

Review of Training Delivery linked to Advertising of Vacant Positions in Queensland

Report to the Minister for Employment and Small
Business and Minister for Training and Skills
Development

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Executive Summary

Maintaining quality in the vocational education and training (VET) sector is a shared responsibility between government, regulators, industry, training providers and students. However, it does not stop there. Other stakeholders that have a role in the VET market must also behave appropriately to maintain the quality and reputation of the overall VET sector.

This *Review of Training Delivery linked to Advertising of Vacant Positions in Queensland* forms part of the Queensland Government's five point plan to ensure recruitment organisations and registered training organisations (RTOs) are behaving appropriately and not taking advantage of job seekers, many who are particularly vulnerable as a result of COVID-19.

This Review explored issues that had been raised by a number of complainants with the Office of the Queensland Training Ombudsman and the Department of Employment, Small Business and Training (DESBT) regarding the alleged inappropriate advertising of job vacancies resulting in applicants being offered places in subsidised and fee-for-service training courses, and media articles that highlighted an apparent increase in this activity as people sought to re-enter the workforce following the impact of COVID-19 restrictions.

This Review specifically investigated the:

- organisations involved in this activity and the relationship between those organisations
- impact on individuals undertaking training offered as a result of responding to job advertisements
- impact on funding arrangements for the Queensland Government (DESBT)
- the role of various regulatory bodies in regulating this activity.

The key findings from this Review indicate that, whilst major systemic changes are not required, more timely action needs to be taken to address poor performance.

Specific findings included that:

1. no breaches of legislation were identified by regulators, however, the activities of the majority of the recruitment organisations identified in this Review are not regulated
2. legislative penalties should breaches of legislation be identified appear to be satisfactory
3. possible breaches of contract (relating to Queensland Government training contracts) provisions have been identified (noting that taking action in regard to the alleged breaches is proving difficult due to the fact there has been no proof that commercial arrangements exist between the parties involved)
4. there are several penalties that can be applied for breaching contract provisions
5. additional penalties and sanctions for breaching contract provisions should be considered
6. improvements need to be made to enhance the actions taken by DESBT
7. additional actions need to be considered by DESBT
8. more needs to be done to assist students
9. complaint referral processes need improving.

To address these findings, the following recommendations are proposed:

1. DESBT should review current practices to:
 - a. consider the timeliness of actions taken for alleged contract breaches
 - b. identify and take decisive action in relation to funding qualifications it identifies as high risk
 - c. focus audit and compliance activity to high risk areas.
2. DESBT should review all guidelines, frameworks and directives to ensure they adequately identify the behaviours required for contracted suppliers.

3. DESBT should consider placing additional requirements on contracted suppliers to enhance quality outcomes where appropriate.
4. DESBT should improve transparency of actions it is taking to ensure all stakeholders are aware of the importance DESBT places on quality.
5. A new Queensland VET Quality Forum should be established.
6. The Queensland VET Quality Forum should initially review existing referral mechanisms and student communication channels and implement enhanced processes.

Background, Purpose and Scope of the Report

A number of complaints were received by the Office of the Queensland Training Ombudsman regarding the alleged inappropriate advertising of job vacancies resulting in applicants being offered places in subsidised and fee-for-service training courses. Concerns raised relate to students utilising their entitlement to a government subsidised course to be considered for a vacancy which does not exist, or where limited vacancies will attract significant interest from job seekers, and inappropriate use of government funding. In many cases, concerns raised also related to the short duration of the training and additional training that was offered but was not delivered (eg forklift training). Media articles have recently highlighted there is an apparent increase in this activity as many people are seeking to re-enter the workforce following the impact of COVID-19 restrictions.

This Review forms part of a five point plan announced by the Queensland Government which includes:

1. an independent investigation by the independent Queensland Training Ombudsman (QTO).
2. a dedicated online compliance unit directly responsible for identifying scammers and referring them to the Australian Skills Authority (ASQA), Office of Fair Trading (OFT) or Queensland Police Service (QPS).
3. a dedicated Training Scammer hotline to report unscrupulous operators.
4. a review of penalties for scammers found to have unlawfully tricked jobseekers.
5. a review of every RTO that receives State Government subsidies with a commitment to cut support if an organisation is found to have tricked jobseekers.

This independent investigation focussed on the:

- organisations involved and the relationship between those organisations,
- impact on individuals undertaking the training
- impact on funding arrangements for DESBT
- the role of various regulatory bodies.

The review methodology involved:

- analysing previous reports from organisations such as the Australian Competition and Consumer Commission (ACCC) regarding these types of issues
- investigating the organisations involved, including their approval by various regulators if applicable
- examining any formal relationship that exists between the organisations
- analysing complaints received and identify the impacts on students
- identifying the regulatory activity undertaken by agencies, including DESBT, ASQA, OFT and Office of Industrial Relations (OIR)
- identifying potential breaches of various legislation, regulations and contract requirements
- identifying enhancements to the co-ordination of regulatory activities across agencies to optimise services provided to Queensland job seekers and students.

This Review did not address the policy intent of government funded training programs, such as the Certificate 3 Guarantee (C3G) and did not consider the effectiveness of the regulation of Private Employment Agents (PEA) or labour hire providers.

A copy of the Terms of Reference for this Review are at **Attachment 1**.

Maintaining Quality in the Vocational Education and Training (VET) System

Maintaining quality in the VET sector is a shared responsibility as outlined in a document released by ASQA (**Attachment 2**).

In the context of this shared responsibility for VET quality, this Review considered :

- the role of various regulators and the current approach to regulating these types of issues
- the role of DESBT in relation to subsidised qualifications
- feedback from industry, unions, RTO peak bodies and other stakeholders
- an analysis of student complaints and consumer protection mechanisms.

Previous Reports and Reviews

Advertising and Consumer Law

The ACCC promotes competition and fair trade in markets to benefit consumers, businesses, and the community. Their primary responsibility is to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws - in particular the *Competition and Consumer Act 2010*.

In August 2011, the ACCC released a report titled “*Misleading Job and Business Opportunity Ads – How to Handle Them*” which identified that:

- misleading job and business opportunity advertisements cause job seekers a great deal of hardship and difficulty
- misleading job and business opportunity advertisements carry heavy penalties under the Australian Consumer Law ranging up to \$1.1 million for the most serious breaches
- publishers are the first line of defence against misleading or deceptive advertising
- advertisements promoting employment related services, such as training, should not be placed in the same section as genuine ‘Positions Vacant’ advertisements.

The report also identified that advertisements are potentially misleading if they:

- leave out key information such as:
 - nature of work
 - key terms and conditions
 - location
- are not advertising an actual job, noting some advertisements are cleverly worded to convince job seekers to pay for a position that does not exist, and training they probably do not need.

In addition, the report identified a range of strategies that should be used by publishers and provided a checklist for them to use.

Duration of Training Courses

In 2017, ASQA released a review of issues related to unduly short training.

The review found that regulation of duration in VET is complex and confusing. Competency-based training is at the core of the Australian VET system - as it is in many systems around the world. The central tenet of competency-based training is that a learner’s rate of progress is determined by their demonstrated competency, rather than by how long they have spent training.

The current regulatory framework for training packages does not allow training package developers to set clear requirements for the amount of training that a new learner might expect to be required to undertake.

Both local and international examples showed that, in a competency-based system, there are still circumstances in which mandating duration is considered a necessary means of regulating quality. ASQA's review collected information on 11,677 advertisements that showed course duration. The advertisements reviewed included 1098 training package qualifications across qualification levels (Certificate I to Advanced Diploma) and qualification types. These courses were advertised by 1181 ASQA-regulated RTOs on their websites between March and October 2015.

