

# Approach to review of decisions



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Regulatory practice guide



Australian Government  
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ASQA

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# Glossary of terms and acronyms

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

**Applicant** means a person who applies to ASQA for a review of a decision, this may be the provider whom the decision was in relation to or another person affected by the decision.

**ASQA** refers to the Australian Skills Quality Authority.

**Delegate** means 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).

**Own motion review** refers to situations where ASQA initiates a review of a decision independent of an application for review.

**Person affected** means:

- in relation to review applications under the NVR Act, means any person affected by the decision
- in relation to review application under the ESOS Act, means any provider affected (as provider is defined in the ESOS Act to include those providers already registered and those seeking to be registered).

**Provider** is a broad term that includes providers offering VET courses (also known as Registered Training Organisations or RTOs) as well as those listed on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) that deliver VET courses and English Language Intensive Courses to Overseas Students (ELICOS).

**Review** means reconsideration as that term is used in the NVR Act. It also means internal review as that term is used in the ESOS Act.

**Review application** means application for review of a reviewable decision under the NVR Act or the ESOS Act.

**Reviewable decision** means a decision listed in section 199 of the NVR Act (see Annexure A) or section 169AB of the ESOS Act (see Annexure B).

**Review period** means the 90-day period between ASQA receiving an application for review and the statutory deadline for ASQA to make a decision on that application under the legislation.

**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*.

**Stay** means that the decision does not come into effect while the stay is in place and may be subject to conditions.

# 1. Purpose and context

The National Vocational Education and Training Regulator (the National VET Regulator) is established under the *National Vocational Education and Training Regulator Act 2011* (NVR Act) and may also be known as the Chief Executive Officer of the Australian Skills Quality Authority (ASQA). Through our regulation and partnership with stakeholders, we ensure quality vocational education and training so that students, employers, the community and governments have confidence in the integrity of national qualification issued by training providers.

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

The Approach to compliance regulatory practice guide focuses on the ways that we monitor compliance with the relevant legislation and standards, and take action in the event of non-compliance.

Certain actions that we take 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 us to review the decision.

The purpose of this Approach to review of decisions regulatory practice guide is to describe how we review decisions.

## 2. Regulatory practice principles

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

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

- **promoting a culture of self-assurance and continuous improvement** – 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.
- **being risk-based and proportionate** – We accept that not all risks can be eliminated, and different strategies and approaches are required to effectively manage different types of risk.
- **being fair** – We will exercise our regulatory powers in accordance with the principles of good administrative law decision making, including principles of procedural fairness.
- **being impartial** – We will treat providers fairly and impartially.
- **maintaining constructive and respectful relationships with providers** – We maintain and adhere to the APS Code of Conduct, and we seek constructive, positive relationships with providers and the sector, based on mutual respect for our respective roles and responsibilities.
- **regulating in a way that supports the objective of quality VET** – We share information with the Department of Education, Skills and Employment (DESE), other government regulators, licensing bodies and funding agencies, in recognition of our shared commitment to and respective roles in quality VET outcomes.

We are focused on embedding a regulatory approach that is recognised internally and externally as best practice, underpinned by an operating model that is characterised by:

- effective use of data, information and intelligence
- integrated, contemporary approaches to applications, performance assessment, 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 informed consumers.

This applies across our regulation of:

- providers that deliver VET qualifications and 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).

[ASQA's Regulatory Risk Framework](#) sets out the framework for our management of sector and provider VET risk.

The framework's purpose is to use:

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

For more information on our regulatory commitments, please refer to [ASQA's Regulatory Risk Framework](#).

## 3. Our approach

When making a decision that adversely affects a provider, our decision makers provide procedural fairness which means ensuring a fair process, providing robust reasons for decisions and also giving an opportunity to providers to respond.

Our approach to reviewing decisions is intended to:

- provide a genuine opportunity to engage with providers
- ensure that our decisions support the integrity of the national qualifications issued by training providers
- ensure that all stakeholders can have confidence in the decisions we make.

When reviewing decisions, we will review the evidence that led to the original decision and any new evidence that is available to the decision maker. This is to determine whether our decision remains correct and preferable.

