

**INQUIRY INTO VOCATIONAL EDUCATION AND
TRAINING IN NEW SOUTH WALES**

Organisation: Australian Skills Quality Authority

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SUBMISSION

AUSTRALIAN SKILLS QUALITY AUTHORITY (ASQA)
submission to the:

***INQUIRY INTO VOCATIONAL EDUCATION AND TRAINING
IN NEW SOUTH WALES***

21 AUGUST 2015



Purpose

This submission from the Australian Skills Quality Authority (ASQA) to the Inquiry of the General Purpose Standing Committee No. 6 into vocational education and training (VET) in New South Wales aims to provide the Committee with an overview of the regulation of the quality of VET in Australia, together with observations made by ASQA of performance, from a regulatory perspective, of training providers in New South Wales.

It is expected that this input from ASQA on the regulation of VET will help inform the deliberations of the Committee in identifying strategies for better ensuring that this important education and skills sector delivers for the communities of NSW (and nationally) the diverse economic and social benefits of VET.

Through successful participation in VET, individuals are better equipped to improve their career prospects; increase their earning potential; better adapt to changing employment opportunities in increasingly volatile economic and labour market environments; boost their productivity; improve business performance, and competitiveness; and contribute significantly to state and national economic growth and sustainability^{1,2}. In terms of social outcomes delivered through VET, higher skilled individuals demonstrate higher motivation for learning, living and working; they have better life satisfaction; they contribute to enhancing social inclusion and social cohesion; they are healthier; and are better able to provide social and other support to their children to access and productively utilise the opportunities and resources available in their communities.

Nationally and at State and Territory levels VET constitutes significant multi-billion dollar capital and recurrent investments by individuals, communities, public, and business and industry.

Ultimately, the quality of outcomes delivered by VET is a function of the quality of training providers, the quality of training products, and the quality of learning experiences of VET participants, all largely dependent on the quality of regulation of vocational education and training in Australia, a core role of ASQA.

To assist the Committee in its inquiry, ASQA's activities in regulating Australia's VET sector, nationally and within New South Wales, since its inception are described briefly below.

National Overview: Regulatory activity (1 July 2011 – 31 March 2015)

The Australian Skills Quality Authority (ASQA) was established to streamline the regulation of VET, increase consistency across the States and Territories, and address emerging quality concerns. The *National Vocational Education and Training Regulator Act 2011* (NVR Act) and related instruments provide the framework that enables ASQA to undertake its functions.

From 1 July 2011, ASQA assumed responsibility for the regulation of approximately 2,000 providers, as well as the accreditation of VET courses, in New South Wales, the Northern Territory, the Australian Capital Territory, Victoria and Western Australia. The Victorian and Western Australian governments did not refer their VET regulatory powers to the Australian Parliament to enable full VET regulation by ASQA in their jurisdictions, therefore ASQA only has regulatory responsibility for those providers in Victoria and

¹ European Centre for the Development of Vocational Training, (Cedefop, 2011), *The benefits of vocational education and training, Research paper No. 10*, Publications Office of the European Union, Luxembourg.

² Beddie, F 2015, *The outcomes of education and training: what the Australian research is telling us, 2011-14*, NCVER, Adelaide.

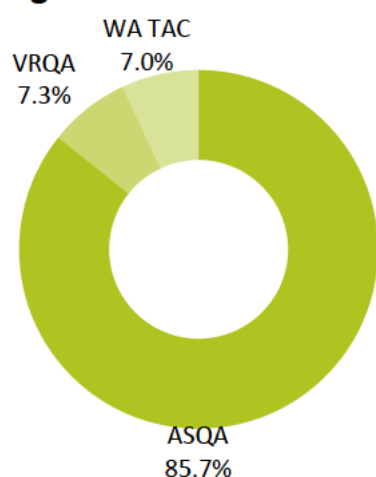
Western Australia that enrol international students, or that operate in a Territory or a State other than Victoria or Western Australia.

