

Review of the National Vocational Education and Training Regulator Act 2011

ACPET Submission

August 2017

Introduction

Established in 1992, ACPET is the national industry association for private providers of tertiary education and training. ACPET members deliver a range of vocational education and training (VET), higher education and English language programs across all States and Territories, as well as internationally.

ACPET seeks to enhance quality, choice and innovation in Australian tertiary education and training. Its members include commercial and not-for-profit entities, community groups, industry providers and enterprise-based organisations. ACPET works with governments, industries and other stakeholders to ensure tertiary education and training services are well targeted, accessible and delivered to a high standard.

The outcomes of this review will impact on the great bulk of its members and their students and industry partners. ACPET's priority is to ensure a VET regulatory framework that helps ensure the very best outcomes for their students, industry and the Australian economy.

ACPET welcomes the opportunity to engage in the review through this submission and the participation of its Chief Executive Officer, Rod Camm, on the review Expert Advisory Panel.

Context for Submission

With most its VET provider members regulated by the national regulator, the Australia Skills Quality Authority (ASQA), ACPET is keen to see as the Review's scope indicates, "...functions and powers that are relevant and suitable to the current and future VET environment". It is clear the current VET environment nationally has been dominated by the failures of the VET FEE-HELP program (VFH) and its replacement by the VET Student Loans program (VSL).

While regulatory shortcomings were identified with the failed VFH, it is also clear there were fundamental program design and implementation flaws due to the absence of basic, common-sense, contract management arrangements. An environment where annual VFH loans could grow to almost \$3 billion in a few years is testament to these failings and a program 'out of control'.

Notwithstanding these program design and implementation flaws, the inability of audit and other regulatory arrangements to identify and respond to very poor student course completions highlighted considerable regulatory failings.

The federal government responded to these failings through changes to VFH and the VET Student Loans Act and Rules with a raft of measures to protect students and support quality outcomes. ACPET strongly supported many of these measures. At the same time, there is some regulatory overreach that will restrict the innovation and flexibility necessary for quality providers to respond to the diverse and dynamic needs of industry and students.

In the current environment where the sector and some students have been damaged by the VFH failings the default position of governments appears to be to 'double down', and add more regulation. This simply demonstrates a lack of confidence in the current regulatory arrangements.

Providers that cannot clearly demonstrate the capacity to deliver strong outcomes must not be granted the privilege to train our young people and others. It is important, however, in reviewing the National Vocational Education and Training Regulator (NVETR) Act 2011 that regulatory demands don't prevent high quality providers from responding to these needs with innovative, responsive programs that achieve strong student outcomes. Or worse still, that quality providers 'worn down' by an increasing compliance burden cease operations.

With the challenges of major restructuring of the economy and workforce arising from digital disruption and the '4th Industrial Revolution', more than ever there is a need for a high quality, innovative VET provider network. The regulatory framework must be able to support this "...future VET environment". Unfortunately, the design and implementation of regulatory arrangements that support this outcome is made more difficult by the absence of a well-articulated strategic plan for the VET sector that addresses these fundamental issues and priorities.

Key points

Much of the recent concerns with quality outcomes have been due to poor government program design and implementation.

Notwithstanding very poor design and implementation, recent program failures also highlight inadequate regulatory governance and practice. More effective regulatory governance would have ensured sound provider training and assessment strategies and industry engagement to support quality outcomes. Regulatory practice should have included closer monitoring of data and timely action to suspend poor practice and 'weed out' poor providers whilst supporting quality providers.

It is important that the regulatory framework does not hinder quality providers from responding to the diverse and dynamic needs of students and industry. More regulation and compliance may simply work against quality student outcomes.

ASQA's move to a student-centred audit model is strongly supported but must be accompanied by a reduced compliance burden for quality, low risk providers.

The current review of national data policies and protocols must lead to changes that enable the real-time collection and sharing of all provider performance data with governments, regulators and prospective students.

There needs to be a greater focus on providers demonstrating sound training and assessment and outcomes governance - not just from a procedural or documentary perspective - but from a systemic, strategic perspective.