ASQA's review also considered 2015 National Centre for Vocational Education Research (NCVER) enrolment data for ASQA-regulated RTOs, in order to show the level of training activity associated with particular qualifications. If qualifications with large enrolment numbers have high rates of short duration courses, the potential impact of poor-quality training outcomes is heightened. ASQA's review found that more than a quarter of courses were advertising duration of less than the minimum of the Australian Qualifications Framework (AQF) volume of learning range.

ASQA recommended a single, coherent strategy (comprising three related recommendations) to address the unacceptable risk that unduly short training poses to individual learners, employers, industry, the community and the quality of the VET system.

The strategy recommended:

- strengthening the *Standards for Registered Training Organisations 2015* (Standards for RTOs) by defining the term 'amount of training' to include the supervised learning and assessment activities required for both training packages and VET accredited courses
- ensuring effective regulation of training by enabling Industry Reference Committees to respond to identified risk by including appropriate training delivery requirements, including the amount of training: a) in the endorsed component of training packages (as mandatory) where they judge this is warranted, and/or b) in the companion volume of the training packages (as recommended) where this is judged as a more proportionate response to the risk
- enhancing transparency by requiring public disclosure of the amount of training in product disclosure statements, presented in a consistent way to enable comparisons across courses.

The recommendations were considered by the Council of Australian Governments Skills Council Meeting on 20 September 2019. The communique from that meeting advises "Council also considered recommendations to address quality concerns relating to unduly short training. Members agreed to change the Standards for Training Packages to allow for the development of minimum training durations in exceptional high risk circumstances."

Value of Certificate III Qualifications

NCVER released a report in 2016 titled "*Costs and benefits of education and training for the economy business and individuals*". The report identified that:

- for Government, VET delivers an increase in employability and productivity, together with improved social equity
- for business and industry, VET can lead to improvements in staff turnover, absenteeism and workplace culture, together with social benefits
- for individuals, VET delivers a return on investment for Certificate III and above qualifications through an increase in participation (employment) and an increase in productivity (higher wages).

In the NCVER 2019 Student Outcomes Survey for graduate outcomes, it was identified that:

- 54.2% of VET graduates in Queensland enrolled in Certificate III qualifications who were not employed before training were employed after training – compared to the Australian average of 52.3%
- 77% of VET graduates in Queensland were employed after training - compared to the Australian average of 75.8%
- 67% of VET graduates in Queensland had improved employment status after training – compared to the Australian average of 67.1%.

Investing in vocational education and training – Report 1: 2019-20

The Queensland Audit Office conducted an audit in 2019-20 which examined whether DESBT was achieving successful learning and employment outcomes through its public and private providers. Some of the findings of this audit relevant to this review include:

- DESBT directs funding toward the skills and qualifications needed in the labour market by setting training priorities and administering government subsidies aligned to those priorities. This helps to achieve the Queensland Government's aim of offering students either affordable and accessible training that leads to real job outcomes, or further training to meet career aspirations.
- DESBT consults broadly with industry to identify the skills Queensland needs. It conducts its own research and analysis to inform the annual VET investment plan.
- The *Queensland VET Quality Framework* outlines DESBT's approach to overseeing the quality of publicly funded VET and provides assurance about the integrity of funding provided to Pre-qualified Suppliers (PQS) (now known as Skills Assure Suppliers). The framework is risk-based and well managed, with a systematic monitoring and audit program.
- DESBT effectively manages the PQS system to provide a central register of pre-approved RTOs. It has sound contract-management processes supported by comprehensive policies, guidelines, and reporting functions. Contract managers monitor performance and compliance against PQS agreements. Non-compliance can result in sanctions such as recovering funds, suspending funding, or terminating the agreement.
- DESBT reduces or removes funding from training providers that do not meet quality standards or breach contract conditions.
- DESBT is effectively managing the risks of funding private and public training providers in a contestable market. This provides students and the Queensland public with greater assurance that PQS are delivering quality training that meets industry skill needs and supports employment opportunities.

Role of Regulators

Australian Skills Quality Authority (ASQA)

ASQA is the national regulator of the VET sector. ASQA's role is to support the quality and reputation of Australia's VET system through the effective regulation of VET providers, accredited courses, and Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) providers that deliver VET courses and English Language Intensive Courses to Overseas Students (ELICOS).

ASQA's purpose is to provide nationally consistent, risk-based regulation of VET that contributes to an informed quality VET sector that meets Australia's needs.

ASQA takes a risk-based approach to regulation that aims to manage both provider risk and systemic risk. This approach is detailed in ASQA's Regulatory Risk Framework that outlines how they identify and respond to risk in the VET sector.

As at 30 June 2020, ASQA had regulatory responsibility for 3735 providers nationally. This includes 3649 RTOs, of which 34% or 1224 had their head office located in Queensland.

ASQA accepts complaints about providers (also known as reports alleging provider non-compliance) from all members of the community. They use the information reported through complaints to help protect the quality and reputation of the VET and ELICOS sectors.

ASQA is not a consumer protection agency and cannot act as an advocate for individual students. Instead, ASQA assesses all reports alleging provider non-compliance it receives along with the other information it knows about the provider to inform decisions on when and if further regulatory scrutiny of a provider is required.

ASQA advised they have received very few complaints about 'bait-advertising'.

The *National Vocational Education and Training Regulator Act* (NVR Act) and supporting legislative instruments, including the Standards for RTOs, place certain obligations on RTOs that use third parties for training and assessment and/or marketing and recruitment purposes.

The Standards for RTOs require RTOs to notify ASQA whenever they enter into, or cancel, a written agreement with a third-party. Nationally, over 1200 RTOs have reported over 38,000 current third-party arrangements to ASQA.

RTOs must ensure marketing and recruitment activities undertaken by third parties are accurate and factual to enable a prospective learner to make an informed decision. RTOs are specifically precluded from guaranteeing that a learner will obtain a particular employment outcome where this is outside the control of the RTO.

As a risk-based regulator, ASQA uses data and intelligence to target its regulatory activity to RTOs most at risk of not meeting the requirements, including the requirement to manage third-party arrangements. From a regulatory perspective, ASQA can and does assess individual RTOs to make a judgement on their demonstrated practices in monitoring how third parties are marketing to and recruiting new learners.

Office of Fair Trading (OFT)

OFT is Queensland's marketplace regulator. It administers marketplace laws that establish the rights and responsibilities of consumers, businesses and certain licensed occupations. OFT administers the *Fair Trading Act 1989* and Australian Consumer Law (ACL). The ACL is a national law administered by the Commonwealth through the ACCC and each State and Territory's consumer regulator agency.

OFT's purpose is to improve safety and fairness for Queensland businesses and consumers. It does this by providing information and guidance; receiving and conciliating complaints; licensing certain 'high risk' occupations; investigating breaches of the legislation it has responsibility for; and taking enforcement action where appropriate against businesses engaged in illegal marketplace activity.

OFT uses a proportionate risk-based approach to compliance and enforcement which follows an escalation model. OFT's compliance and enforcement policy provides this framework covering risk management, case assessment, investigations and enforcement.

Investigations may be initiated after assessment of complaints from consumers or industry, on referral from other government agencies, or on their own initiative using intelligence from general compliance operations undertaken under the Proactive Regulation of Industry and Marketplace Entities program.

When a complaint is received, it is assessed to identify possible breaches of legislation administered by OFT and, depending on complexity, the degree of risk, and consumer detriment; it is categorised and referred to the appropriate area of OFT for investigation. This triage is generally undertaken by OFT's Case Assessment and Response unit. If a breach of legislation is not evident, complaints may also be conciliated or referred to a more appropriate agency for consideration.