We acknowledge that there are circumstances where the decision may have been correct based on the evidence available to us at the time it was made, but no longer remains the correct decision on review. This may be due to the availability of evidence that was not available to the original decision maker, and whether or not that evidence existed at the time the decision was made.

## 4. When can ASQA review a decision

We can review all reviewable decisions made under the legislation, upon application by an affected provider or person, when that decision was made under delegation, that is, by someone other than the CEO of ASQA.<sup>1</sup>

Where a reviewable decision is made by a delegate under the NVR Act, you need to apply to us for review of the decision before being able to seek a merits review in the Administrative Appeals Tribunal (AAT) (see [10. Further review rights](#)).

You **may** choose to apply to us for a review of the decision, or to apply to the AAT for a merits review, where a reviewable decision is made by a delegate under the ESOS Act.

We **may** also review a decision on own motion (that is, without an application for review by an affected provider or person) (see [9. Own motion reviews](#)).

## 5. Approach to engagement

It is your responsibility to submit reasons and evidence to support an application for review. However, if we identify information or evidence in your application that **requires clarification**, we will contact you to ensure that the best available evidence is brought before the decision maker.

If we believe that additional information or evidence will be helpful in making the decision, particularly if that information could support us to make a decision favourable to you, we may request that information or evidence from you.

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<sup>1</sup> See [Annexure A](#) and [Annexure B](#) for a full list of reviewable decisions.

## 6. Review of a decision by ASQA

For ASQA to review a decision, you need to submit an application within 30 days of being notified of our decision.

For your application to be valid, it needs to satisfy the legislative requirements, be in the form approved to us with all fees paid by you.

At the time of making the review application, you need to provide reasons for your application. These reasons need to detail any aspect of the decision you disagree with and do one or more of the following:

- a) be based on the evidence that was available to the decision maker at the time of making the decision
- b) be based on and include any new evidence you are able to provide.

After receiving a valid application, our Internal Review Team will undertake an assessment of the application. To support independence and impartiality, this team remains organisationally separate from the teams involved in the processes leading to the original decision

The purpose of the review is to consider the appropriateness of the original decision. When reviewing a decision, we are not limited to the information or evidence that were raised in the application for review. We may consider other relevant matters or evidence available to us. Where we consider other information or evidence not previously considered, we will bring this to your attention (as appropriate, and in line with our commitment to procedural fairness).

The review of decision will be made by someone who was not the original decision maker. Following the review of the decision, we may:

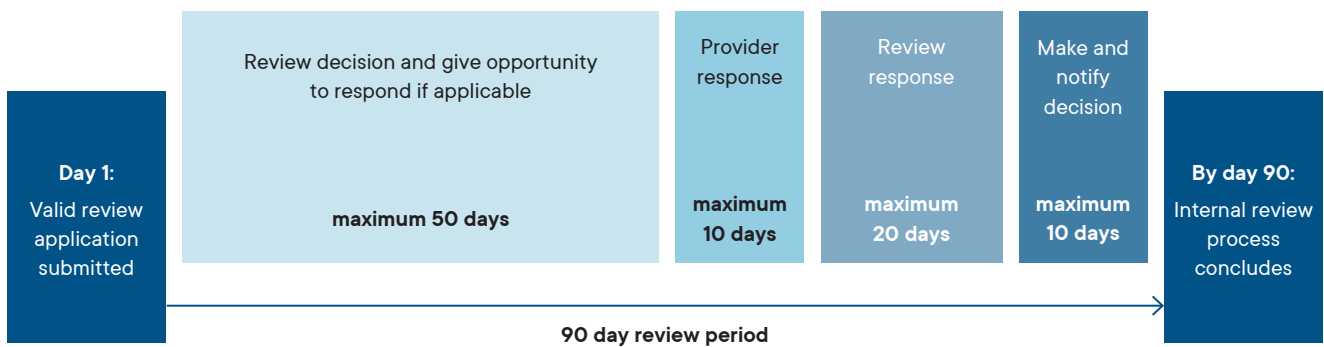
- affirm the decision
- vary the decision
- revoke or set aside the decision
- substitute the decision with a fresh one based on reasons.



