



# Practice Guide

## Accountability

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### Compliance Standards for NVR Registered Training Organisations Part 2 Compliance Requirements

#### Division 3 – Accountability

### What are the key concepts?

The following key concepts are covered in this practice guide:

Compliance requirements	
<ul style="list-style-type: none"> <li>Annual declaration on compliance (ADC)</li> <li>Notification of material changes</li> <li>Third party arrangements</li> </ul>	<ul style="list-style-type: none"> <li>Prepaid fee protection measures</li> <li>Public liability insurance</li> <li>Compliance with laws</li> </ul>

### Achieving these Compliance Requirements in practice

The following tables provide guidance on meeting the Compliance Requirements as well as risks to mitigate or avoid. These should be considered within the context, size, scale and student cohorts of your RTO's operations.

Annual declaration on compliance	
Requirement	Example activities and other considerations for compliance
<ol style="list-style-type: none"> <li>An <b>NVR registered training organisation</b> must submit an annual declaration on compliance with its obligations under the <b>Act</b> for each annual reporting period in which the organisation is registered.</li> <li>An NVR registered training organisation's annual reporting period is the period of 12 months that is specified by the National VET Regulator as the organisation's annual reporting period.</li> <li>An annual declaration on compliance submitted by an NVR registered training organisation must be in the approved form as published on the <b>National Register</b> by the National VET Regulator from time to time.</li> </ol>	<ul style="list-style-type: none"> <li>You can demonstrate how you use the Annual Declaration on Compliance (ADC) as an additional opportunity to reflect upon your RTO's systems, practices and processes, and to inform future improvements to your operations.</li> <li>You disclose to ASQA through your ADC responses any self-identified non-compliance and what rectification actions you are taking.</li> <li>You ensure the preparatory work you do before completing the ADC covers your RTO's entire <b>scope of registration</b>, including all <b>services</b> delivered by <b>third parties</b> on your behalf.</li> <li>You ensure that only the CEO, as the person legally responsible for the RTO's registration, submits the declaration to ASQA.</li> <li>Where you have third party arrangements, your CEO completes the ADC having also verified the compliance of those third parties' systems,</li> </ul>

	<p>practices and processes in relation to the services they deliver on your RTO's behalf.</p> <ul style="list-style-type: none"> <li>You ensure that you retain evidence to support any answers provided in the ADC.</li> </ul>
	<b>Known risks to compliance</b>
	<ul style="list-style-type: none"> <li>Completing and submitting the ADC without adequately verifying your RTO's compliance with each obligation.</li> <li>Not ensuring your CEO has authenticated all responses in the ADC before submitting them.</li> <li>Declaring full compliance on the ADC even though you have identified non-compliances internally – i.e. failing to disclose.</li> <li>Failing to complete and submit the ADC within the submission period notified by ASQA.</li> <li>Not requesting or reviewing evidence as part of your ADC submission to confirm services delivered by your third parties are complying with the relevant obligations.</li> </ul>

Notification of material changes	
Requirement	Example activities and other considerations for compliance
<ol style="list-style-type: none"> <li>1. An NVR registered training organisation must notify the National VET Regulator of the occurrence of an event that would significantly affect the organisation's ability to comply with any of its obligations under the Act.</li> <li>2. A notice under subsection (1) must be given within 10 business days after the event occurs.</li> <li>3. An NVR registered training organisation must notify the National VET Regulator of:               <ol style="list-style-type: none"> <li>a. any prospective changes to the ownership of the organisation as soon as practicable before the change takes effect; or</li> <li>b. any prospective or actual change in relation to a governing person of the organisation:                   <ol style="list-style-type: none"> <li>i. if the change cannot be determined until it takes effect – within 10 business days of the change taking effect; or</li> <li>ii. otherwise – as soon as practicable before the change takes effect.</li> </ol> </li> </ol> </li> <li>4. A notice under subsection (1) or (3) must be provided to the National VET Regulator in writing or electronically.</li> <li>5. After giving notice under subsection (1) or (3) an NVR registered training organisation must provide any further information relating to the notice as soon as practicable, if requested by the National VET Regulator.</li> </ol>	<ul style="list-style-type: none"> <li>• You can demonstrate how your systems ensure that you notify ASQA within ten (10) business days after the occurrence of any event that significantly impacts your RTO's ability to comply with its legislative obligations.</li> <li>• You have systems and processes in place to ensure that:               <ul style="list-style-type: none"> <li>○ any prospective material changes to your RTO's ownership are notified to ASQA as soon as practicable before the change takes effect</li> <li>○ any prospective or actual change to <b>governing persons</b> are notified to ASQA as soon as practicable before the change takes effect, or, where a change cannot be determined until it takes effect, notify ASQA within ten (10) business days of the change taking effect.</li> </ul> </li> <li>• If requested by ASQA, you ensure that you provide information and evidence in relation to your material change application in a timely manner.</li> </ul>
	<b>Known risks to compliance</b>
	<ul style="list-style-type: none"> <li>• Attempting to conceal material changes from ASQA, particularly where there may be a risk to students – for example, financial viability issues.</li> <li>• Failing to update key personnel changes and contact details in ASQAs systems.</li> </ul>

