

Submission to the Review of the National Vocational Education and Training Regulator Act 2011

Submission Number:

046

Name:

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Submitting as:

Government agency.

If other, please specify:

[Not applicable]

If submitting on behalf of an organisation, business, body or agency, please specify whom you are submitting on behalf of:

Australian Children's Education and Care Quality Authority (ACECQA).

Question One

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 beneficiaries of vocational education and training (VET) should be considered when determining which aspects are under the closest scrutiny of ASQA. The beneficiaries include students, employers and a sector's consumers. For students, quality student outcomes are reflected in increased employability, the ability to keep a job, to comply with regulatory obligations, and to access higher qualifications. For employers, quality student outcomes result in job ready workers who support their ability to run a quality and compliant operation. The consumers in a sector benefit from quality qualifications; in education and care, these are young children and their families who benefit because the quality of child outcomes is linked to higher quality qualifications.

As a guiding principle, ASQA should apply the closest scrutiny to qualifications and RTOs operating in sectors with the most risk to beneficiaries if the training does not deliver quality outcomes. Factors to consider when assessing risk include vulnerable consumers, isolated workers, and regulatory obligations for workers and their employers. These factors are relevant to the education and care sector.

Individuals working in education and care have the care and responsibility for some of the most vulnerable in our community: young children. Quality training enables educators to support the health, safety and wellbeing of young children and to improve their educational and developmental outcomes. Individuals may work alone in family day care settings where they have responsibility for young children under no direct or limited supervision. Where workers are not directly supervised, workers, employers and consumers rely more heavily on the quality of a qualification ensuring the worker is able to perform their role. Education and care qualification holders are employed within a

highly regulated sector. Training that fails to equip graduates to meet their legislated obligations puts them at risk of being fined or prosecuted for not meeting these obligations. It also puts children at risk, as the regulatory requirements are in place to ensure their health, safety, wellbeing and enhance their learning and development.

Areas of concern in the education and care sector we suggest should be scrutinised closely include:

- qualifications awarded with limited or no practical experience despite the training package mandating minimum supervised work placement hours
- qualifications awarded in timeframes too short for students to have acquired the required capabilities employers and the regulatory system expects of them
- training that is simplistic or does not address all aspects of the training package
- assessment that is not rigorous
- high rates of approving RPL and/or qualifications issued with little to no genuine training or assessment taking place
- high number of applications for new RTOs with limited proven ability to deliver high quality training for this sector
- qualifications and RTOs other regulators repeatedly find concerns with
- RTOs offering financial incentives for studying with them
- RTOs whose trainers and assessors have little awareness of the sector's regulatory requirements
- individuals holding qualifications from cancelled RTOs
- qualifications awarded to students who lack English language proficiency
- individuals fraudulently claiming to hold qualifications and RTOs improperly awarding qualifications to unskilled individuals.

Question Two

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

The RTO should be clear about and driven by what consumers of VET receive in exchange for the money and time they invest in their training. VET consumers should be able to expect contemporary, high quality training, training that enables them to be employed and to maintain employment, and which allows access to further qualifications. RTOs that deliver training packages as they are supposed to be delivered and that maintain high qualification completion rates should meet these expectations.

The RTO should also understand how and why the vocational training is important to a given sector, considering employer and regulatory expectations. High quality RTOs in the education and care sector deliver training that results in graduates who are workplace ready; that is, they are able to meet sector needs and are aware of the sector's regulatory requirements. Engagement with students, employers and regulatory authorities helps RTOs achieve this. Sector collaboration and communication is particularly important where it supports and enhances workplace training and assessment.

Question Three

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?

While ACECQA sees the benefit of outcomes based regulation that drives quality improvement, current concerns in the education and care sector suggest that the most pressing changes required are those that would ensure RTOs are meeting the minimum standards already in place. ASQA's 2015 Strategic Review into Training for Early Childhood Education and Care found that only 26 per cent of RTOs in our sector were fully compliant with the required national training standards on initial audit, 68 per cent were compliant by the completion of the audit process and 89 per cent were compliant after various regulatory actions (although ASQA notes the strategic review took place during a period of transition to the current education and care qualifications which may account for some of the non-compliance).