Penalties under the ACL for false and misleading advertising are substantial and include up to \$500,000 for an individual or \$10,000,000 for a company.

Office of Industrial Relations (OIR)

OIR administers a number of pieces of legislation including the *Private Employment Agents Act 2005* (PEA Act) and the *Labour Hire Licensing Act 2017* (LHL Act).

Private Employment Agents Act 2005 and Private Employment Agents (Code of Conduct) Regulation 2015

A Private Employment Agent (PEA) is a person who is in the business, for gain, of finding work for a person or a worker for a person. It is important to note the term "work" is not restricted to work performed under a formal employer/employee relationship.

The PEA Act provides that a person is a PEA if the person in the course of carrying on business and for gain:

- offers to find:
 - casual, part-time, temporary, permanent or contract work for a person; or
 - a casual, part-time, temporary, permanent or contract worker for a person; or
- negotiates the terms of contract work for a model or performer; or
- administers a contract for a model or performer and arranges payments under it; or
- provides career advice for a model or performer.

Certain activities are excluded from the definition of PEA, namely:

- where the sole activity is publishing an advertisement about employment opportunities; and
- a person who may hire out a worker to someone else (Labour Hire). In this case, the person continues to be the employer and must meet all obligations of an employer under legislation including the LHL Act.

The PEA Regulation contains a Code of Conduct (the Code) regulating the conduct of agents in their relationships with persons looking for work or for workers.

PEAs in Queensland are not required to hold a licence but must comply with the Regulation. This Regulation establishes enforceable standards of both conduct and service. It does this by specifying the conduct and basic services which are, or are not, appropriate.

The object of the Code is to establish a framework that promotes ethical conduct by PEAs in their dealings with work seekers and others, and to encourage PEAs to provide high quality placement and recruitment services for work seekers and persons looking for workers.

For example, the Code provides that an agent must not, as a condition of finding or attempting to find work for a work seeker:

- charge the work seeker a fee for services or resources provided by the agent; or
- require the work seeker to use services or resources provided by or through a supplier nominated by the agent; or
- accept a financial benefit from a supplier nominated by the agent for the provision of services or resources by the nominated supplier because of a requirement above.

Agents contravening these sections of the regulation can face fines of up to a maximum of 14 penalty units.

The provisions of Chapter 10 of the *Industrial Relations Act 2016* (IR Act) deal with the important issue of the prohibition and limitation of fees charged by PEAs from work seekers.

Under the IR Act, a PEA must not, directly or indirectly, demand or receive from a person seeking work (a work seeker) a fee for finding, or attempting to find, the person work (a finder's fee). Exceptions are provided for an agent who finds work for a model or performer and for an agent who is a manager of a model or performer.

Inspectors are appointed under the IR Act and have the power to require documents to be produced and require information to be given.

Offences against the IR Act may be prosecuted in the industrial magistrate's court. Fees charged in contravention of the IR Act may be recovered in the industrial magistrate's court or the Queensland Industrial Relations Commission.

Labour Hire Licensing Act 2017

Queensland's labour hire licensing scheme commenced on 16 April 2018, and requires all persons providing workers to third parties, in circumstances where they're obliged to pay those workers, to be licensed.

As of 20 August 2020, there were 3278 licensed labour hire providers in Queensland.

The introduction of this licensing requirement was in response to significant evidence of widespread exploitation of labour hire workers including instances of wage theft, sexual harassment, service health and safety concerns and substandard accommodation.

Licence holders must pass a fit and proper person test, comply with all relevant laws, and be financially viable. All applications are risk assessed, and enquiries are made where risk is identified. High risk industries such as agriculture, meat and poultry processing, security and cleaning have a comprehensive audit program.

All complaints regarding licensee behaviour are investigated and referred to relevant agencies as appropriate.

Licensees must report on their activities every six months. Labour hire users must use only licensed labour hire providers. Unlicensed providers and those using unlicensed providers can be liable for penalties of up to \$400,350 for corporations, and up to \$137,987 or three years' imprisonment for individuals.

Inspectors have powers to require documents and information from applicants and licensees, and to enter premises and exercise certain powers under the LHL Act.

Compliance actions available under the LHL Act include:

- providing education and influencing compliance with relevant laws
- imposing conditions
- refusing a licence application
- suspending a licence
- cancelling a licence.

Queensland Training Ombudsman (QTO)

The *Further Education and Training Act 2014* (FET Act) established the QTO as an independent statutory position, which commenced operation in September 2015. The FET Act sets out the key statutory functions and governance arrangements for the QTO. The QTO has established formal information sharing arrangements with a number of entities to assist in achieving outcomes for individuals.

The QTO provides complete wrap-around support for students, apprentices and trainees and other stakeholders, to assist them to address issues with the VET services they are being provided. The QTO has also been tasked to identify systemic issues with the provision and quality of VET in Queensland.

While the QTO is an independent statutory body, the FET Act provides that the Minister may refer a matter to the QTO for review or research and the provision of advice or recommendations.

Role of the Purchaser

DESBT is the Queensland State Training Authority (see **Attachment 2** outlining the shared responsibility for quality), with overall responsibility for the VET system in Queensland, including funding priority qualifications through contracts with approved training providers, and administering the FET Act in relation to the apprenticeship and traineeship system.

DESBT funds a broad range of training and skills initiatives, with the majority of subsidised training funded through the following key VET programs:

- User Choice program – funding provided for the training of apprentices and trainees
- C3G program – funding for students to access a subsidised Certificate III qualification (including access to lower level qualifications if needed by the learner)
- Higher Level Skills program – funding for students to access a subsidised Certificate IV and above level qualification or priority skill set, including interfacing with the Commonwealth VET Student Loans program.

DESBT enters into contracts with a range of RTOs, including TAFE Queensland, to deliver these programs. RTOs approved are currently referred to as Skills Assure Suppliers (SAS). To become an SAS, RTOs must be registered as an RTO with ASQA, have their head office location in Queensland, have the relevant qualifications on their scope of registration and be assessed against the following criteria:

- the RTO's previous training and assessment activity in Queensland
- financial viability of the RTO, determined through an externally conducted assessment
- the RTO's compliance history in Queensland and nationally
- the RTO's subcontracting arrangements
- employer and industry linkages in Queensland, as provided by the RTO
- consideration of current market profile.

SAS enter into a contract with DESBT for the delivery of subsidised training to eligible participants. The subsidy for the delivery of the qualification is paid to the SAS once data has been submitted and validated at the completion of each competency.

To ensure that SAS comply with contract requirements, DESBT publishes a SAS audit evidence requirements document, quality framework and directives and conducts contract audits. Where these audits identify breaches of the contract conditions, SAS can be required to repay funding received, have sanctions applied to their contract or have their contract terminated.

The relevant program to this Review is C3G, which was implemented in 2013 as the Queensland response to the national requirement for each jurisdiction to implement a fully contestable student entitlement funding program to encourage a greater proportion of the population to hold a Certificate III qualification. Contract conditions set benchmarks for employment outcomes to be achieved.

Not long after the commencement of C3G, the contract provisions were strengthened to ensure that contracted RTOs could not use the services of a third-party organisation to market subsidised training. This was further strengthened in June 2016 to require that contracted providers could also not provide payment for the recruitment or referral of students for subsidised training from third-party organisations (such as recruitment companies).