Subsequently, ASQA also assumed responsibility for VET regulation in Tasmania, South Australia, and Queensland following the referral of relevant powers to the Australian Parliament. ASQA assumed responsibility for the regulation of VET in Tasmania on 15 February 2012, in South Australia on 26 March 2012, and in Queensland on 29 June 2012.

At 31 March 2015 ASQA was responsible for the regulation of 3,906 of the 4,556 Registered Training Organisations (RTOs) nationally representing some 85.7% of the total national provider market, as shown in Figure 1. The Victorian Registration and Qualifications Authority (VRQA) and Western Australian Training Accreditation Council (WA TAC) regulate 7.3% and 7.0% of the national training provider market respectively (Figure 1).

Figure 1: Regulators Market Share of Registered Training Organisations (31 March 2015)

VET Regulators - Provider Market %



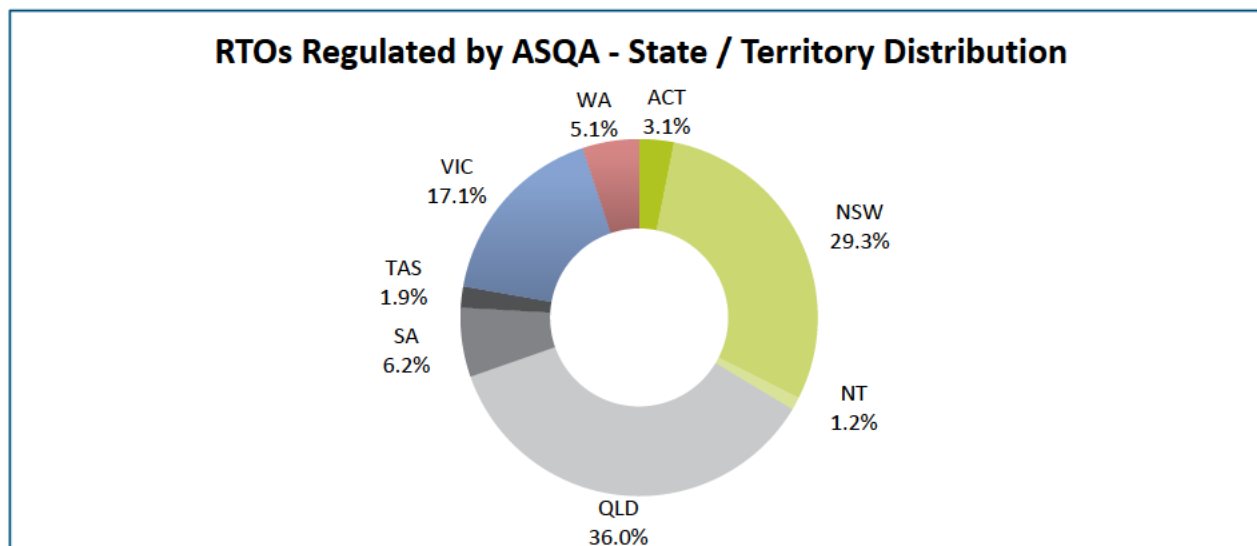
Since ASQA commenced operations on 1 July 2011 there has been a downward trend in provider numbers for both ASQA-regulated RTOs and RTOs Nationally.

This trend reverses a period of expansion in RTO numbers which resulted from reforms that opened access to the VET training market in a number of jurisdictions

ASQA was responsible for regulation of 1086 New South Wales providers after assuming responsibility for the regulation of VET in the jurisdiction on 1 July 2011. As at 31 March 2015 this number had increased slightly to 1144, in contrast to the decrease in provider numbers nationally.

The heavy concentration of RTOs in the Eastern States (as shown in Figure 2) reflects historical activity and population density. It should be noted however that while the numbers are a raw count of individual RTOs, they do not reflect the size of the business of those providers.