The variation in the quality of training and assessment in early childhood education and care qualifications, which has been noted in ASQA's strategic review and by regulatory authorities and employers, raises questions about the ability of RTOs to interpret the Standards for RTOs and use the training package. The flexibility that is purposely built into the VET Quality Framework does allow high quality RTOs to achieve quality outcomes, but does not support many RTOs delivering training for our sector. More explicit requirements in the Standards for RTOs and training package may help RTOs who misunderstand the education and care sector's needs and would allow for more effective identification and regulation of non-compliant RTOs.

ACECQA supports regulatory and legislative changes that ensure RTOs must meet minimum quality standards to operate and which enable the regulator to act quickly on RTOs that are failing to meet minimum standards. High quality providers are faced with unfair competition in the marketplace because of unrealistically short and inexpensive courses. The ability of the regulator to refuse registration/accreditation of RTOs that cannot demonstrate quality, and to investigate and de-register non-compliant and poor performing RTOs, will both remove poor quality RTOs while supporting quality RTOs to gain a stronger market position.

ACECQA would support introducing regulatory methods that encourage high quality new and existing RTOs to increase their market share if accompanied by increased barriers to entry and auditing of poor quality RTOs. Regulatory methods that encourage high quality new and existing RTOs could include reduced compliance costs for trusted training providers. Meanwhile, a more extensive approval process could be attached to new RTOs and greater auditing processes applied to under-performing RTOs. More robust registration and accreditation processes would likely limit the need for more extensive and ongoing regulatory measures by ASQA.

Question Four

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

A major difficulty for ASQA's enforcement powers is high natural justice and review rights in the NVETR Act combined with unclear or flexible compliance obligations in the Standards for RTOs and training packages. The evidence required for enforcement is often unattainable as there are many

areas where RTOs can claim to be technically compliant because the requirements can be met flexibly. Enforcement can be impeded even when quality graduate outcomes are understood to be compromised. For example, some education and care qualifications are being obtained in unduly short timeframes which is accompanied by major concerns about whether graduates could have attained competency in such a short duration and impacting on their ability to gain and keep employment. The short duration in which qualifications are being obtained is in part a consequence of the Community Services Training Package not prescribing a minimum duration for courses. This results in it being difficult for ASQA to determine an unduly short course does not meet the Standards for VET Accredited Courses, as it is open to an RTO to flexibly deliver the training package and justify the short training. Clearer requirements in the Standards and training packages would improve the effectiveness of ASQA's enforcement powers, as it would be easier for ASQA to gather evidence to demonstrate when the Standards have not been met.

An ability to address known issues quickly is desirable. Timeframes for enforcement are currently impeded by natural justice and review provisions in the NVETR Act which are potentially overly weighted in favour of RTOs and against students, employers and a sector's consumers.

A more robust registration assessment would ensure only quality new entrants that are capable of and committed to implementing the Standards are registered.

Greater scrutiny of RTOs seeking to add new qualifications to scope is required, as some RTOs may be registering to deliver less complex qualifications and later adding more complex qualifications, such as education and care qualifications, to the scope of their registration with less scrutiny from ASQA.

There should be an enhanced focus on training providers delivering courses that impact on vulnerable consumers. For example, regulation of education and care qualifications should be given high priority because those affected by poor quality qualifications are young children and among our most vulnerable. ASQA continues to audit RTOs offering the Certificate III and Diploma of Early Childhood Education and Care for this reason.

If an RTO improperly issues qualifications and is subsequently cancelled, it is currently difficult for ASQA to also cancel the qualifications held by individuals obtained from this RTO. ASQA must allow the RTO the opportunity to cancel the qualification, notify each individual of the intention to cancel, allow each individual the opportunity to respond and consider each individual's response. Each individual may appeal to the Administrative Appeals Tribunal. While procedural fairness in administrative decision making is important, the ability of the regulator to cancel a category of qualifications is desirable where there is evidence the category was improperly issued.

Question Five

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?

ACECQA and regulatory authorities in the education and care sector become aware of the quality of student outcomes in three main ways:

1. Through assessments that require responses to hypothetical common workplace scenarios that form part of applications to become an approved provider of education and care services
2. Through questioning educators as part of investigations and assessment processes
3. Through consultation with education and care providers/employers.

These methods shows quality student outcomes are understood as being reflected in individuals who are workplace ready, with an understanding of sector and regulatory requirements. The methods regulatory authorities and employers have found effective for testing and measuring student outcomes could be used by the VET sector.