The SAS Third-party Arrangements Fact Sheet states:

In Queensland, SAS are not able to subcontract services from recruitment agents or brokers, or employment/job service agencies, or provide any form of payment for the recruitment of students (clauses 14.5, 14.6 and 18.7 SAS Agreement, SAS Policy Performance Standard 3B and, Marketing and disclosure directives).

Several of the relevant SAS contract clauses are outlined below:

14.5 The Supplier must not give, or agree or offer to give, to another person any valuable consideration with a view to securing the enrolment with the Supplier of a Student or prospective Student in relation to a Qualification funded under a Program.

18.7 The Supplier must not subcontract or enter into an arrangement whereby the Subcontractor promotes, markets or advertises the Program or the Supplier's status as a SAS for the Program.

23. Termination, suspension or removal by Department without cause.

23.1 The Department may, at its convenience, by providing 20 Business Days written notice to the Supplier: (a) terminate this Agreement; (b) Suspend Funding for the Suspension Period; (c) remove, cancel, vary (including by way of deduction or omission) or suspend a Program or Qualification from this Agreement; or (d) vary the whole or any part of the Services (including by deletion or omission),

23.2 and the Supplier agrees that nothing in this Agreement limits or affects other suppliers undertaking, and other suppliers may undertake, the whole or any part of the terminated Agreement or the whole or any part of the omitted or deducted Services or removed, cancelled, omitted or deleted Program or Qualification resulting from the exercise of the Department's rights under this clause 23. The Supplier releases the Department from any Claim in respect of, arising from or connected in any way with the termination of this Agreement, the suspension of funding, the removal, cancellation, variation or suspension of a Program or the variation of the Services under this clause 23.

Role of Other Bodies

Recruitment, Consulting and Staffing Association Australia and New Zealand (RCSA)

RCSA is a membership organisation for the recruitment and staffing industry in Australia and New Zealand.

RCSA members are bound by an ACCC authorised code of professional conduct which requires that:

- RCSA member firms must be managed by a qualified recruitment and staffing professional
- RCSA members have been checked for business integrity

- RCSA member firms are vetted by a Board of industry professionals
- RCSA members remain at the top of the profession through business support, legal support, professional development and access to a network of other RCSA professionals
- RCSA members get access to leading recruitment and staffing technology to ensure you can source and manage the best talent in the market
- RCSA members are required to maintain high professional standards through industry specific training and continuous professional development.

Three organisations linked to allegations relevant to this review are members of RCSA.

Independent Tertiary Education Council Australia (ITECA)

ITECA is a peak body representing independent providers in the higher education, vocational education, training and skills sectors. Membership of ITECA is identified as a pathway to recognise providers who have shared goals of leadership, professionalism and quality.

To become a corporate member of ITECA, VET providers operating in Queensland must be registered with ASQA and must meet financial sustainability requirements and a fit and proper person assessment.

ITECA also operates the ITECA College of Vocational Education & Training Professionals which is designed to recognise individual professionals that have a strong commitment to quality and compliance within the VET sector.

The college is separate from the general membership, and membership confers one of two credentials:

- CEP – Certified Education Professional
- CEM – Certified Education Manager.

Eligibility requirements for CEP are:

- proof of meeting the ASQA requirements mandated for trainers and assessors
- vocational competencies at least to the level being delivered and assessed
- minimum of three years' experience in Australia that provides current industry skills, directly relevant to the training and assessment being provided
- if working with people under 18 years old, a state/territory endorsement for working with minors and/or a working with vulnerable persons check
- completion of professional development activities equating to at least ten hours per year on matters relating to training and assessment
- participating in continuing professional development activities equating to at least ten hours per year on matters relating to the discipline/s the member is working in
- letter of support from two supervisors and/or CEM attesting to their professionalism and demonstrated competency as a trainer and assessor.

Jobactive Providers

A network of jobactive providers, funded by the Commonwealth Government, operate across Australia to provide employment services to employers and job seekers. Whilst the issues relevant to this Review do not involve jobactive providers, it is relevant to identify the services they provide.

Employers looking for staff can receive help from a jobactive provider who will work with the employer to understand their recruitment needs and will tailor services to ensure an employer gets the assistance needed to find suitable staff.

Jobactive services are generally available to individuals accessing an income support payment, with voluntary online employment services available to those not on income support. The level of service to be provided is assessed on an individual basis. Based on that assessment, services provided can include:

- help to get the skills that local employers are looking for
- help to manage other relevant issues
- help to look for up to 20 jobs per month
- access to approved activity
- access to funding to pay for work related items, professional services, relevant training and support after commencing work
- advice with regards to how to access State Government subsidised training where appropriate.

The Commonwealth Government recently launched a comprehensive 'star' benchmarking system for the services offered by each jobactive provider at each location to improve consumer knowledge and choice of their service provider.

SEEK

SEEK is a large online labour market platform used by job seekers and employers. In the majority of instances relating to the activity covered by this Review, complainants have indicated their concerns started once they applied for a job on SEEK.

SEEK has provided the following information to assist with this review:

- the vast majority of job ads placed on SEEK are legitimate, and to help ensure this, SEEK has a dedicated security team whose sole focus is to protect both job seekers' and advertisers' activity onsite. This includes regular screening for fraudulent job advertisements and checking business details to ensure security and legitimacy of the employment opportunity
- in the event a suspicious job advertisement is identified onsite, SEEK has a robust process to investigate and action these matters, including the removal of a job ad that is proven to be non-genuine
- SEEK also encourages users to report suspect or fraudulent activity immediately via a dedicated helpline on 1300 658 700 or online <https://www.seek.com.au/contact-us/>
- SEEK's Career Advice hub, which is freely accessible via [seek.com.au](https://www.seek.com.au), offers dedicated tips and resources for job seekers to protect their privacy while job hunting. These tips cover the information employers can and can't ask for, tips on making sure the employer is legitimate, and advice on what to do in the event a job seeker has concerns about a prospective employer.
- selling or offering services or products (such as learning or educational courses or tools) to candidates whose personal information an advertiser has obtained through their use of the site (including job applications received from candidates) is considered by SEEK to be a misuse of candidate data and is prohibited.

It is noted that SEEK is not a PEA and is not bound by the PEA legislation.

The Role of Individuals

One of the underlying assumptions relating to a quality VET system is that students will be informed, and can effectively make decisions, regarding the training they wish to undertake and RTO they choose to deliver that training. Once informed, students, as consumers, need to take responsibility and ownership for those decisions.

To protect the interests of consumers, there are provisions regarding cooling off periods if an enrolment occurs through unsolicited calls for goods and services. Specifically for students, there are requirements for RTOs to have a refund policy that is readily available to students which also normally includes a cooling off period and identifies any portion of a fee (eg administration fee) that may be retained even if the enrolment is cancelled during that period.

There are a range of tools available to assist students to make informed choices, such as:

- websites including MySkills and Queensland Skills Gateway
- a comparison table provided by the Commonwealth recommending that students seek responses to a range of questions from at least three RTOs prior to committing to an enrolment
- fact sheets or booklets required to be given to students who enrol in subsidised training with an approved RTO, including the fact sheet for C3G, outlining that students will exhaust their entitlement to a subsidised Certificate III qualification.

However, job seekers can be vulnerable, particularly as Queensland recovers from the impacts of COVID-19 and the lure of free or low cost training leading to a job means the process of informing themselves is often overlooked. It can be argued that SAS who take advantage of this vulnerability are not operating within the intent of the C3G program even though the student will have been provided with the required fact sheet.