Figure 2: ASQA-Regulated Registered Training Organisations by State (31 March 2015)



National Regulatory Activity: 1 July 2011 – 31 March 2015

In the period 1 July 2011 – 31 March 2015 ASQA received 25,389 applications from training organisations. As at 31 March 2015 some 24,796 (97.7%) of these applications had been finalised.

The NVR Act enables ASQA to conduct a compliance audit of a national VET regulator registered training organisation (NVR RTO) at any time, to assess whether the organisation complies with its requirements under the Act. Further, the Act requires ASQA to apply a risk management approach to performing such regulatory functions.

Other than audits conducted to assess a registration application, ASQA conducts audits to:

- Monitor an NVR RTO's ongoing compliance following approval of initial registration;
- Monitor an NVR RTO's compliance on identified risk exposure grounds; and
- Investigate the substance of complaint allegations.

ASQA completed 4,693 audits between 1 July 2011 and 31 March 2015. Outcomes of the 4,693 completed audits were that 3,451 (73.5%) were compliant; 1002 (21.4%) were non-compliant; and 240 (5.1%) were discontinued or awaiting a decision from an ASQA Commissioner.

Further, Table 2 details levels of compliance at audit and following rectification for completed audits of existing providers that were finalised within the 2013-14 financial year and the first three quarters of 2014-15. As can be seen, levels of full compliance at audit nationally were 23.9% (2013-14 FY) and 25.4% (1 July 2014 – 31 March 2015). Following rectification, the level of fully compliant RTOs rose to 77.8% (2013-14 FY) and 83.5% (1 July 2014 – 31 March 2015).

Table 2: Finalised Audits of providers 2013-14 FY & 1 July 2014 – 31 March 2015: National

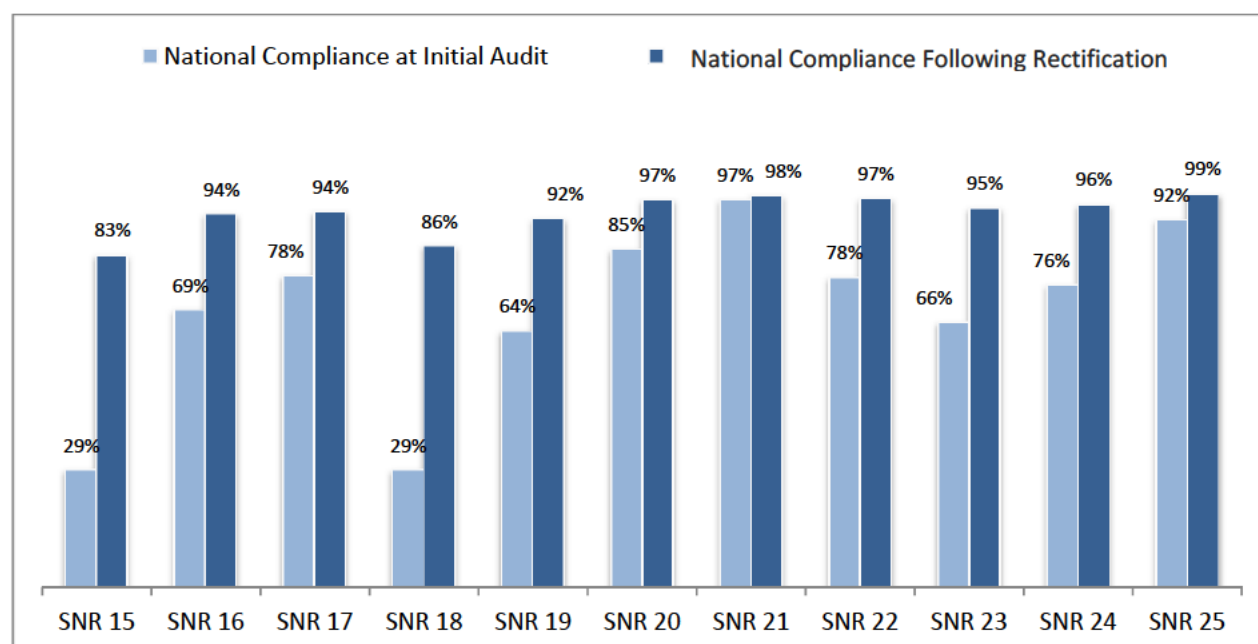
	At Audit		After Rectification	
	2013-14 FY	1 Jul 14 – 31 Mar 15	2013-14 FY	1 Jul 14 – 31 Mar 15
Fully Compliant	23.9%	25.4%	77.8%	83.5%
At least One Non-Compliance	76.1%	74.6%	22.2%	16.5%