Regulatory authorities test the knowledge of applicants seeking to operate education and care services using hypothetical workplace scenarios. Applicants who hold VET qualifications in education and care are asked to answer questions verbally or in writing about operating an education and care service, including questions relating to the sector's regulatory requirements. Regulatory authorities have noted a large majority of applicants for provider approval hold a certificate III or diploma in education and care that has been issued by an Australian RTO between 2009 and 2016. Some applicants are unable to respond adequately to the scenarios including mentioning basic requirements for dealing with a medical condition, educational program and practice (including age appropriate experiences) and the requirement to provide suitable materials and equipment. The literacy levels of some applicants are poor. Some applicants are unable to indicate where they undertook their work placement hours and in some instances indicate they were assessed in their home when working as a family day care educator.

Regulatory authorities also question people who have been awarded VET qualifications as part of the regulatory authorities' investigations and assessments. During this questioning, some VET qualifications holders are unable to demonstrate knowledge that would be expected to be held by qualified educators, such as knowledge of first aid and safety requirements, curriculum documents and other regulatory requirements. Concerns are raised when individuals are unable to apply their knowledge to ensure the safety, health and well-being of children, or to discuss requirements using language that should be common to individuals holding an education and care qualification.

Employer expectations are a good measure of quality student outcomes. Feedback from employers in the education and care sector indicates that the competency of VET-sector graduates often falls short of employer expectations. In several instances, employers have made clear to ACECQA their preference for graduates from well-established, high quality RTOs, with graduates from lower quality RTOs often requiring significant additional training and support. Some of the largest employers continue to operate their own RTO to ensure the necessary calibre of staff, regardless of whether their RTO makes a financial profit or loss. Some of the largest employers have also referred to a 'blacklist' of RTOs who they will not recruit graduates from. This is clearly a very undesirable situation, particularly for students enrolling at those RTOs in good faith.

Question Six

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

ACECQA suggests opportunities that give other regulators a stronger voice in the regulation of VET be explored.

The legislation does currently allow for the exchange of information between regulators. For example, section 205 of the National Vocational Education and Training Regulator Act 2011 (the Act) allows ASQA to share information with another regulator if it is of assistance. Section 210 of the Act allows ASQA to request information, which could be used if another regulator flags something informally. ASQA has cooperated with education and care regulators on a number of occasions. Regulatory authorities have noted that ASQA has been able to inform them about student enrolment checks and information about RTOs that are of interest or non-compliant. ASQA has also been able to inform regulatory authorities about students who may have received a qualification from a cancelled RTO, and has supported regulatory authorities investigating fraudulent qualifications.

However, there may be the opportunity to strengthen the exchange of information between regulators. Implementing a triage system for notifications whereby if regulators notify ASQA of concerns the information is acted upon as a matter of priority could assist. Communication by ASQA back to regulators could also support the dissemination of information about non-compliant RTOs and suspect qualifications to employers. Enhanced communication between regulators would help in situations where regulatory authorities encounter difficulties when trying to engage with RTOs about potential fraudulent qualifications. It could assist regulatory authorities with concerns about the legitimacy of qualifications to have enough information to justify denying an application to provide an education and care service.

One option would be for ASQA and ACECQA to partner to ensure only RTOs that are able to deliver high quality training for the education and care sector are accredited to do so. For example, ACECQA could assist ASQA to assess an RTO's business case by providing advice on whether the RTO's trainers and assessors are skilled to deliver education and care training. ACECQA could also assist by facilitating an exchange of information between ASQA and regulatory authorities who may have intelligence on the fitness and propriety of those involved in an RTO's application.

Greater consumer power in the regulatory design is also needed. ACECQA notes ASQA does not have consumer protection powers and that while complaints from students, parents and employers inform ASQA's regulatory process, it is unable to follow up individual issues on behalf of students. Potential options to enhance the voice of consumers could include providing more information to consumers about the quality of RTOs to influence consumers to choose high quality providers and training, and supports that enable students to switch to higher quality providers and training.

Feedback from large education and care providers is that they would like to have strengthened links with RTOs, for example through a greater role in validating assessment. This could be a means of bridging the gap between industry expectations and graduate capabilities, and increasing employer confidence in the quality of graduates who hold VET qualifications in early childhood education and care.

Question Seven

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?