Students are also not required to be informed that, under certain circumstances, they may be eligible for 'second chance funding' even if they exhaust their entitlement to a first subsidised Certificate III qualification. In general terms, DESBT offers second chance funding opportunities in the following circumstances:

- where the individual goes on to undertake an apprenticeship or traineeship
- where the individual participates in a Skilling Queenslanders for Work program
- where the individual undertakes training with TAFE Queensland in a qualification required for a clearly identified job.

Whilst access to wide ranging second chances has a cost impact, it ensures vulnerable job seekers have a safety net. Once this safety net is explained to students who have undertaken a course and a job has not eventuated, they are generally satisfied and relieved they have other options.

Consultation and Feedback

A summary of feedback received from stakeholders is outlined below.

Industry Bodies

- Believe employers in the food processing and warehousing and many other sectors would not mandate that job seekers must have a Certificate III qualification
- Quality is their main concern, particularly regarding short duration, and the need to retrain someone even if they already have a Certificate III
- Aware of previous reports that outline the benefits to an individual of holding a Certificate III level qualification – enhanced employability and earning potential
- DESBT should address performance issues of identified funded RTOs, and any flaws in contracting arrangements, before consideration of implementing systemic changes to funding arrangements – “Fix the problem not the system”
- Opportunity for increasing traineeships in the industry to address quality concerns and train in a real life situation

- Opportunity for consideration of mandatory vocational placement in qualifications to ensure workers are job ready
- Recruitment organisations are also members of industry bodies.

Unions

- Confirmed they had received no comments or complaints from their members regarding this activity, noting that the target audience are job seekers who are more than likely not union members
- Despite this, believed it is an appalling process targeting vulnerable job seekers and whatever can be done should be done
- Described as “Bastardising legitimate attempts by government and stakeholders to create a skilled workforce”
- Main concern is that people get quality training with concerns regarding duration of training offered as this degrades the VET system, particularly trades at the Certificate III level.

Jobactive Providers

- Expectation from the Commonwealth that they provide a link between vacancies and skilled workers
- Have access to Commonwealth funds to fund short courses or qualifications to enable this
- Often approached by industry sectors – eg a warehousing development where it has been identified a large number of jobs will be available with lead in time to skill workers to enable them to compete for the jobs
- Depending on level of service available to an individual, can be referred to training or to Queensland government subsidised providers
- Train more than the jobs available to provide a suitable pool of applicants
- Often approached by industry associations and labour hire companies
- Sometimes approached by RTOs – stating they want to train for available jobs and wanting to access the Commonwealth funding – significant due diligence undertaken to verify the jobs exist.

Other Stakeholders

- DESBT needs to focus on addressing these critical issues and not on what appears to be trivial contract matters, or assessment matters that are the responsibility of ASQA
- DESBT needs a more effective audit model that provides more penalties than just requiring an organisation to repay funding, and responds quickly to emerging issues
- DESBT needs to establish a contract audit team (Note, DESBT does have a contract audit team but some stakeholders were not aware of the activities undertaken by DESBT)
- SAS that are doing the wrong thing need to be removed quickly to avoid reputational damage to the brand of VET
- There needs to be closer monitoring of expenditure for qualifications and action taken to address issues identified (as has happened previously).

Examination of Complaints and Issues

A number of specific activities have been undertaken by regulatory bodies during this Review.

ASQA

ASQA has a number of ongoing scheduled meetings and regularly engages with the Queensland Government under agreed protocols.

DESBT currently refers complaints and reports about RTOs to ASQA. The information provided from DESBT is recorded and assessed and contributes to making a determination on whether regulatory scrutiny of the provider is required.

ASQA shares the outcomes of its regulatory activities with the Queensland Government. ASQA has commenced a national project to share information consistently with all State and Territory training authorities and has had initial conversations with DESBT about this work.

ASQA is aware of recent media articles reporting recruitment companies advertising entry level jobs in Queensland and seeking applicants who are eligible for government funding with a promise of a job offer.

ASQA has reviewed the RTOs, third-party associations and person(s) mentioned in the media reports. This information has been recorded and assessed and will be used to inform future regulatory activity.

ASQA recently took action against a third-party association for false and misleading advertising and was successful in having a fine imposed on the organisation. The media release is at **Attachment 3**. Whilst not identical to the current issues that are within the scope of this Review, it does highlight the type of action being taken by ASQA, in addition to their regular auditing of RTOs.

OFT Activity

OFT agreed to consider complaint referrals from DESBT about training organisations allegedly engaging in bait advertising practices to entice job seekers to enrol in training programs. It is noted that under the ACL, bait advertising (s.157) refers to a person in trade or commerce advertising goods or services for supply at a specified price. It is therefore not a technically accurate description of the behaviour being alleged. An example of bait advertising would be, for example, a property being marketed for a price substantially lower than what the vendor will accept, to attract interest in the sale.

OFT report that when referrals are made and contact is made with the consumer, often the student or jobseeker is not aggrieved by the training they received but are more concerned that they have not been able to secure employment.

OFT agreed to consider the allegations in terms of *false and misleading advertising* (sections 151 and 153 of the ACL).

Additionally, OFT agreed to map the connectivity and relationships between various parties and entities identified in media reports and in complaints made to DESBT over the previous 18 months, to identify likely targets for subsequent investigation.

While no formal Memorandum of Understanding or referral system is in place between OFT and DESBT, this is not seen as a serious impediment to the co-operation between the agencies in terms of referring and receiving complaints and investigating matters of concern. Indeed, OFT has previously accepted referrals from DESBT in relation to training issues and in 2016 undertook a significant operation assisting DESBT in identifying fraudulent practices by DESBT PQS entities.

While OFT works at a Whole of Government level to address allegations of deceitful practices in the training and recruitment industry, and addressing allegations of false or misleading advertising, it considers other regulators may be more suited to address aspects associated with the issue.

OFT advised that, in their experience, removing the source of funds is always the most efficient and effective way of negating the harm.

OFT assessed available evidence of false and misleading representations and has not been able to identify any claims which would pass an appropriate threshold enabling enforcement action to be taken. Advertising claims generally indicated the availability of positions within a certain industry within a geographic area and it would be impossible to refute the accuracy of those statements.

On all occasions, the advertisements appeared to meet the requirements outlined by the ACCC in their 2011 report and did not breach relevant provisions of the ACL.

OFT also undertook a detailed mapping exercise to understand the linkages between RTOs and the other organisations outlined in complaints and recent media articles. This detailed analysis identified that whilst there appeared to be strong links between several individuals, “the results of the analysis do not support the inference that a breach of ACL has occurred.”

OFT also alerted their interstate and Commonwealth consumer affairs colleagues to the allegations raised in these complaints. Feedback from other jurisdictions confirmed that this appeared to be a matter that was only occurring in Queensland at that point in time.

OIR Activity

Since 2015, the QTO has referred a number of matters to OIR for investigation in relation to PEA activity. On some occasions, organisations were confirmed to not be undertaking PEA activity or had ceased to operate. In cases where it was confirmed the organisation was a PEA, OIR confirmed the advertisements related to true vacancies that had since been filled. In some instances, it appeared organisations had breached the PEA Act. However, complainants were not prepared to provide a detailed statement of evidence to enable OIR to take further action.

During September 2020, OIR conducted an audit of 16 organisations (not RTOs) mentioned in media articles and in past and current complaints lodged with the Office of the QTO and DESBT. This audit identified that only four of the organisations were currently operating as PEAs. Of those four:

- three were assessed as compliant with the PEA Act
- one was deemed not compliant and required to keep work, placement and employer registers. This organisation has now ceased trading and is in the process of being deregistered.