Figure 3 details the levels of compliance at audit and following rectification against each of the *Standards for NVR Registered Training Organisations 2012* (SNR – refer to Table 3). Figure 3 shows that levels of full compliance at audit vary considerably across the Standards, ranging from 29% for *SNR 15 – Strategies for quality training and assessment* and *SNR 18 Governance arrangements* respectively; through to 97% for *SNR 21 – Insurance*.

Further, Figure 3 shows that compliance following rectification also varies across the Standards. On this point, a key concern for ASQA is that non-compliance following rectification remains at some 17% for the critical *SNR 15 – Strategies for training and assessment*.

(Note: the data in Figure 3 and in Table 3, below, refer to Standards (SNRs) from the *Standards for NVR Registered Training Organisations 2012*. The new *Standards for Registered Training Organisations 2015* did not commence for existing RTOs until 1 April 2015, i.e. not until after the end of the period for which data is shown in Figure 3. While it was possible for ASQA to use mapping to convert the SNR data used in Figure 3 in terms of Clauses from the *Standards for Registered Training Organisations 2015*, ASQA opted to not do this in order to ensure easier access of the material to readers more conversant with the Standards for RTOs 2012.)

Figure 3: Finalised Audits of RTOs 1 July 2014 – 31 March 2015: National



NB: refer Table 3: *Standards for NVR Registered Training Organisations 2012* for SNR information



Table 3: Standards for NVR Registered Training Organisations 2012

15	Strategies for quality training and assessment
16	Strategies for principles of access and equity and to maximise outcomes for clients
17	Management systems
18	Governance arrangements
19	Interactions with National VET regulator
20	Compliance with legislation
21	Insurance
22	Financial management for initial registration
23	Strategy for certification
24	Access & equity issues – initial
25	Strategies for qualifications transition

Regulatory Decisions Following an Audit

ASQA's audit between 1 July 2011 and 31 March 2015 resulted in ASQA making 692 decisions to refuse applications:

- 147 refusals of initial applications to set up a new NVR RTO (out of 958 completed applications);
- 141 refusals to re-register an existing NVR RTO (out of 2427 completed applications); and
- 404 refusals to add a new course to a provider's registration (out of 20808 completed applications).

This means that some 15.3% of applications from organisations seeking to establish a new provider are refused, some 5.8% of applications from existing providers to re-register are being refused, and 1.9% of completed applications to add a new course are also being refused.

In the same period ASQA made 760 regulatory decisions to: cancel (86 decisions); suspend (132 decisions); give written notices of intention to cancel/suspend (470 decisions); and impose another type of administrative sanction (72 decisions).

This means that since ASQA's inception 829 decisions have been made to cancel/suspend (218 decisions) registration; give written notice of intention to cancel/suspend registration (470 decisions); or refuse the re-registration of an RTO (141 decisions). These 829 decisions have affected a total of 439 individual NVR RTOs (given an NVR RTO can have more than one decision made against it).

[N.B. If written notices of intention are excluded, ASQA's decisions to cancel/suspend registration (218 decisions) and refuse re-registration (141 decisions) have affected a total of 333 individual RTOs (given an NVR RTO can have more than one decision made against it)].



