

# SUBMISSION

## **Submission by the Australian Skills Quality Authority to the Joint Standing Committee on Migration Inquiry into the Efficacy of Current Regulation of Australian Migration Agents**



**Australian Government**

**Australian Skills Quality Authority**

## Contents

<b>ASQA Overview .....</b>	<b>3</b>
Establishment.....	3
Establishing legislation.....	4
Providers registered by ASQA .....	4
Limit of ASQA’s Remit.....	5
<b>Responses to Terms of Reference .....</b>	<b>6</b>
1.    “...the adequacy of information and evidence sharing between...authorities”.....	6
The Education Regulators and Immigration Committee.....	6
ASQA’s International Education Strategic Review .....	7
2.    Evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia .....	8
3.    Appropriateness of migration agents providing other services to clients .....	10
4.    Conclusion.....	10

## ASQA Overview

As the national regulator for the vocational education and training (VET) and English Language Intensive Courses to Overseas Students (ELICOS) sectors, the Australian Skills Quality Authority (ASQA) ensures the sectors' quality is maintained through the effective regulation of:

- VET providers;
- VET accredited courses; and
- Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) providers, including those delivering ELICOS.

Australia is fortunate to have a world-leading vocational education and training system. This crucial sector provides training in the skills Australians need for employment, and injects billions of dollars of export income into the economy each year.

## Establishment

The national VET regulatory system was established through:

- a referral of powers to the Commonwealth from most States (except Victoria and Western Australia, which maintain their own VET regulators); and
- the exercise of the Commonwealth's constitutional powers in the regulation of vocational education and training in the Territories.

On 1 July 2011, ASQA became the regulatory body for the VET sector for the Australian Capital Territory, the Northern Territory and New South Wales. ASQA also assumed responsibility for regulating certain registered training organisations (RTOs) in Victoria and Western Australia from that date, specifically:

- those RTOs that offer courses in any State or Territory other than Victoria or Western Australia, including by offering online courses, and
- those RTOs that offer courses to overseas students.

ASQA became the regulatory body for the VET sector in Tasmania after the State's referral legislation was proclaimed on 15 February 2012, the regulatory body for the VET sector in South Australia on 26 March 2012, and the regulatory body for the VET sector in Queensland on 30 June 2012.

Victoria and Western Australia have not referred their VET regulatory powers to the Commonwealth, and these states retain power to register and regulate certain RTOs that only provide training to domestic students within those states. However, ASQA regulates RTOs in Victoria and Western Australia that provide training to overseas students, or in a referring jurisdiction.

As at 31 March 2018, there were 4531 RTOs nationally and ASQA has regulatory responsibility for 4074 of those RTOs

## Establishing legislation

ASQA was established on 1 July 2011 through the enactment of the *National Vocational Education and Training Regulator Act 2011* (Cth) (NVR Act).

### Legislative framework

ASQA's regulation of Australia's VET sector is supported by a framework of legislation and Standards.

This framework includes the establishing legislation above, as well as the VET Quality Framework, the Standards for Accredited Courses, and legislation relating to the provision of courses to overseas students.

The VET Quality Framework comprises the:

- *Standards for Registered Training Organisations 2015*—standards to ensure nationally consistent, high-quality training and assessment across Australia's VET system;
- Fit and Proper Person Requirements—which determine requirements for people with some control or influence over the operation of an RTO;
- Financial Viability Risk Assessment Requirements 2011—which relate to the ability of RTOs and applicant training organisations to meet financial viability requirements;
- Data Provision Requirements 2012—which set out the requirement for providers to supply ASQA with data upon request, and to submit quality indicator data annually;
- Australian Qualifications Framework—which is the national policy for regulated qualifications in Australian education and training; and
- Quality Standards enacted under s 231A of the NVR Act.

### Education for overseas students (ESOS) legislation

As an ESOS agency under the *Education Services for Overseas Students Act 2000* (ESOS Act), ASQA assesses providers' compliance with the ESOS Act for registration on CRICOS, including, where appropriate, for the delivery of ELICOS courses. ASQA monitors these providers against the:

- ESOS Act;
- National Code of Practice for Providers of Education and Training to Overseas Students 2018 (the National Code 2018); and
- ELICOS Standards 2018, if applicable.