Of the remaining 12 organisations:

- two were approved labour hire agencies only
- two provide services to RTOs, including designing training programs
- two assisted employers to recruit and shortlist but were not PEAs
- two advertised vacant positions and did not perform PEA functions
- one was under external administration
- one was no longer operating as a PEA and was awaiting approval for a labour hire licence
- one was a consulting company for employers
- one offered professional development opportunities for job seekers.

DESBT Activity

DESBT investigates all complaints it receives regarding SAS, including recent complaints regarding a small number of providers and recruitment agencies that are the subject of this Review.

As at 17 November 2020, there were 456 SAS.

To date during 2020, DESBT has received 54 complaints regarding activities of PQS/SAS (as at 16 November 2020). It is noted that four phone complaints were received through the training scammer hotline and one email was received through the training scammer email address (the complaint received via the training scammer email was a duplicate of a complaint previously received directly by DESBT).

Of these complaints, 21 related to activities relevant to this Review, involving 17 third-party entities and 10 PQS/SAS, which is less than 2.3% of current contracted SAS.

DESBT commenced investigations into these 10 SAS, with one investigation completed and investigations ongoing in relation to nine Requests for Information issued.

Actions taken to date include: (note: sanctions and notices are often issued together and the list below may represent sanctions and notices issued to the one supplier concurrently):

- one SAS Agreement has been terminated
- three suppliers have been issued with a sanction “Directive to Cease Enrolments”
- three Show Cause Notices/Notice of Events of Default have been issued
- two additional sanctions, Directives to Cease Enrolments, are currently being prepared to be issued shortly
- two additional Show Cause Notices are currently being prepared to be issued shortly
- two Performance Reviews (forensic investigations) have commenced and are underway
- one supplier has been issued a Directive to Terminate its third-party agreement with a recruitment company.

In relation to the supplier that has been directed to terminate its third-party agreement, it was identified the supplier had engaged the third-party recruitment company to deliver training and assessment services. While SAS are not prohibited from engaging a third-party to deliver training and assessment services, DESBT considers there was a risk in the supplier’s arrangement as there was no visibility for DESBT, or the supplier, to manage any perceived or actual conflict of interest in relation to any student recruitment practices by the recruitment company, as a third-party.

In relation to the balance of the investigations, the majority of the responses from suppliers has been a denial of any relationship with any of the third parties identified by DESBT and further investigations have been ongoing. One of the challenges faced by DESBT in resolving complaints, is the lack of statutory powers to compel the production of documents and to conduct investigations.

Importantly, the aim of DESBT’s investigations is to identify if there is evidence to support any allegation of non-compliance. DESBT would be acting unlawfully if it were to impose sanctions on suppliers in the absence of proven non-compliance.

DESBT investigations into these allegations also include reviewing online marketing, third-party agreement disclosures, ASQA declared third-party relationships, Australian Securities Investments Commission and Australian Business Register searches, reviewing student data, and contacting the student/complainant to obtain further information. Where warranted, DESBT refers complaints to appropriate integrity agencies such as the Crime and Corruption Commission, ASQA, OFT and QPS to ensure appropriate reporting and management of matters in accordance with legislative provisions.

DESBT has risk mitigation measures in place and undertakes regular compliance monitoring. This includes monthly reviews of claims for payment, data analytics and contractual audits. With the implementation of Skills Assure in July 2020, compliance monitoring activities have been further strengthened to include SAS Compliance Checks. Additionally, the new Skills Assure Agreement has also been strengthened to include new provisions that enables DESBT to access further records and for training organisations to be required to declare third-party training arrangements. If SAS fail to comply with the requirements of the SAS Framework, it may result in the termination of their agreement, the removal, cancellation, variation or suspension of a Program or Qualification from the Agreement.

DESBT has also advised it is currently reviewing its contract management and compliance monitoring processes to develop enhanced approaches to these areas and is also planning to undertake a third-party compliance check during 2021, including mapping third-party training arrangements notified to ASQA with third-party training arrangements notified to DESBT by SAS.

QTO Activity

Since its establishment in September 2015, QTO has received a total of 42 complaints (out of 1665 as at 30 September 2020) regarding this issue. Nine of those complaints have been received in 2020.

An analysis of those complaints identified that:

- 35 related to Queensland government funded RTOs (SAS)
- five related to RTOs delivering training under fee-for-service arrangements
- they related to 16 recruitment companies, labour hire companies and consultants
- on almost all occasions, the complainants applied for a job on SEEK
- on most occasions, additional training was also offered (eg forklift training) but not delivered
- complainants generally sought:
 - a refund of fees paid (for fee-for-service training)
 - that the RTOs provided the additional training offered
 - action be taken to ensure the practice of informing prospective students that a job would be available once the training was completed was stopped and government funding should be reviewed
 - clarification over the confusion created by so many organisations being involved once they replied to the job advertisement
 - clarification they had exhausted their entitlement to access government subsidised training.

Outcomes of investigations undertaken identified that:

- job advertisements met the requirements outlined in the ACCC report
- there were more applicants for positions than vacancies
- SEEK had removed advertisements if they had concerns they were not genuine
- whilst individuals wished organisations were reprimanded, they were generally satisfied, and did not wish to be further involved in investigations, when
 - additional opportunities to access government funded subsidies were outlined to them
 - they received their qualification
 - they received the additional training promised
 - they received a refund if appropriate
- whilst there were numerous allegations of financial linkages between organisations, no evidence of those linkages could be substantiated (noting the only restrictions related to SAS and their linkage with recruitment organisations).

Where appropriate, complaints were referred under established processes to OIR, OFT, DESBT and ASQA. It is noted that, on at least two occasions, OIR advised they had identified concerns with the operation of PEA. However, the complainants did not wish to be involved in assisting further investigation of the matters.

For a complaint recently finalised, the complainant advised that:

- he thought the training he attended was well resourced and he was satisfied with the duration
- he was happy to now have a Certificate III qualification and believed it would assist him to secure future employment
- following involvement of the QTO, he undertook training for his promised forklift licence and thought this would also assist him to secure employment.

Key Findings

Overall, the feedback from stakeholders, including complainants, is that more timely action needs to be taken to address SAS that don't meet quality standards, noting the current complaints relate to 10 out of 456 SAS. It was considered that major systemic changes were not required, and as identified in the report from the Queensland Audit Office, DESBT has a range of directives, guidelines and frameworks to guide the activities of SAS.

Only a very small percentage of recruitment organisations are covered by legislation and no breaches of the relevant legislation or ACL were identified.

All stakeholders agreed that some job seekers are vulnerable in the current economic conditions and should not be misled by recruitment companies, RTOs and other organisations.

Specific findings are outlined below:

No breaches of legislation were identified by regulators

- No breaches of ACL were identified by OFT in relation to the advertisements identified
- No breaches of the Fair Trading Act were identified by OFT
- No breaches of the PEA Act were identified by OIR
- No unlicensed labour hire providers were identified by OIR
- No breaches of the NVR ACT or National Standards were identified by ASQA (noting that future audits will continue to consider issues related to this review, including third-party arrangements)
- The activities of the majority of the recruitment organisations identified in this Review are not regulated (confirming information reported in media articles regarding this issue).

Legislative penalties should breaches of legislation be identified appear to be satisfactory

- Penalties for breaches of ACL are substantial
- Penalties for breaches of the Fair Trading Act are considered satisfactory
- Penalties for breaches of the PEA Act and Regulation are considered satisfactory
- Penalties for breaches of the LHL Act are considered satisfactory
- Penalties for breaching NVR Act and National Standards are considered satisfactory – see recent action taken by ASQA at **Attachment 3**.