New South Wales Overview & Regulatory Activity: 1 July 2011 – 31 March 2015

New South Wales Overview

At 31 March 2015, ASQA had regulatory responsibility for 1144 RTOs based in New South Wales, which represents 29.3% of the total number of RTOs regulated by ASQA nationally as shown in Figure 2.

New South Wales Regulatory Activity: 1 July 2011 – 31 March 2015

In the period 1 July 2011 – 31 March 2015, ASQA received 7217 applications from New South Wales RTOs (28.4% of applications received nationally). 7021 (97.3%) of these applications had been finalised by ASQA as at 31 March 2015.

ASQA completed 1417 audits of New South Wales based RTOs between 1 July 2011 and 31 March 2015. Outcomes of the completed audits were that 994 (70.1%) were compliant; 344 (24.3%) were non-compliant; and 79 (5.6%) were discontinued or awaiting a decision from an ASQA Commissioner. These results are consistent with national audit outcomes.

Further, Table 4 provides levels of compliance at audit and following rectification for completed audits of existing providers that were finalised in New South Wales for the 2013-2014 financial year and the first three quarters of 2014-15. The overall level of compliance at audit for New South Wales RTOs (32.7% for 2013-14 and 34.6% for 1 July 2014 – 31 March 2015) is higher than the overall national levels (23.9% for 2013-14 and 25.4% for 1 July 2014 – 31 March 2015; refer Table 1). Further, the overall compliance level following rectification for New South Wales RTOs (83.6% for 2013-14 and 87.2% for 1 July 2014 – 31 March 2015) were also above the overall national levels for both time periods.

Table 4: Finalised Audits of providers 2013-14 FY & 1 July 2014 – 31 March 2015: NSW

	At Audit		After Rectification	
	2013-14 FY	1 Jul 14 – 31 Mar 15	2013-14 FY	1 Jul 14 – 31 Mar 15
Fully Compliant	32.7%	34.6%	83.6%	87.2%
At least One Non-Compliance	67.3%	65.4%	16.4%	12.8%

Trends in provider quality over time

Across the 2013-14 financial year and the first three quarters of the 2014-15 financial year, compliance levels at audit for NSW based RTOs have for the most part, increased, with improved levels of compliance at audit of 5% or more against SNRs 15, 16, 17, 20, 22, 23 and 25. Correspondingly, national RTO data indicates increases in the levels of compliance at initial audit of 5% or more against SNRs 17, 20, 24 and 25. Overall the level of compliance for NSW based RTOs is higher than the national levels at initial audit for 9 of the 11 standards across both reporting periods.

Significantly, NSW compliance at audit and following rectification for the critical SNRs 15 and 18 are higher than national levels at audit for both reporting periods.

Figure 4: Compliance levels at initial audit for 2013-14 FY and 1 July 2014 – 31 March 2015: NSW and National