Third party arrangements	
Requirement	Example activities and other considerations for compliance
<p>1. An NVR registered training organisation must ensure that where services are delivered by a third party on the organisation's behalf, the provision of the services is governed by a written agreement that:</p> <ol style="list-style-type: none"> <li>a. is entered into by the organisation and third party as soon as reasonably practicable prior to the third party delivering any of the services set out in the agreement;</li> <li>b. requires the third party to cooperate with the National VET Regulator where the Regulator conducts any audit of the NVR registered training organisation's operations;</li> <li>c. requires the third party to provide accurate responses to requests for information from the Regulator relevant to the third party's delivery of the services;</li> <li>d. prohibits the third party from: <ol style="list-style-type: none"> <li>i. using the NRT logo;</li> <li>ii. using the organisation's branding;</li> <li>iii. issuing any AQF certification documentation; and</li> </ol> </li> <li>e. contains the following particulars: <ol style="list-style-type: none"> <li>i. the business or trading names of the parties to the agreement;</li> <li>ii. the dates on which the agreement will commence and end;</li> <li>iii. all the parties' obligations concerning the delivery of the services; and</li> <li>iv. an entitlement for the organisation to regularly monitor the quality of the services being delivered by the third party.</li> </ol> </li> </ol> <p>2. An NVR registered training organisation must notify the National VET Regulator of any written agreement made pursuant to subsection (1) within:</p> <ol style="list-style-type: none"> <li>a. 30 calendar days of the agreement being entered into or prior to the obligations under the agreement taking effect, whichever occurs first; and</li> <li>b. 30 calendar days of the agreement ending.</li> </ol>	<ul style="list-style-type: none"> <li>• You can demonstrate that all your third party written agreements include all information stipulated under the Standards.</li> <li>• Your written agreements clearly specify the roles and responsibilities of each party and how you monitor the performance of the third party to ensure the quality of services and compliance with the Standards.</li> <li>• You can demonstrate the systems and processes you use to identify emerging risks and promptly rectify non-compliance by your third party providers.</li> <li>• You have evidence that a written agreement was in place with each of your third parties before they commenced delivery of any services.</li> <li>• You can demonstrate how you routinely review the suitability of your third party arrangements and maintain currency of your written agreements.</li> <li>• You ensure your staff understand the definition of third parties and when a written agreement is required.</li> <li>• You ensure that your third parties are aware of their ongoing requirement to cooperate with ASQA.</li> <li>• You can demonstrate how you make your third parties aware of their obligations under the Standards and any other legislative or regulatory requirements that apply to the service/s they are delivering on your RTO's behalf.</li> <li>• You can demonstrate the protocols you have in place to communicate with your third parties regarding: <ul style="list-style-type: none"> <li>○ legislative changes that may impact their service</li> <li>○ changes in delivery</li> <li>○ expectations around providing support for student wellbeing and managing complaints.</li> </ul> </li> <li>• You can demonstrate how you authenticate the credentials and practices of <b>trainers</b> and <b>assessors</b> engaged by your third party providers.</li> <li>• You ensure that <b>VET students</b> are made aware of any third party involvement in their training and assessment, including that their <b>AQF certification documentation</b> will be issued by your RTO (not the third party).</li> <li>• You have processes in place to notify ASQA within the required timeframe whenever you enter into, or end, a third party arrangement.</li> </ul>

	Known risks to compliance
	<ul style="list-style-type: none"> <li>• Failing to notify ASQA of new and ceasing third party agreements.</li> <li>• Failing to undertake due diligence on an organisation's commitment, capability and capacity to deliver quality training and assessment before engaging it as a third party – for example, but not limited to: <ul style="list-style-type: none"> <li>○ failing to undertake due diligence checks in relation to the fitness and propriety of relevant staff of the third party organisation</li> <li>○ not comprehensively assessing the capacity of the third party to provide <b>training support services</b> and <b>wellbeing support services</b>.</li> </ul> </li> <li>• Assuming that outsourcing services to third parties will release your RTO of its compliance obligations.</li> <li>• Allowing services to be provided by a third party before the written agreement has been signed by both parties.</li> <li>• Failing to invest in dedicated resources to monitor the quality and compliance of services provided by your third parties. This is of particular concern where you have many third party arrangements.</li> <li>• Not being transparent with students about the role and responsibilities of your RTO versus those of the third party provider.</li> <li>• Failing to inform students about how they can provide feedback or make a complaint about a third party engaged by your RTO.</li> <li>• Engaging offshore-based third parties that are unaware of relevant Australian laws and the <b>VET Quality Framework</b>.</li> </ul>

