

We draw on data and intelligence from many sources and uses this data to understand risks to the quality of VET. Our regulatory program and resource allocation is planned and prioritised on the basis of understanding:

- **Provider risk** which is the behaviour of some providers that can present a risk to the quality of student outcomes and the reputation of the VET sector
- **Systemic risks** which are risks that are likely to affect a significant proportion of providers or relate to a particular cohort of providers across the VET sector or specific industry sector.

The VET sector spans every industry in Australia and comprises thousands of training products. Changing economic circumstances and employer expectations, as well as changes within the VET sector, mean that the level of risk is not static.

In a rapidly changing sector we have a critical role in early identification and response to emerging risks. These may arise due to changes in environmental settings such as the COVID-19 pandemic, market responses, policy or regulatory settings and any number of other factors including technical change, new business models for industry participants, and changes in consumer preferences or behaviours.

Emerging risks¹² are often complex. While, entities other than ASQA may have jurisdiction to manage the risk, their drivers relative to historical and current risks are not well understood, their timing and duration is relatively uncertain, industry exposure is unknown, and it is difficult to determine effective forward indicators.

¹² Cite reference guidance for regulators NSWG https://www.productivity.nsw.gov.au/sites/default/files/2018-05/Guidance_for_regulators_to_implement_outcomes_and_risk-based_regulation-October_2016.pdf

Given these differences to historical and current risks, we work in collaboration with the sector and other stakeholders to identify emerging risks through:

- regular and coordinated scanning and brainstorming in collaboration with other regulatory agencies, with clear accountability assigned
- qualitative, rather than quantitative, analysis given the lack of data and experience
- discussion with technical and subject matter experts, and
- provider and stakeholder engagement forums (as above) to obtain a variety of views for analysis.

In determining current risk response priorities, we use internal regulatory data and feedback from key stakeholders to identify:

- providers for monitoring activity
- training products with a degree of risk that warrants closer scrutiny
- the clauses in the *Standards for Registered Training*

Organisations (RTOs) 2015 (the Standards) where providers are most likely to be at risk of non-compliance and impact on quality outcomes

- continuing work from previous strategic reviews, and
- support for continuous improvement of our regulatory approach.

In determining risk response priorities, we use a range of indicators and intelligence to identify the greatest risks to Australia's VET sector, drawing inputs from a range of sources including:

- VET and provider data and regulatory intelligence
- Australian Government priorities
- outcomes from engagement with key stakeholders and providers
- evidence of community concern.

Mechanisms for identifying risk:

- environmental scanning for key risks and issues
- strategic review of priority areas for regulatory focus
- provider enrolments and completions data
- issues raised by consumers, employers or the community about a VET provider or other entity
- referrals, data and information from other government bodies and regulators
- annual declaration of compliance, 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
- engagement with the VET sector (including through the Roundtable and SLG meetings)
- engagement with industry / employer end users of training for occupational licensing and employee skills.

5 Assessing risks and designing regulatory responses

We apply risk assessment when we decide:

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

When we are deciding what action to take, our response to risk, relevant to the decision being made, will be based on:

- risk assessment** – including the actual or potential harm to students arising from not receiving quality training and assessment in line with requirements under the legislation (consequence) and the level of confidence in terms of the likelihood that the provider will deliver quality training and assessment in line with requirements under the legislation (likelihood). This is set out in Figure 3 below.
- determining the most effective response** to specific regulatory risk, having regard to the particular circumstances and purpose of the action to be taken, and

making the best use of a coordinated response across engagement, communication and regulatory operational activities including by using a graduated approach to the use of escalating regulatory tools and considering broader behavioural insights to support change

- assigning the resources** to addressing the risk at a program planning level considering the regulatory program as a whole. Resources will be allocated to initiatives, regulated entities, and behaviours that represent the greatest risk to regulatory outcomes. However, we will also assign resources to routinely interact with a sample of providers for which ASQA has not identified risk. This is important to ensure we interact with a range of providers and has sufficient oversight to support public confidence in the performance of the sector as a whole.

Where we invest in a sector wide regulatory initiative, we develop a program logic or rationale targeted at the underlying risk drivers. This assists us to develop internal processes, quality controls and other operational procedures, identify changes as outcomes are monitored, and undertake post-implementation evaluations of regulatory initiatives, to identify strengths and limitations in designing and implementing initiatives.