There may be some occasions where we identify adverse facts, inferences or reasoning that have not previously been put to you. Where this occurs, we will give you an opportunity to respond prior to making the review of decision. Due to the statutory timeframe for making a decision, the response timeframe given to you will generally be a maximum of 10 days.

We will notify you of the review outcome within 90 days (as required by the legislation and described in our Service Standards) and also give you reasons for our decision. If exceptional circumstances prevent us from notifying you of the review outcome within 90 days, the review outcome will default to affirming the original decision and you will have a right to apply to the AAT<sup>2</sup>.

Figure 1. Timeline for making a review decision



<sup>2</sup> See sections 202(2) and 203 of the NVR Act.

# 7. Applications for extension of time

## (to submit a request for review of a decision)

We may, under the legislation<sup>3</sup>, grant an extension of time for the completion of an application for review.

We will consider applications for an extension of time if received within 21 days of notification of the decision, and if a valid application is provided including:

- reasons for the request for an extension
- evidence to support those reasons as appropriate.

When considering a request for an extension of time to submit a review application, we will take into account matters such as:

- whether the request was made within the required time
- when the original decision will take effect (in most cases this will be 35 days from the date of us sending the notification of decision to you)
- your explanation and supporting evidence for the delay and extension of time
- consequences for you if your application is refused
- fairness between you and other applicants who lodge their applications on time.

If we grant an extension of time to submit a review application, we will also consider extending the effective date of the original decision. If considering whether to extend the effective date, we follow the same considerations as we use for stay applications (see 8. Stay applications).

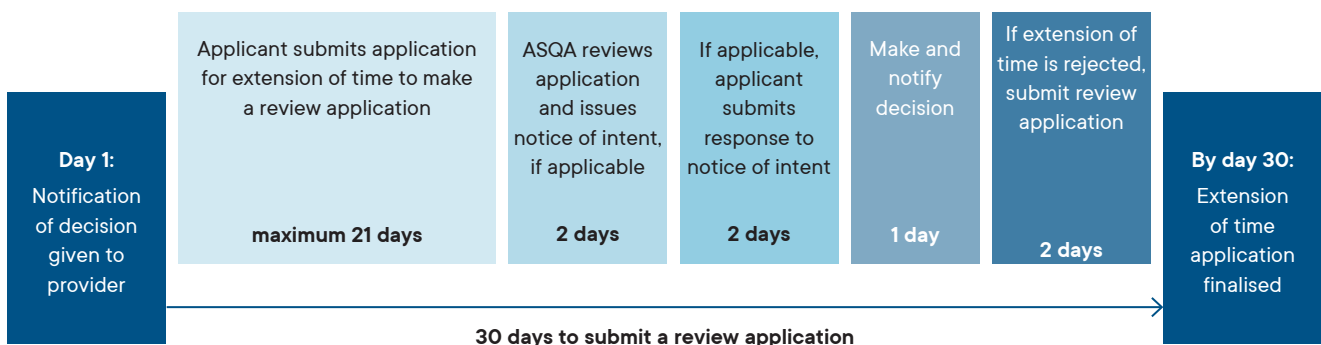
If we extend the effective date of a decision, it will generally be five days after the extended date for submitting a review application. This helps ensure cases are dealt with quickly, reducing uncertainty about the provider’s status.

We aim to make decisions on all extension of time applications within seven days of receiving the application.

If we intend to reject the extension of time application, we will give you an opportunity to respond before making a decision. We will give you a minimum of 48 hours to respond in writing.

If we make a decision to reject the extension of time application, we will give you written reasons for our decision.

**Figure 2. Timeline for extension of time decisions<sup>4</sup>**



<sup>3</sup> See section 200(4)(b) of the NVR Act and section 169AD(2)(c)(ii) of the ESOS Act.

<sup>4</sup> Note: Five days represented in the timeline as a weekend will fall across the seven days allocated to making a decision.