Prepaid fee protection measures	
Requirement	Example activities and other considerations for compliance
<p>1. Where an NVR registered training organisation or third party receives <b>prepaid fees</b> from or on behalf of an individual in excess of \$1500 in relation to the same <b>VET course</b> (<i>the threshold prepaid fee amount</i>), the organisation must:</p> <ol style="list-style-type: none"> <li>a. where the organisation is a <b>government entity</b> or an <b>Australian university</b> – comply with the requirements set out in subsections (2) and (3); or</li> <li>b. where the organisation is any other NVR registered training organisation – implement one or more of the arrangements set out in subsection (4).</li> </ol> <p><i>Requirements for government entities and Australian universities</i></p>	<ul style="list-style-type: none"> <li>• You can show how your <b>prepaid fee</b> policy ensures that students are adequately protected financially in accordance with this requirement.</li> <li>• You maintain adequate controls over how withdrawals can be made from your protected account and by whom – for example: <ul style="list-style-type: none"> <li>○ multiple signatories for withdrawals</li> <li>○ ensuring administrative staff are aware that the protected account is only to be used to refund a student, not for other operational expenses.</li> </ul> </li> <li>• You ensure prepaid fees received through a direct enrolment are protected no matter how the fees are collected, including where they are collected by a third party loan provider or via online payment instalments.</li> </ul>

2. The NVR registered training organisation must have a policy in place for circumstances where the organisation is unable to provide the services to which the threshold prepaid fee amount relates (*prepaid fee policy*).
3. An NVR registered training organisation's prepaid fee policy must specify how an individual who has prepaid will:
  - a. be placed into an equivalent course at a location suitable to the individual and receive all services for which the individual has prepaid at no additional cost to the individual; or
  - b. be refunded the prepaid fees for services yet to be delivered which are in excess of the threshold prepaid fee amount.

*Requirements for other NVR registered training organisations*

4. The NVR registered training organisation must implement one or more of the following arrangements:
  - a. an unconditional financial guarantee from a bank operating in Australia, provided:
    - i. at all times, the guarantee is at least equal to the total amount of prepaid fees held by the organisation in excess of the threshold prepaid fee amount; and
    - ii. the costs of establishing and maintaining the guarantee are met by the organisation.

Note: For example, where an RTO receives prepaid fees of \$2000 from three individuals (totalling \$6000), the guarantee must be at least equal to \$1500 (i.e. \$500 multiplied by three).

- b. a current membership with a tuition assurance scheme operator which, if the organisation is unable to provide services for which the individual has prepaid, must ensure:
  - i. the individual will be placed into an equivalent course at a location suitable to the individual and receive all services for which the individual has prepaid at no additional cost to the individual; or
  - ii. if an equivalent course cannot be found – the individual will be refunded the prepaid fees which are in excess of the threshold prepaid fee amount.
- c. any other fee protection measure approved by the National VET Regulator.

- Where you choose to hold an unconditional financial guarantee from a bank operating in Australia, you ensure that:
  - the guarantee is structured so that you can promptly refund students' prepaid fees in excess of \$1500 in circumstances where you are no longer able to deliver the training; and
  - you can demonstrate how the amount of the guarantee was determined; and
  - this level is always greater than the amount of fees required to be protected.
- Where you choose to implement an alternative fee protection measure, you ensure that:
  - you apply to ASQA for approval in writing, including details of how the measure will be implemented; and
  - the measure demonstrates an equivalent level of fee protection as that provided by an unconditional financial guarantee from a bank operating in Australia; and
  - you wait until you receive approval from ASQA before collecting fees in excess of \$1500, unless you already have another approved fee protection measure in place in the interim.
- If you utilise the Tuition Protection Service to protect fees paid by international students, you ensure that you have an alternative approved fee protection measure for domestic VET students.
- If you utilise the tuition protection arrangements under the *VET Student Loans Act 2016* for VET Student Loans (VSL), you ensure that you have an alternative fee protection measure for non-VSL students.
- You ensure that your refund policy, that students are provided with at the time of enrolment, is reflective of the prepaid fee protection requirements.

**Known risks to compliance**

- Accepting prepaid fees before determining the suitability of a prospective student for the course they are enrolling in.
- Failing to ensure that your fee protection method covers all applicable student cohorts within the scope of your operations.
- Incorrectly assuming that multiple pre-paid instalments of less than \$1500 each for the same VET course will avoid the threshold prepaid fee amount and requirements associated with it.
- Not monitoring the protected account to ensure it is always equal to or greater than the amount of fees required to be protected.
- Failing to ensure that prepaid fees above \$1500 that are collected through external loan providers, including 'buy now, pay later' providers, are appropriately protected.