Figure 3: Quality Assessment Risk Matrix

| | | Actual or potential harm to students | | | |
|---------------------------------|----------------|--|----------|--------|--------|
| | | By virtue of not receiving quality assessment and training in line with requirements under the legislation (consequence) | | | |
| Level of confidence in provider | | MINOR | MODERATE | MAJOR | SEVERE |
| | ALMOST CERTAIN | Medium | High | Severe | Severe |
| | PROBABLE | Medium | Medium | High | Severe |
| | UNCERTAIN | Low | Medium | Medium | High |
| | UNLIKELY | Low | Low | Medium | Medium |

6 Interacting with regulated entities

We interact with providers in a range of ways to enable them to respond to systemic issues relating to the quality of vocational education and training and monitor individual provider compliance with legislation, including the VET Quality Framework and the ESOS framework.

PRE-MARKET INTERACTION

6.1 Initial applications

Applications for initial RTO and CRICOS registration undergo risk-based assessment to ensure the applicant organisation can comply with, and remain compliant with, required standards and legislative obligations. This includes ensuring that registration is only granted to applicants who are adequately resourced to provide quality training and assessment and meet the Fit and Proper Person requirements.

During the application assessment process, we consider information in documents submitted by the applicant and may, where necessary, undertake site visits, or make contact via phone calls, emails or virtual meetings.

Our risk based treatment of new applicants in most instances is to approve an initial registration period of two years. This initial registration period allows us to assess and manage risks to the sector and provide assurance that new registered providers are meeting requirements.

We have published guidance to support applicants considering registration as a VET and/or international education training provider to consider if they have the resources and skills needed to support initial registration. This includes self-assessment tools, a financial viability risk assessment tool and an application guide.

Processing of applications also happens for RTOs that are already in the market but seeking approval for a change of scope or applying for reregistration as an RTO

6.2 Course accreditation

We grant accreditation to courses that may be delivered by RTOs. Accreditation is formal confirmation that the course:

- is nationally recognised and meets quality assurance requirements
- meets an established industry, enterprise, educational, legislative or community need
- provides appropriate competency and learning outcomes and a satisfactory basis for assessment
- is aligned appropriately to the AQF where it leads to a VET qualification.

For more information on our course accreditation see <https://www.asqa.gov.au/course-accreditation>.

POST-MARKET INTERACTION

6.3 Education and information

ASQA provides information and guidance to support providers to better understand and meet their regulatory obligations. Communication and engagement is a key tool in our regulatory operating model. This means sharing information with stakeholders to communicate expectations, better understand risk, raise awareness, and provide support for providers to self-assure and continuously improve. We use information as often as possible when it is likely to achieve the desired outcomes. We educate and inform in the following ways:

- Actively promote and support a provider culture and systems for self-assurance and continuous improvement. Where we find patterns of non-compliance across multiple providers, we focus our guidance to assist the sector to understand the risk and legislative requirements. This supports self-assurance by providers to identify, and address early, any deficiencies in their compliance to limit or prevent harm to students or the sector.

- When we interact with providers, we use multiple levers to support education and behaviour change, including partnering with stakeholders, funders and other regulators on regulatory priorities.
- When we identify a provider is not complying, we clearly communicate this information in a way that supports them to understand what is required. While it is not our role to tell providers how to remedy non-compliance, we 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.

6.4 Change of scope or applying for re-registration

ASQA takes a risk management approach when evaluating applications to change scope of registration and re-registration applications.

When an application to change scope of registration is made by an RTO that has held registration for less than two years, extra information will need to be provided. In addition to a change of scope application form, the RTO will also need to complete a self-assessment and supply information about financial viability.

This is to ensure that an RTO is prepared to deliver quality training and assessment in the new scope items applied for, and to assist an organisation to review its systems and processes against key requirements of the Standards.

When a re-registration application is received, we will do an initial check to ensure that the provider has delivered training or assessment during the previous year of registration, to confirm a provider remains committed to and capable of delivering training or assessment, and that nominated personnel are continuing to meet fit and proper person requirements.

Subsequently, ASQA will consider the provider's scope of registration, provider profile and risk rating, and time elapsed since the last full scope audit. An audit may be conducted to review compliance with the VET Quality Framework and to examine or investigate other matters such as the effectiveness of management systems, delivery strategies and other material; the suitability of facilities and equipment; and credentials of nominated delivery personnel.