The principles that should drive the business plan of a quality VET provider are:

- Governance to support quality training and assessment and student outcomes
- Continuous improvement in all aspects of the business and particularly student support and outcomes
- Ethical behaviour and a commitment to student welfare
- Transparency of performance and student outcomes
- Sustainability demonstrated by the certification of ethics and support of industry

The current environment where providers are simply regulated objects subjected to a growing regulatory burden is unsustainable. The regulatory model should be a partnership with industry and providers that recognises the shared responsibility to ensure quality training and assessment and outcomes. Changes are required to recognise, support and reward continuous improvement and strong outcomes by quality providers.

ASQA needs to be able to use a broader range of intervention strategies to address any shortcomings in training and assessment and student outcomes including greater use of conditional registration, financial penalties and enforceable undertakings.

There are consistent concerns with the variability of audit approaches and assessments.

There should be a single VET regulatory framework and regulator across the country. There are insufficient grounds to retain the residual regulatory responsibilities in Victoria and Western Australia.

Response to Questions

The following responses are provided against the questions listed on the Review's web site.

Question 1

In the interests of quality student outcomes, which aspects of vocational education and training (VET) should be under the closest scrutiny by the regulator, the Australian Skills Quality Authority (ASQA)?

The focus of ASQA's regulatory activity to date has largely been on processing applications for registration and re-registration with an emphasis on document compliance - has all the paperwork been submitted? Is the paperwork compliant? Clearly the workload associated with this is disproportionate with the outcomes, particularly when linked to the large number of registration and re-registration applications and have limited ASQA's ability to focus on quality student outcomes.

ACPET is strongly supportive of ASQA's recent adoption of a regulatory approach that is aligned to the student 'experience' and outcomes rather than pure compliance. This approach, underpinned by a stronger risk management approach to identifying its audit priorities, will make a significant contribution to a greater focus on student outcomes. But it must be accompanied by reduced compliance for quality providers.

Of course, the key for students and industry is whether training has led to the desired outcome - subject and program completion, workplace competency, employment or career development.

Currently, however, there is very little information available at the provider level on these fundamental outcomes. While State and Territory governments collect some of these outcomes as part of their purchasing activities, this information is not broadly available or shared.

The Australian Government published provider completion rates for VFH - but too late to inform purchasing and regulatory action to prevent some very poor student outcomes.

The National Centre for Vocational Education Research (NCVER) collects provider data in accordance with national data policies and protocols. But these same arrangements do not support timely collection, publication and sharing of provider level outcomes with students, jurisdictions and regulators.

Quality outcomes depend on students understanding the outcomes they want, how these outcomes link to available training programs and being able to make informed decisions about providers who can best deliver these outcomes.

A meaningful and effective focus on student outcomes requires adequate, accessible and reliable data. The current review of the national data policies must lead to changes that enable the timely availability, publication and sharing of these outcome data - with prospective students and all jurisdictions and regulators. This would enable ASQA, for example, to more effectively monitor enrolment data and trends and identify the need for regulatory or other action.

It also needs to be borne in mind, particularly as changes impact the 'world of work', the desired outcomes may not always be those aligned to traditional employment and career pathways. There needs to be consideration of the student outcomes providers aim to achieve and what was achieved.

It is clear from some recent experience that a relatively few providers 'achieved' financial returns at the expense of student outcomes. Others, it seems from the strategic audits conducted by ASQA, have insufficient understanding of quality training and assessment requirements, with significant implications for workplace competency and employment. While the regulator has taken regulatory action where failings have been identified, in many cases the 'damage had been done'.

Put simply, some RTOs should not have been registered or had significant conditions imposed on their registration. While this may reflect shortcomings of ASQA's previous compliance regime (is the paperwork all in place?), there needs to be a greater focus on ensuring high standards of training and assessment governance and quality is evidenced (and will be maintained) in registration applications.

The Standards for Registered Training Organisations 2015 (RTO Standards) have a strong focus on procedural compliance and obligations to students but little emphasis on ensuring training and assessment integrity and governance. The governance focus in the RTO Standards is on financial integrity and business continuity.