Possible breaches of contract provisions have been identified (noting that taking action in regard to the alleged breaches is proving difficult)

Under the National Standards for RTOs, RTOs can use third-party arrangements to market and recruit students, provided the third-party arrangements are registered with ASQA and the RTO takes full responsibility for the actions of the third-party.

However, under DESBT contract provisions and evidence guidelines for SAS, they are not able to contract the services of a third-party to market available courses and are not able to pay for and receive referrals from contracted organisations such as recruitment companies. It is noted that, to meet the benchmarks in their contract regarding employment outcomes, SAS will more than likely have linkages with recruitment companies to assist graduating students gain employment.

It is noted that despite many allegations SAS have contractual arrangements with recruitment companies where they pay for student referrals, the existence of any such arrangement has not yet been proven during investigations undertaken to date by either DESBT or the QTO.

It is assumed DESBT has clarified the eligibility of students and other contract provisions have been complied with (as part of regular DESBT contractual audit activity).

There are several penalties that can be applied for breaching contract provisions

Penalties for breaching the SAS contract include:

- suspension of the contract
- variation of part or the whole of the contract
- termination of the contract.

Where breaches of the contract are identified, DESBT also seeks recovery of funding where appropriate.

Additional penalties and sanctions for breaching contract provisions should be considered

During the course of the review, two views were put forward regarding this issue.

The first view was that removing the source of funding and seeking recovery of funds previously claimed provided sufficient penalties for breaches of the contract.

The second view was that more needed to be done to ensure SAS operate within the intent of the program and do not bring VET into disrepute. To achieve this, it was suggested that having the capacity to take action against individuals would provide a greater deterrent. It was suggested this could be achieved through legislation, similar to the PEA ACT and Regulation which establishes enforceable standards of both conduct and service.

Whilst the second view has merit, it must be noted the current issues being experienced with regard to proving a breach could also be experienced in taking this sort of action. One benefit of such an approach could be the consolidation of existing frameworks, directives and guidelines into a single enforceable code of conduct which could either be legislated or enforced through contract provisions.

Improvements need to be made to enhance the actions taken by DESBT

As outlined, DESBT is undertaking a range of activities associated with the alleged breaches of contracts, ensuring the principles of natural justice and fair procedures are applied.

However, feedback indicates there is a need for DESBT to:

- be more transparent about the action they are taking to reinforce the importance that DESBT places on quality
- better target its audit and compliance activities
- provide timely responses to issues identified.

Additional actions need to be considered by DESBT

DESBT has historically had a good track record in monitoring and managing expenditure in individual qualifications or industry areas. For example, previously changes were made to subsidy levels for the Certificate III in Warehousing as a result of a spike in RTO activity. In 2018, DESBT in partnership with the QTO, reviewed nine qualifications that had been identified by DESBT as high risk qualifications. For the purposes of that review, DESBT identified the following market trends may contribute to an assessment as high risk:

- short course duration
- relatively low co-contribution fees
- high use of recognition of prior learning
- relatively high complaint levels
- high growth in students and investment through a small number of PQS.

It is noted the Minister recently announced the capping of a number of qualifications and this is currently being implemented by DESBT. However, given the growth in funding that occurred in qualifications such as the Certificate III in Food Processing, it can be argued it should have been identified as a high risk qualification and action taken much earlier.

DESBT advised it has identified provider trends within these qualifications as higher risk through compliance monitoring processes, with different providers prioritised for audit or other reviews. In addition, Food Processing and other Certificate III qualifications were included in a VET Investment Review project, which resulted in decisions to cap investment levels and other changes to investment settings, including monthly monitoring of these qualifications.

There is also the possibility that DESBT, as purchaser, could consider imposing additional criteria on SAS receiving government funding (such as minimum duration of training to be delivered to new entrants to the labour market to ensure they are job ready).

More needs to be done to assist students

It is unacceptable for any organisation to make a false or misleading claim to induce a prospective student (whether accessing government funded training or undertaking fee-for-service training) to undertake training with a specific RTO. Just as action needs to be taken where possible to address poor behaviour of organisations, more needs to be done to assist students to make informed choices.

There is a need for a review of current arrangements to inform students that must streamline the channels available to students, make information more accessible, provide assistance to navigate the complex VET system and make complaints where appropriate.

Complaint referral processes need improving

It is evident from the activities of various organisations during this Review that ad-hoc or informal referral arrangements are not an efficient use of resources, particularly when complaints may be relevant to multiple agencies. To be efficient, it is considered there needs to be clear understanding of the roles of each entity and the purpose for the referral, clear expectations of what action the other entity will take and what reporting mechanism is expected. Complainants should not be placed on the “referral roundabout” and a single entity should take responsibility for keeping the complainant informed and reporting outcomes to them.

For example, QTO has formal referral mechanisms in place with a range of Commonwealth and State agencies and continues to report to the complainant on the progress of their complaint.

Recommendations

1. DESBT should review current practices to:
 - a. consider the timeliness of actions taken regarding alleged contract breaches
 - b. identify and take decisive action in relation to funding qualifications it identifies as high risk
 - c. focus audit and compliance activity to high risk areas.
2. DESBT should review all guidelines frameworks and directives to ensure they adequately identify the behaviour expected of SAS and consider alternative arrangements if required.
3. DESBT should consider placing additional requirements on SAS to enhance quality outcomes where appropriate.
4. DESBT should improve transparency of actions it is taking to ensure all stakeholders are aware of the importance DESBT places on quality.

5. A quarterly Queensland VET Quality Forum should be established with membership including:
 - a. ASQA
 - b. OFT
 - c. DESBT
 - d. OIR
 - e. QTO (Chair)
6. The Queensland VET Quality Forum should initially review existing referral mechanisms and student communication channels and implement enhanced processes.

Attachments

Attachment 1 – Terms of Reference



QUEENSLAND
TRAINING
OMBUDSMAN

Review of training delivery linked to advertising of vacant positions in Queensland

Objective

The Queensland Training Ombudsman will investigate the organisations involved and the relationship between those organisations, the impact on individuals undertaking the training, the impact on funding arrangements for the Department of Employment, Small Business and Training (DESBT) and the role of various regulatory bodies.

Background

There have been a number of complaints received regarding the alleged inappropriate advertising of positions resulting in applicants being offered places in subsidised and fee-for-service training courses. Concerns raised relate to students utilising their entitlement to a government subsidised course to be considered for a vacancy which does not exist, and inappropriate use of government funding. In many cases, concerns raised relate to additional training that was offered but was not delivered (eg forklift training). Media articles have recently highlighted there is an increase in this activity as many people are seeking to re-enter the workforce following the impact of COVID-19 restrictions.

Scope

The review will:

- analyse previous reports from organisations such as the Australian Competition and Consumer Commission regarding these types of issues
- investigate the organisations involved, including their approval by various regulators if applicable
- examine any formal relationship that exists between the organisations
- analyse complaints received and identify the impacts on students
- identify the regulatory activity undertaken by agencies, including DESBT, Australian Skills Quality Authority (ASQA), Office of Fair Trading (OFT) and Office of Industrial Relations (OIR)
- identify potential breaches of various legislation, regulations and contract requirements
- identify enhancements to the co-ordination of regulatory activities across agencies to optimise services provided to Queensland job seekers and students.

The review will not address the policy intent of training programs such as the Certificate 3 Guarantee. The review will also not consider the effectiveness of the regulation of private employment agents or labour hire companies.

Consultation

Consultation will occur with:

- DESBT
- ASQA
- OFT
- OIR
- Employer Associations
- Unions

- Registered Training Organisations
- Other stakeholders identified during the review, including students and industry bodies such as the Independent Tertiary Education Council Australia (ITECA) and the Recruitment, Consulting and Staffing Association (RCSA)

Outcomes

It is expected a report will be provided that identifies the organisations related to this issue, the relationship between those organisations, the impact on students and jobseekers and make recommendations on regulatory reform to strengthen enforcement arrangements and optimise outcomes for individuals.