This structured process ensures that providers meet all requirements for continued registration before approval.

6.5 Routine and risk-based monitoring

We use a range of compliance routine and risk-based monitoring methods to efficiently and effectively understand performance.

- **Risk-based monitoring** is undertaken where we have identified and assessed providers that present the greatest risks to quality VET. This can be in response to intelligence received about a provider or in managing existing non-compliance.
- **Routine monitoring** is not based on risk but involves a random sampling of providers as part of monitoring of the sector as a whole. It is an important part of our regulatory risk framework because it ensures public confidence in quality VET.

Depending on the circumstances we may, for example:

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

For these activities, we apply a risk-based approach to achieve the best outcomes from that activity and to minimise the burden on providers.

6.6 Performance assessments (audits)

A performance assessment (audit) is a comprehensive way of determining whether the provider is meeting the legislative requirements. Performance assessments are undertaken for a range of reasons including in response to risk-based intelligence, and in relation to a registration or change of scope application.

While performance assessments can be undertaken either with notice to the provider (announced) or without notice to the provider (unannounced), the majority of providers receive notice advising of any upcoming performance assessment.

The Quality Assessor plans the performance assessment based on intelligence received and initial research, and will request specific information from the provider to support the evidence collection. The performance assessment may involve a site visit component.

The Quality Assessor will gather and assess relevant evidence to inform an objective assessment of performance against the relevant standards/clauses or requirements of the legislation. The Assessor will reflect findings and evidence in a report which in turn informs our decisions in relation to the most appropriate regulatory response when non-compliance is identified.

6.7 Dealing with non-compliance

Where we find that a provider does not meet the requirements of the legislation and/or the standards, we will respond to non-compliance 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 many 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.

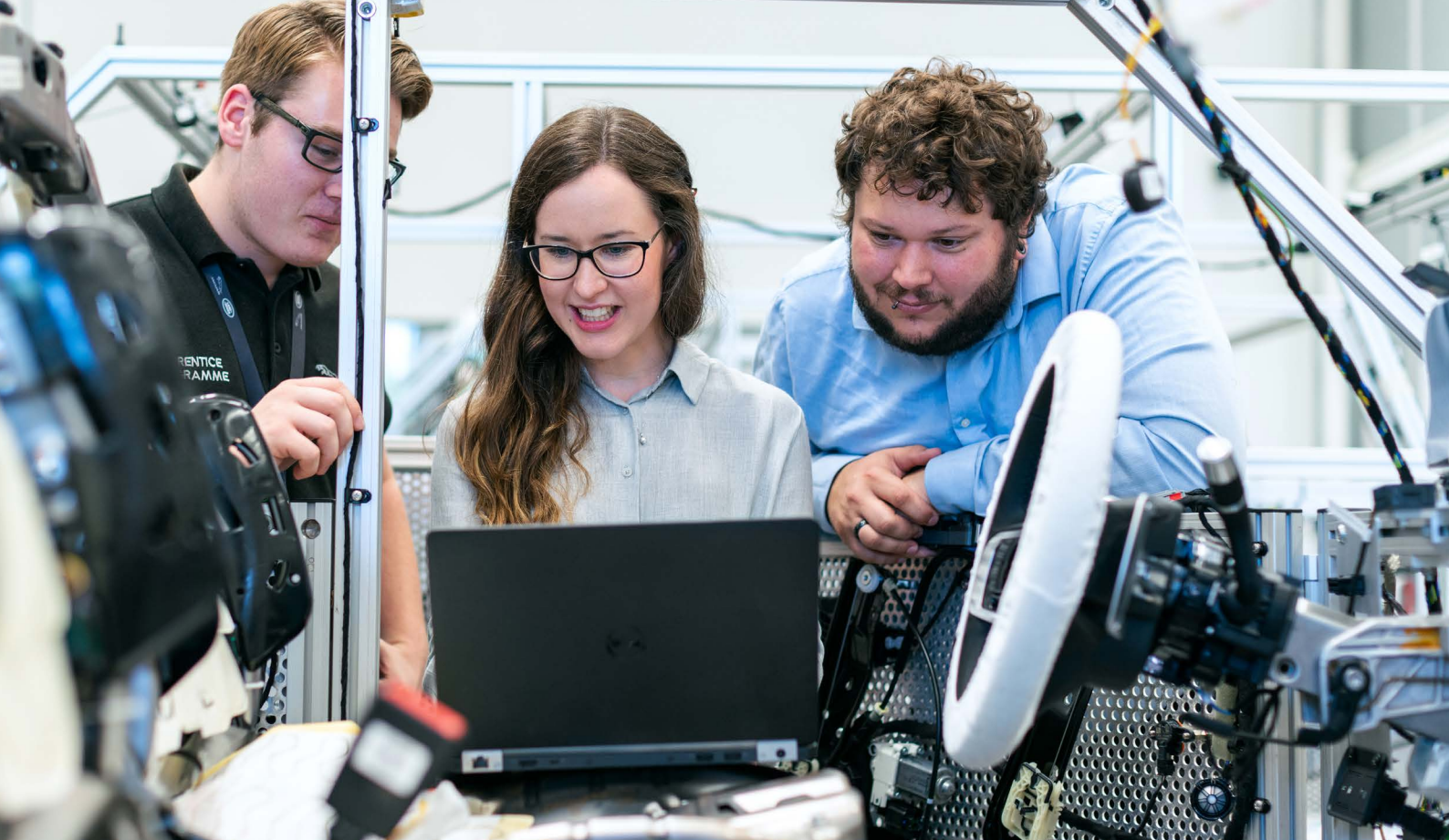
This does not mean that ASQA will take a linear or rigidly stepped approach to breaches of the law or ensuring compliance, for example, to always use administrative measures as a first step and only move to the next 'pyramid layer' if this is not successful at deterring the market behaviour. In all circumstances, our response to non-compliance will be:

- proportionate to the seriousness of the non-compliance and extent of the provider's commitment and capability
- focused on ensuring sustained compliance
- support clarity of legislative requirements and self-assurance by providers.

The range of regulatory tools to encourage, assist, deter or enforce compliance with the legislation, including the standards is represented in the regulatory pyramid (Figure 4 next page). We use education, methods to direct compliance, sanctions and court actions. These tools and measures may be used individually or in combination, to respond in a way that is risk-based and proportionate.

Figure 3: Quality Assessment Risk Matrix

| | | Actual or potential harm to students | | | |
|---------------------------------|----------------|--|----------|--------|--------|
| | | By virtue of not receiving quality assessment and training in line with requirements under the legislation (consequence) | | | |
| Level of confidence in provider | | MINOR | MODERATE | MAJOR | SEVERE |
| | ALMOST CERTAIN | Medium | High | Severe | Severe |
| | PROBABLE | Medium | Medium | High | Severe |
| | UNCERTAIN | Low | Medium | Medium | High |
| | UNLIKELY | Low | Low | Medium | Medium |

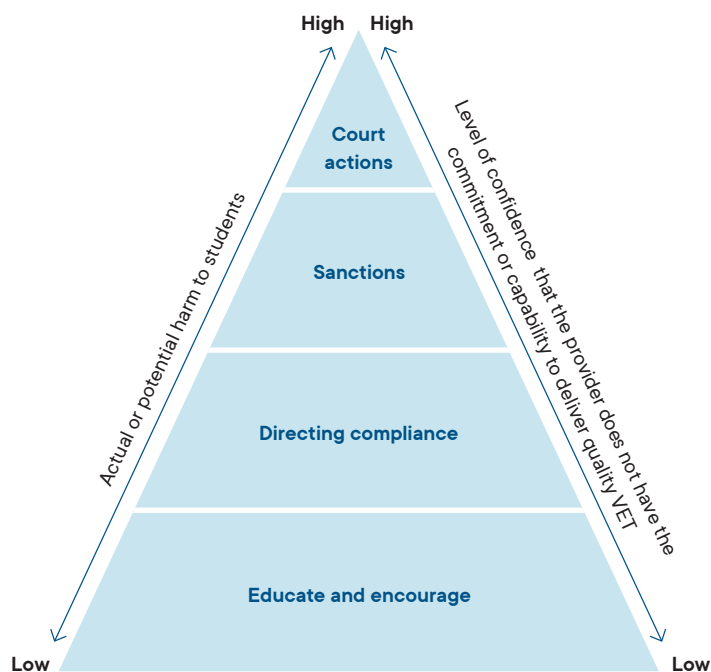


When we decide what action to take, our response (also see Figure 3 previous page) will be based on an assessment of:

- **Consequence:** actual or potential harm to students arising from not receiving quality training and assessment in line with requirements under the legislation. This goes to the nature and type of non-compliance, the seriousness of non-compliance in terms of the impact on qualifications being inappropriately issued or student inappropriately assessed, the extent of non-compliance and impact on students
- **Likelihood:** the level of confidence in terms of the likelihood that the provider will not deliver quality training and assessment in line with requirements under the legislation. This goes to matters relating to the compliance history and behaviour of the provider, whether they understand the issues and what is required to address a non-compliance, whether the provider has demonstrated that they have the systems, capability and commitment to take the actions needed

Relevance: any other matters relevant to the decision.