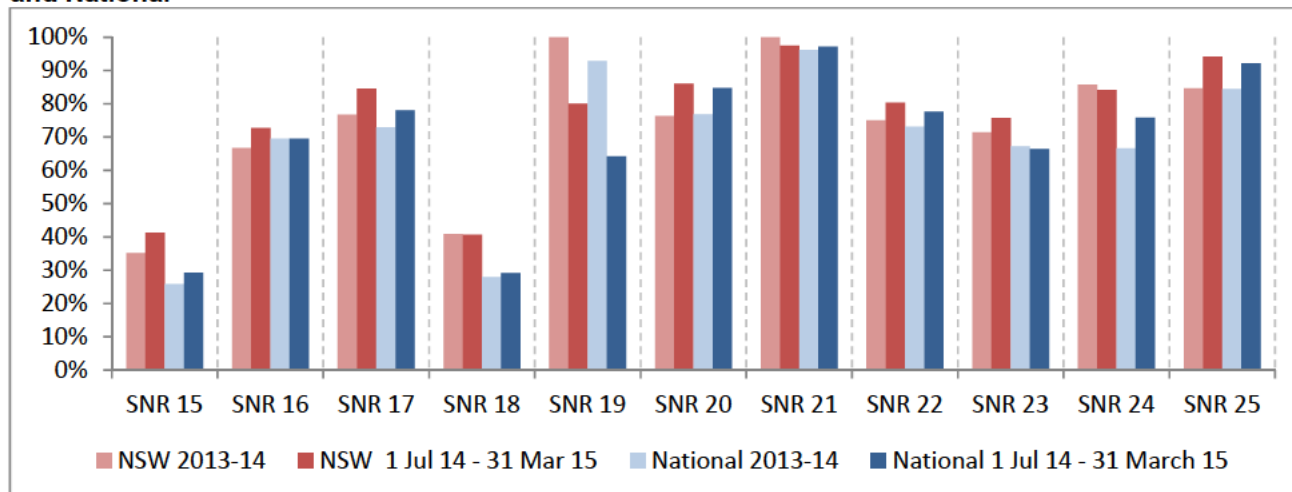
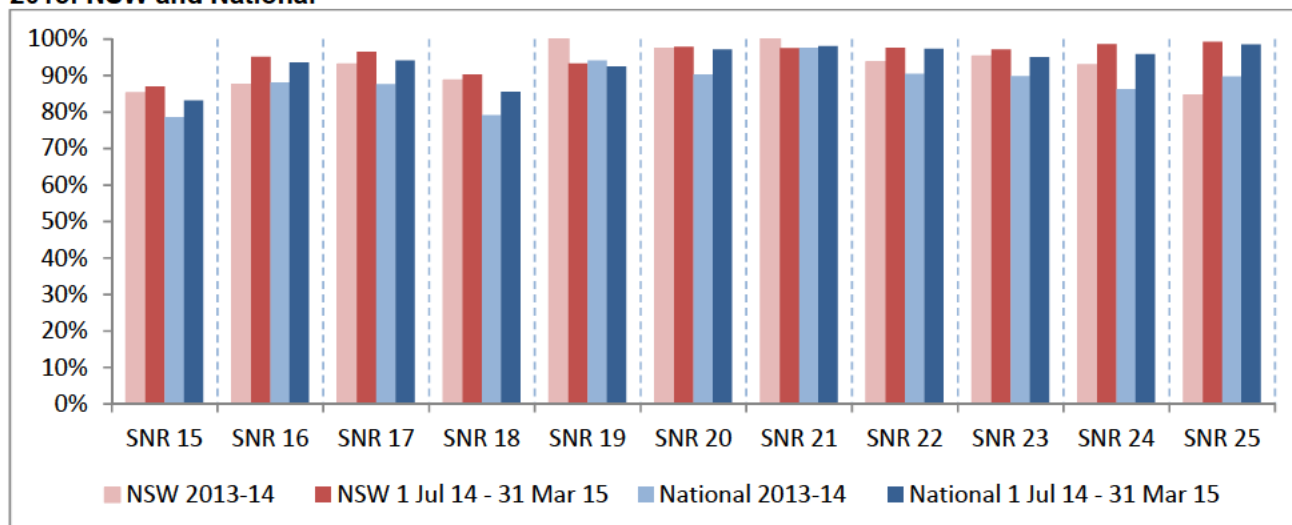


Figure 5: Compliance levels following rectification for the 2013-14 FY and 1 July 2014 – 31 March 2015: NSW and National



Levels of compliance following rectification for NSW based RTOs have, for the most part, remained consistent with national figures across each of the standards (see Figure 5).

Regulatory Decisions Following an Audit

Audit activity between 1 July 2011 – 31 March 2015 resulted in ASQA making 323 decisions to refuse applications from NSW based RTOs:

- 81 refusals of initial applications to set up a new NVR RTO (out of 390 completed applications)
- 60 refusals to re-register an existing NVR RTO (out of 777 completed applications)
- 182 refusals to add a new course to a provider's registration (out of 5686 completed applications).