## 8. Stay applications

When you submit an application for review, you can request that we delay or ‘stay’ the date that our decision takes effect until the review process has concluded.

After receiving a valid application for review of a decision:

- under the NVR Act, we may determine that the operation of the decision is stayed or delayed, pending the outcome of the review
- under the ESOS Act, we may decide to vary the effective date of the decision so that it does not come into effect until the outcome of the review is known (this is also referred to as a ‘stay of the decision’ in this document).

You should nominate whether you want the decision to be stayed during the review process at the time you submit the review application. We will make a decision on whether to grant the request.

We will not stay decisions relating to:

- rejection of an application for initial registration
- rejection of an application to add to a provider’s scope of registration
- rejection of an application for accreditation of a course.

When considering a request for stay of a decision, we will take into account the following considerations:

- public interest
- consequences for you
- consequences for current and potential future students
- other relevant matters.



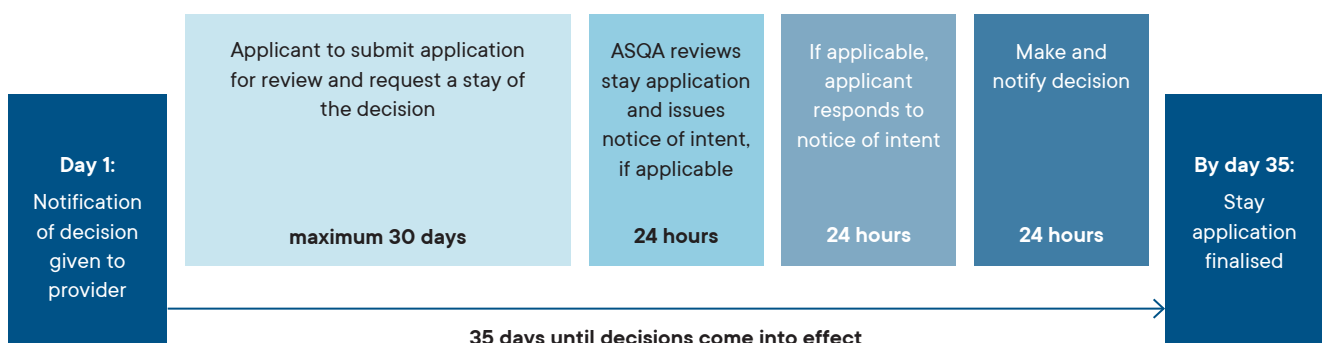
We will make a decision based on the cumulative facts and circumstances of the application as a whole. No one consideration will be definitive in making a decision on the application.

If, after receiving an application for a stay of the decision, we intend to reject the request, we will notify you of this to give you an opportunity to respond. We will give you a minimum of 24 hours to respond in writing.

We will generally make a decision on stay applications within five days from the receipt of a valid application. This ensures that we will make a decision in relation to the stay application prior to the decision coming into effect.

If we make a decision to reject the stay application, or to impose conditions on the stay, we will provide written reasons for the decision together with written notification of the decision.

Figure 3. Timeline for making a stay decision



6 Note: Three days represented in the timeline as a weekend may fall across the five days allocated to making a decision.

## 9. Own motion reviews

If relevant information comes to our attention, we may review an adverse decision after it has been made without an application for review having been made.

We would generally only do this within three months of the decision being made. If we do this, we will notify any affected parties and invite them to provide any further evidence they would like to be taken into account.

## 10. Further review rights

In certain circumstances (based on the relevant legislation), you will have an opportunity to apply to the AAT for external review of a decision.

When we notify you of a decision, we will inform you about whether you may also apply to the AAT either following ASQA's internal review or directly.

Depending on the circumstances, you may also seek judicial review of certain decisions under the *Administrative Decisions (Judicial Review) Act 1977* and/or section 39B of the *Judiciary Act 1901*.

## 11. Continuous improvement

We are committed to continuously improving our regulatory practice.

We will use the findings from our review of decisions to identify trends and patterns in evidence collection and decision making practice.

This will feed back into our regulatory practice and into our education and engagement with providers to ensure that we continue to be a best practice regulator working with the sector to enhance VET quality.