There needs to be a stronger focus on demonstrating sound training and assessment governance - not just from a procedural or documentary perspective - but from a systemic, strategic perspective with an emphasis on ensuring and 'protecting' quality training and assessment and outcomes and a culture of continuous improvement.

Question 2

What are the principles that should drive the business plan of a quality VET provider?

As noted above, recent experience has highlighted some RTOs having focused on financial returns and growth, with inadequate attention to quality training and assessment and outcomes. The first and foremost principle that should drive the business plans of providers is a commitment to quality training and assessment, the student experience and outcomes, including governance arrangements that underpin this commitment.

Equally, continuous improvement must be a core principle. This should particularly be applied to training and assessment, and again, the student experience and outcomes.

Some of the recent experiences across the sector, and particularly the impact on students of program and provider failures, highlight that training young people and others is not simply a 'transaction' - a commodity purchased by governments, industry or students. The consequences for students of poor practices and behaviours can be very significant and long lasting.

In recent weeks, the issue of sexual harassment and assault amongst university students and the role higher education providers must play in addressing the concerns identified has been prominent. This responsibility to support the welfare of students (particularly for those who are young or disadvantaged) is one that must be acknowledged by all providers.

A commitment to ethical behaviour and student welfare must, therefore, be a guiding principle for RTOs. This principle should permeate all aspects of their operations, from marketing and recruitment to ongoing student support, training and graduation. The core of ACPET membership is a commitment to its Code of Ethics that includes a strong focus on 'putting students first'.

While there has recently been a national focus on transparency in the higher education sector with a raft of reforms implemented, this focus on transparency - amongst providers, regulators and governments - is not as evident in the VET sector. National data policies and bureaucratic structures do not support the sharing of data that is fundamental to a culture of openness and transparency that underpins informed student choice. Equally, performance data can be seen as commercial in confidence, part of the provider's competitive advantage or open to misinterpretation.

If the sector is to stand for quality student outcomes, above all else, there needs to be maximum transparency of information - including performance and financial data. Transparency of all relevant information, including outcomes, must be a principle that guides business planning and delivery. There needs to be full and real time reporting of provider data direct to NCVET.

Having recently witnessed first-hand the impact on students of the closure of a number of providers, sustainable operations - including not being beholden to a single funding source - must underpin business planning. This sustainability must transcend the immediate planning cycle with industry certification and support evidenced.

In summary, the principles that should drive the business plan of a quality VET provider are:

- Governance to support quality training and assessment and the student experience and outcomes
- Continuous improvement in all aspects of the business
- Ethical behaviour and a commitment to student welfare
- Transparency of performance and student outcomes
- Sustainability demonstrated by industry certification and support

Noting the above, however, there would be concern if the regulator was tasked with assessing or 'approving' provider business plans.

Question 3

Are regulatory and legislative changes required to support Registered Training Organisations to continuously improve across all areas of their operations and to go beyond meeting minimum quality standards?

As noted above, the RTO Standards have a process focus. There is a strong emphasis on meeting requirements - what RTOs are required to do to comply. While these requirements need to be clearly articulated, there is little that goes beyond RTOs being regulated 'objects'. There is little recognition, in the legislative instruments or processes, of good educational and ethical practice.

There is little in the RTO Standards that reference the importance of continuous improvement in performance across providers' operations, and particularly student outcomes. As highlighted above, the governance standards refer to financial and business sustainability, but not to arrangements that support a strategic perspective and response to maintain, 'protect' and enhance quality training and assessment and outcomes.

This strong compliance flavour means that high quality providers are not empowered to look at ways to better respond to the needs of their students, to innovate their programs and training and assessment approaches. Consultations with members indicate the need to adopt a 'small target' approach - to stick with the approved processes and limit any innovation or reform, lest it draw the attention of the regulator.

Advice from members also indicates the increasing burden of compliance (ASQA, as well as Commonwealth, State and Territory regulators and contract managers) means the capacity to pursue improvements that would support better student outcomes is compromised.