These refusals represent 20.8% of completed initial applications, 7.7% of completed re-registrations and 3.2% of completed applications to add a new course. The national figures for refusals per application completed in these categories are 15.3% for initial applications, 5.8% for re-registrations and 1.9% for completed applications to add a new course.

As can be seen in Table 5, there is significant divergence between some of the national figures for refusals per application completed, and the figures for various jurisdictions. While these results are, to some degree, attributable to the nuances associated with the flow of applications within different jurisdictions, they have also occurred as a result of the move toward nationally consistent regulation. It is interesting to note that the refusal of initial applications from organisations wishing to become an RTO is notably higher in New South Wales, possibly due to the significant number of applications rejected in 2011 – 12 in that jurisdiction, however this trend is now normalising.

Table 5: Decisions to reject applications as a % of applications completed within each category in ASQA's 3 largest jurisdictions 1 July 2011 – 31 March 2015

	National	VIC	QLD	NSW
Initial	15.3%	16.0%	7.7%	20.8%
Renewal	5.8%	10.7%	3.4%	7.7%
Change of Registration	1.9%	2.1%	1.0%	3.2%

ASQA has made 27 decisions to cancel the registration of a NSW based RTOs and 49 decisions to suspend the registration of a NSW based RTOs. Further, ASQA also made 165 decisions to issue a written notice of intention to cancel/suspend the registration of a NSW based RTO and made 16 decisions to impose another type of administrative sanction.

This means that since ASQA's inception 301 decisions have been made to cancel/suspend (76 decisions) registration; give written notice of intention to cancel/suspend registration (165 decisions); or refuse the re-registration (60 decisions) of a NSW based RTO. These 301 decisions have affected a total of 135 individual NSW based RTOs (given an RTO can have more than one decision made against it).

These 135 RTOs represent 11.8% of the RTOs based in NSW. Given that NSW based RTOs represent 29.3% of the total number of RTOs regulated by ASQA nationally, ASQA believes that the level of regulatory activity undertaken in NSW to 31 March 2015 has been commensurate with the size and profile of the provider market in the jurisdiction.



New South Wales – Some VET Issues of relevance:

- VET FEE HELP


- The VET FEE HELP scheme, established under the *Higher Education Support Act 2003*, is administered by the Commonwealth Department of Education and Training.
- ASQA is aware of the large number of media stories (which have appeared over the recent past) in relation to alleged poor and dubious practices by a range of RTOs and/or brokers in terms of the recruitment of students into various courses, that have, in many instances, been tied to the VET FEE HELP scheme.
- While ASQA has no direct role in the regulation of VET funding schemes such as VET FEE HELP, the regulator has acted in relation to provider behaviour in this area:
 - ✓ ASQA developed a VET FEE HELP strategy mindful of the need for cooperation between Australian Consumer Law regulators (ACL), itself, and the Department of Education and Training in order to present a holistic response to the issues emerging.
 - ✓ ASQA mapped and documented the behaviours allegedly occurring through an analysis of its complaints data against the provisions in the VET Standards and NVR Act, Australian Consumer Law, and the guidelines applying to VET FEE HELP. This mapping document was the basis of discussions with the Department and the ACL regulators.
 - ✓ ASQA held a number of meetings with the ACL national project team on training providers of concern. NSW Fair Trading was the leader of this project on behalf of the ACL regulators.
 - ✓ ASQA implemented short (5 day) notice audit of a number of VET FEE HELP providers that included:
 - 18 RTOs of concern – those that ASQA has received 2 or more VET FEE HELP related complaints
 - 5 other RTOs – VET FEE HELP approved providers that ASQA has not received complaints about and are not listed on the Australian consumer law regulators 'traders under consideration' list.