## Providers registered by ASQA

ASQA registers organisations under the NVR Act to deliver nationally recognised VET qualifications. Organisations seeking to deliver to students studying in Australia on student visas (overseas students) are also required to be registered under the ESOS Act.

Organisations that seek to deliver:

- nationally recognised VET qualifications to overseas students must be an RTO under the NVR Act and be registered under the ESOS Act as a CRICOS provider; and/or
- English language intensive courses to overseas students must be registered under the ESOS Act as a CRICOS provider to deliver ELICOS courses. If these providers seek to deliver English language courses only, they do not need to be an RTO.

As at 31 March 2018, ASQA had regulatory responsibility for 4145 organisations registered to deliver VET and/or ELICOS courses. These organisations are described below.

- 4074 Registered Training Organisations registered under the NVR Act to deliver nationally recognised VET qualifications. This includes;
  - 3488 RTOs registered to deliver VET to any individual, other than a person in Australia on a student visa; and
  - 586 RTOs registered on CRICOS to deliver VET to overseas students (i.e. student visa holders) - of these RTOs, 143 RTOs are also registered to deliver English language courses to overseas students.
- 71 CRICOS providers registered to deliver ELICOS only courses in addition to the 143 RTOs mentioned above. As ELICOS only providers, they are not required to be RTOs.

## Limit of ASQA's Remit

As national VET regulator pursuant to the meaning of the NVR Act and ESOS Agency under the ESOS Act, ASQA's remit is limited to regulation of registered VET and ELICOS providers and the courses they provide to students, including overseas students.

ASQA's powers do not extend to direct regulation of education agents who provide information about education opportunities in Australia, and assist with the admission application process and the Australia visa application process, on behalf of providers. Many such education agents are located offshore, and providers negotiate arrangements with education agents directly. The National Code 2018 requires a provider to enter into written agreements with each agent it engages to formally represent it; monitor the behaviour of these education agents; and take action where such behaviour is inappropriate. ASQA's remit does include monitoring providers' compliance with this code as discussed further below.

## Responses to Terms of Reference

ASQA welcomes the opportunity to provide a submission to the *Joint Standing Committee on Migration Inquiry into the Efficacy of Current Regulation of Australian Migration Agents*. Noting that ASQA's remit is limited to the regulation of VET and ELICOS providers, ASQA provides its views and comments about the following terms of reference items:

1. "...the adequacy of information and evidence sharing between ... authorities";
2. Evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia; and
3. Appropriateness of migration agents providing other services to clients.

### **1. "...the adequacy of information and evidence sharing between...authorities"**

ASQA provides the below comment about the forum established to enable the sharing of information and evidence between relevant authorities, and ASQA's ongoing efforts to ensure the quality of Australia's VET and English language education services delivered to overseas students by ASQA-regulated providers.

#### The Education Regulators and Immigration Committee

In August 2015, the Education Regulators and Immigration Committee (ERIC) was formed to identify emerging areas of risk and share data and intelligence to improve regulatory responses. ERIC is chaired by the Department of Home Affairs and includes ASQA, the Tertiary Education Quality and Standards Agency (TEQSA) and Department of Education and Training (DET) officers.

ASQA uses the data and intelligence from ERIC to inform its regulatory scrutiny of providers of interest. Recent legislative amendments to the ESOS Act will further assist ASQA to identify providers of interest by strengthening the ability of agencies to share information, including in relation to education agents of concern.

ERIC meets every six months to share information about emerging issues in the overseas student market. An operational sub-group (the ERIC Working Group) meets more regularly to share data and information about emerging issues and providers of interest. The Tuition Protection Service and Overseas Student Ombudsman participate in these meetings from time to time.

ASQA works actively through ERIC to monitor changes in the overseas student market, including in ELICOS. ASQA has been involved in collaborative efforts through the ERIC Working Group to gain greater insights into the market and provider behaviour so that risks associated with this sector can be managed.

ASQA has also worked with the ERIC agencies to develop a CRICOS Dashboard that maps a number of indicators across ASQA, TEQSA and Departments of Education and Training and Home Affairs areas of risk. The Dashboard is being used to identify providers of interest for possible further regulatory scrutiny.