The outcomes for students, industry and economy of this approach are clear - mediocrity for now and a sector less able to respond to future workforce needs.

There need to be changes that recognise the role providers and their peak bodies can play in better supporting the sector's regulatory regime. They need to become regulatory partners that have a stake in not only ensuring poor performance is identified and addressed, but that quality provision and improvement is promoted, recognised and rewarded.

Formal recognition or consideration of the sector's own efforts to lift quality and support high quality providers, like ACPET's Industry Certification program or professional development, should be provided for in the legislation and other instruments. Industry certification means the provider has been subject to rigorous scrutiny and analysis, including by their peers. This will provide a clear signal to regulators, government and other purchasers and students that these providers deliver quality outcomes.

Peak bodies, like ACPET, can also play a role in educating and developing providers and the sector to lift performance and student outcomes.

This approach will clearly be more acceptable and 'doable' if there is confidence in the overall quality of providers - that (almost) all are meeting minimum standards. Unfortunately, as highlighted in recent times, this is not the case.

Legislative changes that focus greater emphasis on demonstrating a commitment and capacity to deliver quality training and assessment and student outcomes are required. This also means the need to demonstrate governance that ensures, 'protects' and enhances quality training and assessment. It is worth noting the academic governance requirements of the Higher Education Standards Framework (Threshold Standards) 2015. Consideration of appropriate equivalent requirements should be considered for the NVETR Act and RTO Standards.

The unavailability of data to support student choice, program administration and regulation has been highlighted above. Legislative and policy changes that enable the ready accessibility of all provider performance data is required. Access to this data would assist providers to understand and benchmark their performance relative to others and inform improvement strategies.

Question 4

How effective are the enforcement powers of ASQA for ensuring a quality VET sector and how might they be improved?

The enforcement of its powers depends on the regulator focusing on the 'things that matter', having the appropriate information on which to make judgements about quality training and assessment and outcomes and the appropriate range of measures that focus on the 'things that matter'.

While changes to its audit model and a stronger risk-based approach should assist, the recent focus on assessing document compliance means ASQA has not always focused on the 'things that matter'. So, while its enforcement may have been robust, it is questionable if it has made a substantial difference to quality outcomes.

Enforcement strategies that encourage providers to lift student outcomes are the key. That requires access to relevant data and other evidence. As noted above, the lack of real time, comprehensive performance data and information limits ASQA's ability to identify and address poor performance at an early stage. The current review of national data policies and protocols must lead to changes that allow real time (or at least much more frequent) data lodgement, access and publication.

So too would greater sharing of information and responsibility with key stakeholders, including providers and their representatives. Quality providers have a keen interest in ensuring quality is maintained and are often the first to identify poor performance by others. This engagement would also assist in identifying strategies to improve provider performance at an earlier stage and perhaps before enforcement measures are required. This approach should recognise and harness the industry's own activities to lift provider quality. It would support the regulatory partnership model articulated above.

The move to a student-centred audit approach should assist ASQA's ability to focus its resources on the 'things that matter'. To complement this approach, the regulator needs to be able to use an appropriate mix of intervention strategies to address any shortcomings. The current approaches, that seem to focus on drawn out legal processes and proceedings are costly, time consuming and too late to make a difference for students.

In an environment where it is moving to focus on key course and provider risks, ASQA should be better placed to intervene earlier. But this requires the authority to 'step in' and contain risks like exponential growth or delivery patterns associated with poor student outcomes. The ability for ASQA to impose conditions or limit activities where high risks are identified is required.

Greater use of conditional registration, financial penalties and enforceable undertakings should also be considered to enable a more graduated and timely response to identified compliance issues. Follow-up to ensure enforcement must, of course, also be undertaken.

Conversely, working with sector representatives, there needs to be greater information and advice that assists providers to comply with what can be complex and unclear regulatory requirements. TEQSA's approach to guidance notes is worthy of consideration, as is harnessing the sector's professional development capacity.

At the same time, ASQA's enforcement activities would be made much simpler if there were not the overlapping regulatory responsibilities in the VSL Act and Rules and the State and Territory regulators and purchasers. There needs to be a single national regulatory framework and regulator.