Five New South Wales providers were audited as part of the strategy.

- Significantly, the Commonwealth Government has implemented a number of reforms of the VET FEE HELP scheme, including amending the VET Guidelines 2015. The reform measures include:
 - ✓ Banning inducements to students under the VET FEE-HELP scheme (effective 1 April 2015)
 - ✓ Tightening VET marketing and recruitment practices (effective 1 July 2015)
 - ✓ Improving the understanding of how VET FEE-HELP operates, and students' rights and obligations (effective 1 July 2015)
 - ✓ Streamlining the debt waiver and revocation processes for students under VET FEE-HELP (1 January 2016)



- ✓ Strengthening the assessment criteria for, and ongoing scrutiny of, all training providers (1 January 2016)
 - ✓ Introduction of new penalties for breaches of the VET Guidelines that include:
 - Ensuring that student VET FEE-HELP debt is incurred in line with course delivery and continued student participation, and not in one hit
 - Establishing minimum pre-requisite and prior education qualifications, including demonstrated literacy and numeracy requirements
 - ✓ Enhancing training and outcomes information, allowing students to make more informed choices about training providers and courses (March 2015)
- Legislative Amendments
 - A number of amendments to the *National Vocational Education and Training Regulator Act 2011* (the Act) were passed on 16 March 2015. Several of the amendments have implications for New South Wales based RTOs, as well as for the way ASQA interacts with other government entities. These include:
 - That the Minister may, by legislative instrument, make Quality Standards that RTOs must satisfy as a condition of registration. Where the existing Standards for RTOs are insufficient, the Quality Standards would establish a new standard to address emerging issues which impact on the quality and integrity of training. The Government intends to consult with key stakeholders, including state and territory ministers, before making any Quality Standard.
 - Amendments to the Act so that persons offering and/or marketing all or part of a VET course must identify the RTO authorised to issue the VET statement of attainment/VET qualification.
 - Amendments to the Act to extend the maximum period of registration from five years to seven years.
 - Amendments to the Act to allow for sharing of VET information with other governmental entities, including where the disclosure is reasonably necessary to enable, or assist the performance, or exercise of functions, or powers of entities listed in section 205 (i.e. Disclosure of information by the National VET Regulator).
 - External Delegations
 - In-line with the Australian Government's commitment to reduce the regulatory burden on business, ASQA is rolling out a package of regulatory reforms.
 - A key element of the reform package is giving high performing RTOs the ability to manage their own scope of registration without the need to apply to ASQA and pay a fee each time they wish to add a new qualification or unit of competency to their scope of registration.
 - ASQA conducts a comprehensive due diligence check on all potential delegates which includes reviewing the compliance history of the RTO as well as all intelligence ASQA has gathered on the RTO.

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- ASQA issued the first stage of delegation invitations to 555 RTOs on the 17th October 2014, a further 57 invitations have subsequently been issued to eligible providers. As a result of these invitations ASQA had, as at 31 March 2015, issued 130 delegations (including TAFEs). In New South Wales there are 50 delegates including all of the TAFE Institutes.
 - While ASQA has issued a delegation to these RTOs based on a strong history of compliance it should be noted that ASQA does not in any way endorse these RTOs, nor should the granting of a delegation be seen as an indicator of overall training quality.
 - ASQA – Department of Education and Communities Memorandum of Understanding (MOU)
 - A recent revision of the MOU for Information Sharing between ASQA and the NSW Department of Education and Communities, involving departmental officers and ASQA staff, has been completed. The key features of the new MOU include:
 - greater definition of the types of information each party agree to provide and exchange processes including; senior officials meetings and regulatory activity data reports;
 - the provision of 'audit status reports' by ASQA in respect of RTOs approved for Smart and Skilled funding;
 - nominating the Regional Manager Compliance based in Sydney as the initial point of contact for reporting information about suspect RTO activities and developments in VET training in NSW.