## ASQA's International Education Strategic Review

From this work and earlier identification of possible issues in its Environmental Scans, ASQA has committed to a strategic review of VET and English language education services delivered to overseas students by ASQA-regulated providers (the International Education Strategic Review). This is outlined in ASQA's 2017-2018 Regulatory Strategy.

The purpose of the International Education Strategic Review is to ensure that the quality of Australia's VET and English language education services delivered to overseas students by ASQA-regulated providers remains at a high standard, students are protected, and Australia's reputation as a destination of choice for overseas students is enhanced.

The International Education Strategic Review will:

1. document the full range of VET and English language education services delivered to overseas students by ASQA-regulated providers;
2. document and analyse available data on the activity levels and trends in the delivery types;
3. document the regulatory arrangements and agency responsibilities for each delivery type across the student lifecycle;
4. outline ASQA's regulatory approach and recent regulatory activity;
5. identify risk indicators and access relevant data held by government agencies to identify a sample of ASQA-regulated providers of interest to be the subject of a targeted assessment of practices and behaviours as well as compliance of systems and processes to test risk indicators, data sources and regulatory strategies;
6. document examples of provider best practice;
7. research the regulatory approaches of comparable international jurisdictions, to identify world's best regulatory practice;
8. enhance the communication with the regulated community to improve their compliance with legislative requirements, including student protection requirements; and
9. make any relevant findings and recommendations in a report aimed at protecting the quality of VET and English language education services delivered to overseas students by ASQA-regulated providers.

The review is guided by a Reference Committee (which includes external stakeholders) and the findings will be released in 2018-19.



## 2. Evidence of the volumes and patterns of unregistered migration agents and education agents providing unlawful immigration services in Australia

The National Code 2018 supports the National Strategy for International Education 2025 to advance Australia as a global leader in education, training and research. The National Code 2018 is a legislative instrument made under the ESOS Act and sets nationally consistent standards to support providers to deliver quality education and training to overseas students.

Standard 4 of the National Code 2018 details the standards that each registered provider must meet in respect of any formal engagement of education agents, irrespective of whether the education agent is located on-shore or offshore. The National Code 2018 at Standard 4.1 provides that a “*registered provider must enter into a written agreement with each education agent it engaged to formally represent it, and enter and maintain the education agent’s details in PRISMS*”.<sup>1</sup>

Per Standard 4.3, a registered provider must require its education agent to:

- “4.3.1            *declare in writing and take reasonable steps to avoid conflicts of interests with its duties as an education agent of the registered provider*
- 4.3.2            *observe appropriate levels of confidentiality and transparency in their dealings with overseas students or intending overseas students*
- 4.3.3            *act honestly and in good faith, and in the best interests of the student*
- 4.3.4            *have appropriate knowledge and understanding of the international education system in Australia, including the Australian International Education and Training Agent Code of Ethics.”*

According to Standard 4.4, “*where [a] registered provider becomes aware, or has reason to believe, the education agent or an employee or subcontractor of that education agent has not complied with the education agent’s responsibilities under standards 4.2 and 4.3, the registered provider must take immediate corrective action*”.

Additionally, in accordance with Standard 4.6:

“*[A] registered provider must not accept students from an education agent if it knows or reasonably suspects the education agent to be:*

- 4.6.1            *providing migration advice, unless that education agent is authorised to do so under the Migration Act*<sup>2</sup>

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<sup>1</sup> PRISMS is the Provider Registration and International Student Management System used to process information given to DET by registered providers.

<sup>2</sup> On 1 January 2018, the National Code 2018 replaced the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2017* (National Code 2017) and prior to that the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (National Code 2007). The National Code 2017 and the National Code 2007 in Standard 4.3(d) included similar obligations on the provider with respect to suspected contravention under the *Migration Act 1958* by education agents.



- 4.6.2 *engaged in, or to have previously engaged in, dishonest recruitment practices, including the deliberate attempt to recruit a student where this clearly conflicts with the obligations of registered providers under Standard 7 (Overseas student transfers)*
- 4.6.3 *facilitating the enrolment of a student who the education agent believes will not comply with the conditions of his or her visa*
- 4.6.4 *using PRISMS to create CoEs<sup>3</sup> for other than bona fide students.”*

Under Section 83 of the ESOS Act, ASQA has authority to impose sanctions against education providers that are non-compliant with the National Code 2018, which includes the power to suspend or cancel a provider’s registration. Where a provider engages education agents, ASQA monitors such provider’s compliance with Standard 4 during the CRICOS audits it conducts.