# Annexure A – NVR Act reviewable decisions

For the purposes of the NVR Act, each of the following ASQA decisions is a reviewable decision:

## Reviewable decisions

Item	Reviewable decision	Provision under which reviewable decision is made
1	A decision to grant an application for registration (including renewal of registration) as an NVR registered training organisation.	Section 17
2	A decision to reject an application for registration (including renewal of registration) as an NVR registered training organisation.	Section 17
3	A decision determining the period for which an NVR registered training organisation is registered.	Section 17
4	A decision to impose a condition on an NVR registered training organisation's registration.	Section 29
5	A decision to vary a condition on an NVR registered training organisation's registration.	Section 29
6	A decision not to determine a shorter period for making an application for renewal of registration as an NVR registered training organisation.	Section 31
7	A decision to change, or refuse to change, an NVR registered training organisation's scope of registration.	Section 33
8	A decision to give a written direction to an NVR registered training organisation requiring the organisation to rectify a breach of a condition of the organisation's registration.	Section 35A
9	A decision to give a written direction to an NVR registered training organisation requiring the organisation to notify its VET students, in writing, of a matter set out in the direction.	Section 36
10	A decision to shorten the period of an NVR registered training organisation's registration.	Section 36
11	A decision to amend an NVR registered training organisation's scope of registration.	Section 36

## Reviewable decisions

Item	Reviewable decision	Provision under which reviewable decision is made
12	A decision to suspend all or part of an NVR registered training organisation's scope of registration.	Section 38
13	A decision to cancel an NVR registered training organisation's registration.	Section 39
14	A decision to defer making a decision to change an NVR registered training organisation's scope of registration until the organisation addresses issues identified by the National VET Regulator.	Section 41
15	A decision not to allow an NVR registered training organisation's registration to be withdrawn.	Section 42
16	A decision to grant an application for accreditation of a course (including renewal of accreditation) as a VET accredited course.	Section 44
17	A decision to reject an application for accreditation of a course (including renewal of accreditation) as a VET accredited course.	Section 44
18	A decision to impose conditions on the accreditation of a VET accredited course.	Section 48
19	A decision to vary a condition on the accreditation of a VET accredited course.	Section 48
20	A decision to amend a VET accredited course.	Section 51
21	A decision to cancel the accreditation of a VET accredited course.	Section 52
22	A decision to issue, or not issue, a VET qualification.	Section 55
23	A decision to issue, or not issue, a VET statement of attainment.	Section 55
24	A decision to cancel, or not cancel, a VET qualification.	Section 56
25	A decision to cancel, or not cancel, a VET statement of attainment.	Section 56
26	A decision to enter other matters on the National Register.	Section 216

# Annexure B – ESOS Act reviewable decisions

For the purposes of the ESOS Act, each of the following ASQA decisions is a reviewable decision:

## Reviewable decisions

Item	Reviewable decision	Provision under which reviewable decision is made
1	A decision by the ESOS agency for a provider to refuse to register the provider.	Section 10
2	A decision by the ESOS agency for a registered provider to register the provider under section 10 for a particular period.	Section 10
3	A decision by the ESOS agency for a provider or registered provider to impose a condition on, or to vary or remove a condition of, the provider's registration.	Section 10B
4	A decision by the ESOS agency for a registered provider to refuse to renew the provider's registration.	Section 10E
5	A decision by the ESOS agency for a registered provider to renew the provider's registration under section 10E for a particular period.	Section 10E
6	A decision by the ESOS agency for a registered provider to refuse to add a course at a location to the provider's registration.	Section 10J
7	A decision by the ESOS agency for a registered provider to extend the provider's period of registration.	Section 10L
8	A decision by the ESOS agency for a registered provider not to notify the provider.	Subsection 46A(4)
9	A decision by the ESOS agency for a registered provider to take action against the provider.	Section 83
10	A decision by the ESOS agency for a registered provider not to give the provider a notice.	Subsection 89(4) or 95(3)





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](mailto:enquiries@asqa.gov.au)