Regulators in the education and care sector are faced with individuals fraudulently claiming to hold qualifications. ACECQA, regulatory authorities and employers may be alerted to potential fraudulent qualifications and must decide whether to report these findings to ASQA, state police and/or the Australian Government. Fraudulent first aid and anaphylaxis qualifications in the education and care sector are particularly alarming given the harm that could result if educators are not adequately trained to respond to medical emergencies involving babies and young children.

Sometimes qualifications are fraudulent because documentation has been doctored, sometimes the qualification itself is genuine (in that it has been given to a student by an RTO) but it has been given improperly because no legitimate training was received. The only related situation where ASQA can intervene is if the qualification has been cancelled and the person purports to hold the qualification. The potential harm in the education and sector of these scenarios is the same; an individual who is not competent to educate and care for children holds documentation suggesting that they are. However, the avenues for addressing the scenarios are quite different as one is fraud, one is a technically valid qualification from a non-compliant RTO and another is a cancelled qualification. Clarity around how to manage fraudulent qualifications and qualifications from non-compliant RTOs would help regulators and employers. The NVETR Act could be designed to respond to each of these scenarios. Improved avenues for collaboration and information exchange between regulators would also assist in addressing fraudulent behaviours.

On a related note, as RTOs are responsible for issuing their own testamurs, establishing the veracity of a document can be difficult for regulatory authorities and employers. Establishing whether training was legitimate is further restricted by RTOs only being required to retain student records for a period of 6 months. Further, if a cancelled RTO or RTO that has ceased operating fails to transfer student records to ASQA, ASQA and regulatory authorities have been unable to determine the authenticity of a qualification. These issues may be somewhat overcome by better use of the Unique Student Identifier.

ACECQA would also strongly support efforts to align and enhance the work and functions of IRCs and ASQA. There is a clear benefit to better aligning components of the overall system – having a disconnect between how the training package is developed and how RTOs are audited against delivery of the training package is undesirable.

Question Eight

Other comments. Please address any other issues related to the Terms of Reference.

The training issues in the education and care sector have been known for a number of years. Concerns about the quality and variability of early childhood education and care training were expressed in two Productivity Commission reports in 2011 and 2014. ASQA's 2015 strategic review into training for early childhood education and care in Australia again noted concerns about the quality of training, including RTOs having difficulty complying with assessment requirements, courses being delivered in overly short timeframes, and issues with learning and assessment in

workplace environments. ASQA's 2017 strategic review into course duration repeated concerns about unduly short training in the sector. In response to the 2015 ASQA review, SkillsIQ consulted with the sector and outlined industry perspectives on the quality of training in *Improving Quality in Children's Education and Care Training: Industry Perspectives*. ASQA continues to audit providers offering the Certificate III and Diploma of Early Childhood Education and Care as it considers these qualifications to be of concern. Regulatory authorities and employers in the sector continue to raise concerns about training quality with ACECQA.

ACECQA is the national authority for education and care in Australia responsible for guiding the implementation of the National Quality Framework (the NQF). The NQF is the national system for regulating approved education and care services, setting levels of safety and quality for children attending long day care, preschool/kindergarten, outside school hours care and family day care. There are over 15 000 regulated education and care services in Australia attended by children aged birth to under 13 years. The 2013 National Early Childhood Education and Care Workforce Census estimated over 1.1 million children attended an education and care service during the reference week.

In the education and care sector, quality outcomes for children are regulated to be achieved in part through mandating the qualifications the people who work with them must hold. The Education and Care Services National Law and Regulations set out the ratio of qualified educators to children that must be employed, and the qualification levels that must be held. One of ACECQA's roles is to approve the qualifications educators must hold. The majority of educators are required to hold or be actively working towards VET qualifications, such as the Certificate III and Diploma of Early Childhood Education and Care. Qualifications are regulated because research shows formal early childhood qualifications are positively associated with higher quality education and care programs and interactions with children leading to better outcomes for children.

Considering the benefits of high quality training for children, helping students and educators to access high quality training should be a common goal of the education and care sector. ACECQA delivers free national workshops to help educators understand their obligations under the NQF. The sector also relies on employers to support educators to gain their qualifications and to access professional development and to provide opportunities for student work placements.

ACECQA's submission has been informed by consultation with state and territory regulatory authorities who regulate and assess education and care services.