Since inception, ASQA has *not* encountered a high incidence of non-compliance with Standard 4 across the VET or ELICOS industry.

Of the 8992 audits completed up until 1 March 2018, 1616 (or approximately 18% of the total number of audits) included a CRICOS component and assessed compliance with either the National Code 2007, the National Code 2017 or the National Code 2018. However, of these 1616 CRICOS audits, ASQA recorded non-compliance with the requirements of Standard 4 in only 24 audits (note: the non-compliance recorded in audits relates to all requirements of Standard 4, rather than specifically relating to any contravention of the *Migration Act 1958* pursuant to Standard 4.6.1).

Further, of the 24, in 15 cases, the provider was able to rectify the non-compliance identified and no adverse regulatory decision was subsequently made by ASQA. ASQA has only made an adverse regulatory decision (to sanction or reject an application) on nine occasions where non-compliance with Standard 4 was amongst the reasons for the decision.

**Adverse decisions following audit where non-compliance with Standard 4 was identified (completed prior to 1 March 2018)**

Decision Type	Number
Cancellation	5
Rejection of Initial Application	2
Rejection of Initial Application (partial)	1
Rejection of Renewal Application	1

Audits of registered providers have generally demonstrated positive adherence to the requirements in Standard 4, as compared to other standards. However, audits conducted by ASQA rely on evidence provided by registered providers and ASQA has no authority to investigate or regulate education agents directly. ASQA may also identify issues with education agents through a complaint or elsewhere in provider data.

<sup>3</sup> Confirmation-of-Enrolment document issued electronically by registered providers to intending overseas students, and which must accompany a student’s application for a student visa.

If ASQA was made aware of specific concerns about the behaviour of an education agent, ASQA would bring this to the attention of ASQA-regulated providers known to have an association with that education agent. In the first instance, ASQA would remind a provider of its obligations under Standard 4 to ensure its education agents act appropriately. If such concerns related to an education agent providing unlawful immigration services in Australia, ASQA would also bring this to the attention of the Department of Home Affairs through the ERIC Working Group process.

Recent work by DET to improve the quality of data on education agents collected from registered providers, and to ensure that registered providers have the appropriate tools to manage education agents, is improving transparency of these third-party relationships. This approach also serves to mitigate the risks of unethical education agents operating in this space. ASQA works closely with DET in this respect, and supports these ongoing efforts to better equip registered providers to manage interactions with education agents, and meet the requirements of the National Code 2018.

### 3. Appropriateness of migration agents providing other services to clients

Based on Migration Agents Registration Authority data, ASQA is aware that a number of ASQA-regulated providers may be linked to individuals who are also registered migration agents.<sup>4</sup> These individuals may be owners of providers, or otherwise serve as executive office bearers or registration enquiry contacts of ASQA-regulated providers.

Possible instances where this is the case, are as follows:

<b>Agents possibly linked to current providers</b>	208
<b>Current providers possibly linked to agents</b>	182
<b>Agents that are possibly owners of providers</b>	150
<b>Providers with possible agents as owners</b>	133

Of all providers regulated by ASQA, the number of current providers who may have links to individuals also providing migration services to clients are relatively low, and there is no legislation restricting such associations where they occur.

### 4. Conclusion

ASQA's current audit history does not demonstrate that there is evidence that providers that may have links to either migration agents (or education agents that also provide migration agent services) are more likely to be non-compliant with relevant legislation than other providers.

<sup>4</sup> Available Migration Agents Registration Authority data only provides first name and surname information to use for matching against ASQA's data. As such, there is high probability of false positives (for example migration agents with the same name as RTO owners).



ASQA's regulatory jurisdiction in respect of agents only extends to monitoring compliance by providers of education and training – and does not extend to direct investigation and regulation of agents themselves. However, current audit findings do not indicate significant levels of non-compliance with legislative provisions relating to agents.

Notwithstanding this, ASQA recognises the importance of information sharing between relevant agencies to maintain and enhance the quality of education and training provided to overseas students in Australia. ASQA continues to work actively through the Education Regulators and Immigration Committee to monitor emerging risks and improve regulatory responses in respect of education quality and visa integrity.