	<ul style="list-style-type: none"> <li>• Using the protected amounts and accounts to pay for business operating expenses.</li> <li>• Failing to have adequate controls over who within the RTO can make withdrawals from the protected account.</li> <li>• Failing to limit online payment gateways to \$1500 where an RTO states it will not collect more than \$1500 in prepaid fees.</li> </ul>
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Public liability insurance	
Requirement	Example activities and other considerations for compliance
<p>An NVR registered training organisation must hold public liability insurance that covers all the organisation's operations for the entire period in which the organisation is registered under the <b>Act</b>.</p>	<ul style="list-style-type: none"> <li>• You have evidence of how you determine appropriate and sufficient public liability insurance for your operations.</li> <li>• You have systems and processes in place to ensure that any additions to scope including activities such as work-integrated learning or community-based learning, are covered under your public liability insurance.</li> <li>• You can demonstrate evidence of your public liability insurance, such as a certificate of currency, which: <ul style="list-style-type: none"> <li>○ identifies that your RTO and its full scope of operations is covered by the policy; and</li> <li>○ confirms that all <b>VET students'</b> activities are covered, or that there are no restrictions on the activities covered.</li> </ul> </li> </ul>
	<b>Known risks to compliance</b>
	<ul style="list-style-type: none"> <li>• Failing to ensure your public liability covers your entire scope of operations, including where training is delivered online.</li> </ul>

Compliance with laws	
Requirement	Example activities and other considerations for compliance
<p>An NVR registered training organisation must comply with all applicable Commonwealth, State and Territory laws, including, for example, by ensuring:</p> <ol style="list-style-type: none"> <li>a. <b>personal information</b> is collected, used and disclosed by the organisation in accordance with all applicable privacy laws; and</li> <li>b. the organisation complies with all applicable requirements under the <i>Student Identifiers Act 2014</i>.</li> </ol> <p>Note: There are a range of laws that may be applicable under this section. The examples provided in paragraphs (a) and (b) are for illustrative purposes.</p>	<ul style="list-style-type: none"> <li>• You can demonstrate how you identify all Commonwealth, State and Territory laws that are applicable to your RTO's operations (e.g. the Work Health and Safety Act in your jurisdiction/s).</li> <li>• You have systems and processes in place to ensure that your staff have knowledge of, and comply with, all applicable laws at all times, including any changes to legislative and regulatory requirements that may affect the services delivered.</li> <li>• You ensure that the design of training and assessment tasks does not breach the privacy of any individuals.</li> <li>• Before adding a <b>training product</b> to scope, you ensure you have checked whether the training product is required to be approved by an <b>industry regulator</b> or if there are additional licensing requirements to be able to deliver and assess the training product.</li> </ul>

	<ul style="list-style-type: none"> <li>• Where your operations involve children (e.g. students under the age of 18), you ensure your organisation and relevant staff are fully compliant with child safety laws.</li> <li>• You take active steps to protect VET students' personal and sensitive information and ensure the secure storage of VET students' documentation and <b>student identifiers</b>.</li> </ul>
	<p style="text-align: center;"><b>Known risks to compliance</b></p> <ul style="list-style-type: none"> <li>• Not identifying and considering all legislative and regulatory requirements across your entire scope of operations.</li> <li>• Failing to train your staff on essential legislative obligations, such as privacy laws and work health safety obligations.</li> <li>• Failing to gain the consent of all individuals that may be involved in an assessment activity (e.g. undertaking a personal care assessment activity with an individual where that individual has not given consent).</li> <li>• Assessment activities that put students at risk of breaching the law (e.g. recorded assessment activities involving vulnerable people electronically shared with your RTO).</li> </ul>

## Self-assurance questions

1	How do you ensure you are completing and submitting the Annual Declaration on Compliance within the relevant reporting period?
2	How do you use the ADC process to demonstrate to ASQA that you self-disclose non-compliance, as well as your organisation's rectification and continuous improvement efforts?
3	How do you monitor your operations to identify whether there are, or likely to be, material changes that require notification to ASQA?
4	What due diligence do you undertake before engaging a particular third party provider? What verification do you undertake of their trainers and assessors' qualifications?
5	How do you monitor your third parties to ensure they comply with all relevant legislative and regulatory requirements?
6	How do you ensure you have sufficient protected funds to be able to refund students promptly, if required?
7	How do you ensure your public liability insurance is adequate and covers all VET students in all delivery settings?
8	How do you identify the Commonwealth, State and Territory laws that apply to your operations? How do you ensure your staff and third party providers comply with these laws, including privacy laws and child protection laws?
9	How do you monitor changes to legislative and regulatory requirements that may affect the services that you deliver?