Question 5

How could quality be effectively measured and reported as part of an outcomes-based approach to regulation? What is the best way to measure student outcomes?

The key to effective measurement, first and foremost, is identifying the student outcomes sought. As noted above, in an increasingly diverse labour market and economy, measures like course completion and employment, whilst important, may not be the only measures. There is an ongoing debate, for example, about the relative merits of course and subject completion. In an environment where technology is rapidly re-shaping jobs and careers, course completion may not be the optimal outcome for some students.

What should be measured is that which students, or other purchasers, sought to achieve. Did they enrol to complete a course or just get the skills set required for their current job? Did the program deliver the workplace competency that industry requires? What was the provider 'offering' in its course or program marketing?

While the 'core' indices including course completion are important they need to be supplemented, as necessary, to recognise the diversity of outcomes sought. The move by ASQA to a student-centred approach will greatly enhance its ability to make more informed judgements about these outcomes. The inclusion of student surveys will help inform these outcomes but so too would greater, not less, industry feedback to understand workplace competency outcomes.

At the same time, it is important that the 'core' indices are captured and published in a manner that is readily accessible by students, industry and others. As indicated above, the current review of national data policies must lead to changes that enable more frequent collection, sharing and publication of all provider data currently reported to NCVER and other agencies. This means Total VET Activity and includes all government-funded activity captured by States and Territories.

The data should also be reported in a way like that available through the QILT initiative that enables comparisons across higher education providers - and easily understood by students and others.

Given the diversity of possible outcomes, and particularly as they relate to individual providers, the publication of outcomes on providers' web sites should be required and the assessment of these outcomes included in ASQA's audit regime. ASQA audit reports must, likewise, be readily available to all stakeholders.

Question 6

What measures can be taken to give students, parents and communities a stronger voice in the regulation of VET?

To enable all stakeholders to have a greater say in the regulation of VET, or even to effectively engage with the sector, requires the ability to obtain, understand and act on relevant information. As noted above, transparency of data and information is fundamental and current limitations need to be addressed to assist stakeholders and students alike.

The complexity of the sector, with a raft of overlapping regulatory and funding arrangements means there is a need for a simple mechanism for all students to take their concerns and have them 'case managed'. While action has been taken at the national level and through several jurisdictions to establish a training ombudsman or similar functions, the differing approaches add to the sector's complexity and are confusing to students. This support should be available across the country by a single, national training ombudsman.

Through its stakeholder and provider surveys, ASQA provides opportunities for feedback on its service delivery. What is missing are mechanisms that would help underpin a regulatory partnership focused on supporting strong outcomes for students and industry. Ongoing, structured and formal arrangements to engage the sector and industry around the design, implementation and monitoring of the regulatory framework and initiatives are required.

Question 7

Are there areas of overlap, inconsistencies or gaps between the National Vocational Education and Training Regulator Act 2011 and other legislation that impedes the effective regulation of the VET sector?

As noted above, there is a need for a single VET regulatory framework and regulator across the country. While there were, and still are, some concerns about ASQA's capacity, there are insufficient grounds to retain the residual regulatory responsibilities in Victoria and Western Australia. It would also assist in addressing significant regulatory inconsistency concerns identified by ACPET members.

Some of the measures introduced for the VSL simply add to the regulatory burden and overlap with the NVETR Act. States and Territories are likewise adding to the regulatory burden through provider contracts. Those elements that are considered worthwhile and applicable to all providers should be migrated to the NVETR Act with the VSL Act and Rules and various State and Territory requirements limited to program specific matters.

Members have also commented on the 'same but slightly different' regulatory requirements of the ESOS Act that necessitate repetition of compliance activities.

Question 8

Other comments

A consistent theme in the advice from provider members is the inconsistency in the application of the RTO Standards. They are interpreted differently by different auditors which makes compliance a challenge.

Advice from ASQA on best practice should be provided. Improvements would include actual advice from ASQA on request on how to ensure compliance and a case manager to help navigate the regulatory requirements.