Figure 4. ASQA's graduated approach to its use of escalating regulatory tools to promote and ensure compliance



6.8 Internal review

ASQA can conduct an internal review of all reviewable decisions made under the legislation when that decision was made by a delegate.

Our approach to reviewing decisions is intended to provide a genuine opportunity to engage with providers and ensure that our decisions support the integrity of the national qualifications issued by training providers and to ensure that all stakeholders can have confidence in our decision making.

The review is conducted by a team that is separate from the teams involved in the processes that led to the making of the original decision, to ensure that the review process is independent and impartial.

When reviewing decisions, the review officer will consider

the appropriateness of the original decision, which also includes consideration of any deficiency in:

- the process that led to the decision
- the quality of the communication about the decision that was given to the applicant
- the timeliness of the decision, and
- the impact any of the above may have had on the decision or the applicant's ability to adequately respond to any issues raised.

Following review of the decision, ASQA can affirm the decision, vary the decision, or revoke or set aside the decision.

Our internal review provides the opportunity to identify areas for improvements to our decision making processes, communication or timeliness.

(7) Understanding regulatory impact and outcomes

We are committed to a structured and consistent focus on monitoring and reporting on regulatory impact to identify and reprioritise risks over time, understand, adapt and strengthen evidence underpinning regulatory initiatives, and continuously improve. This will also inform our corporate and strategic direction.

We use the following measures to understand the impact and effectiveness of our regulation:

- monitor regulatory data and measures changes in outcomes
- undertake provider surveys to seek feedback on regulatory initiatives and regulator performance
- evaluate regulatory initiatives to identify circumstantial factors requiring regulatory adjustment, gaps in evidence, internal processes, quality controls and other operational procedures
- monitor service standards to understand where we can improve the quality and timeliness of service delivery
- undertake internal quality assurance to ensure we are consistent in our application of the regulatory framework and that it is being implemented as intended
- use monitoring, along with broader corporate knowledge and experience, to continually strengthen the approach to regulatory risk
- monitor costs of the regulatory program and optimise cost effectiveness, reducing the burden on complying regulated entities and promoting better compliance outcomes through a more targeted and effective regulatory approach.



(8) Reporting on regulatory outcomes

We are accountable for our actions and undertake an annual assessment against regulator key performance indicators and publish the results of this assessment. We also publish information on our functions relating to the outcomes of monitoring, compliance and enforcement actions.

We publish information about certain regulatory decisions we make, to assist students and potential students to make informed decisions when choosing to study with a provider, and to provide industry, government and the public with accurate information on our regulatory activity.

More information on what kinds of decision ASQA publishes and our legislative authority to publish this information is available at [About ASQA's published decisions](#).

Appendix

Table A: Principles underpinning ASQA's Regulatory Risk Framework

| Regulatory commitment | Behaviours |
|---|--|
| Promoting 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"> • We accept that not all risks can be eliminated, and different strategies and approaches are required to effectively manage different types of risk. • 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. • We will seek to minimise regulatory burden for proven high-performing providers with a history of compliance and increase regulatory action for those considered higher risk. |

Regulatory commitment

Behaviours

Be fair and impartial

- 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 our practice.

Maintaining constructive and respectful relationships

- 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.

Regulating in a way that supports the objective of quality VET

- We share information with the Department of Education, Skills and Employment, other government regulators, licensing bodies and funding agencies, in recognition of our shared commitment to and respective roles in quality VET outcomes.
- We work in partnership to support broader reforms to quality VET.



The ASQA Info Line is available to help with enquiries regarding regulatory matters between 9.00 am and 7.00 pm Eastern Standard Time (EST), Monday to Friday at 1300 701 801 (dial +61 3 8613 3910 from outside Australia), or via email at enquiries@asqa.gov.au