Support

DESBT will:

- provide data and information required
- attend consultations as required by the Queensland Training Ombudsman

Resources

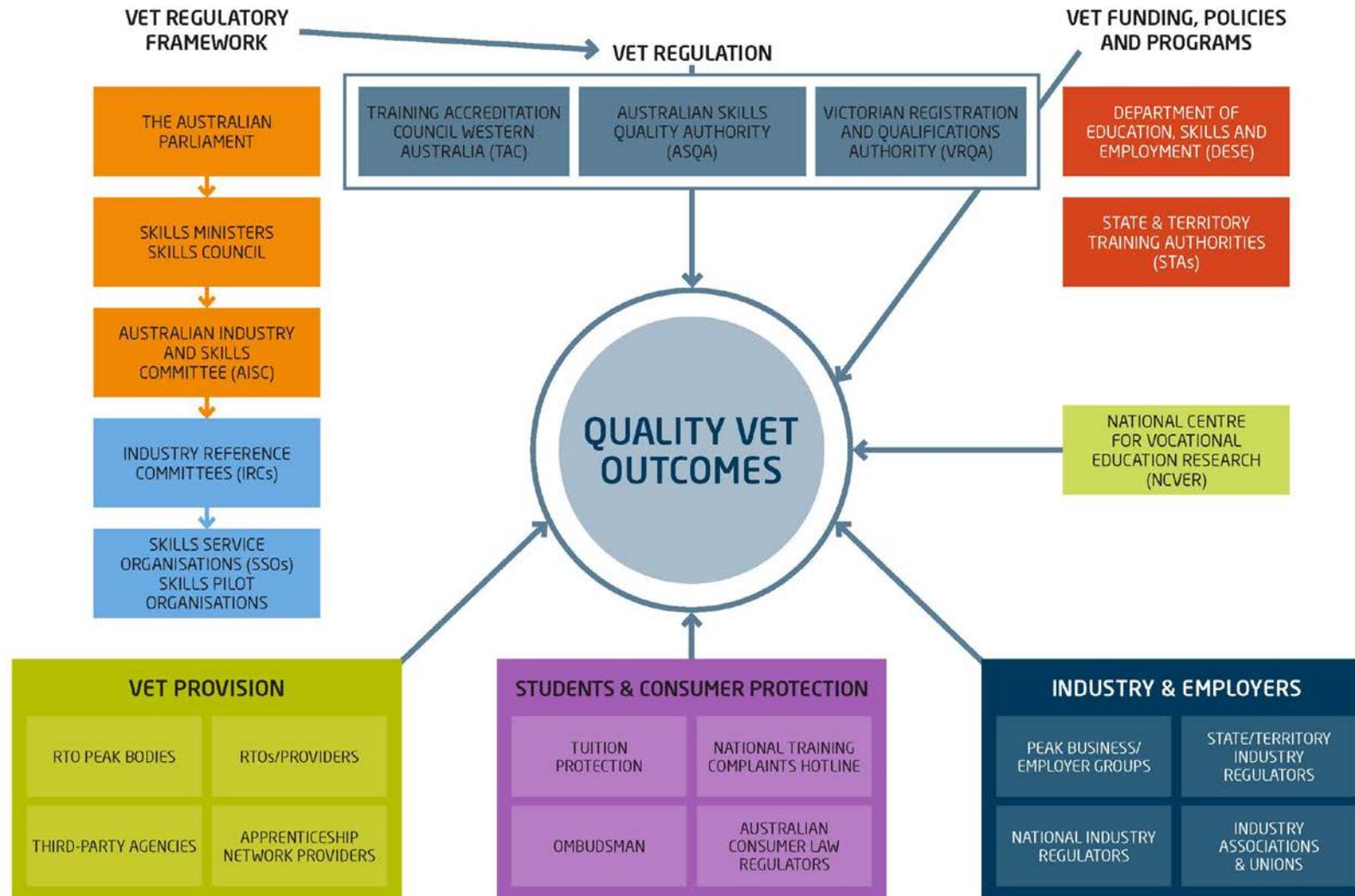
This review will be conducted utilising existing resources.

Timeframe

It is anticipated the review will be completed by 30 November 2020.

Attachment 2 - Maintaining Quality in the VET System

Quality in the VET system - a shared responsibility



Understanding the VET regulatory architecture

The Australian Parliament approves **VET legislation** that ASQA regulates against including the NVR Act and the *Education Services for Overseas Students (ESOS) Act 2000*.

National Cabinet (formerly COAG)

VET REGULATORY FRAMEWORK

VET QUALITY FRAMEWORK

The VET Quality Framework:

- the Standards for Registered Training Organisations (Standards for RTOs)
- the Quality Standards
- the Australian Qualifications Framework
- the Fit and Proper Person Requirements
- the Financial Viability Risk Assessment Requirements
- the Data Provision Requirements.

Administered by the Minister for Employment, Skills, Small and Family Business with agreement from the Ministerial Council.

Australian Industry and Skills Committee (AISC) provides advice to the Ministerial Council on the implementation of VET policies. AISC quality assures and **approves training packages** for implementation.

TRAINING PACKAGE DEVELOPMENT & APPROVAL

Training Packages are sets of nationally endorsed standards and qualifications used to recognise and assess the skills and knowledge people need to perform effectively in the workplace.

Industry Reference Committees (IRCs) determine industry need and oversee training product development.

Skills Service Organisations (SSOs) provide support and related services to enable IRCs to develop and review training packages.

VET REGULATORS

ASQA—THE NATIONAL VET REGULATOR

ASQA regulates against the NVR Act, VET Quality Framework, VET legislation, Standards and Training package requirements.

The Victorian Registration and Qualifications Authority (VRQA) regulates RTOs that operate solely in Victoria and do not offer courses online or to overseas students.

The Training Accreditation Council (TAC) is responsible for the registration of training providers delivering nationally recognised training to domestic students in Western Australia only, or in both Western Australia and Victoria.

VET Research: the National Centre for Vocational Education Research (NCVER) is a national research, evaluation and information organisation for the VET sector in Australia, jointly established by state, territory and Commonwealth ministers responsible for skills. NCVER is the data custodian of the national VET statistical collections and national VET survey collections.

National Careers Institute: Created to improve the quality of career development and career information and services.

National Skills Commission: provides advice and data on workforce skills needs, VET pricing and investment in VET.

VET responsibilities outside ASQA's remit

VET FUNDING, POLICIES AND PROGRAMS

The agencies listed below are responsible for administering VET policies, programs, funding and ensuring compliance of the VET funding contracts they enter into with RTOs. Collaboration and information sharing between ASQA and these agencies are essential to effective VET regulation. A breach of funding program compliance may in some cases also result in a breach of the standards against which ASQA regulates.

Department of Education, Skills and Employment (DESE) Skills & Training division is the Australian Government department responsible for national policies and programs that help Australians access quality higher education, international education and skills and training. DET provides funding to the VET sector through its programs such as: Apprenticeships Incentives programs, Skills for Education & Employment programs. DET administers the VET Student Loans (VSL) scheme and other specific purpose payments.

State and Territory Training Authorities (STAs) are government departments that participate in the planning of national VET objectives. They are responsible for regulation of apprenticeships and traineeships training contracts within their jurisdiction. STAs are also responsible for administering and ensuring RTO compliance of VET funding criteria, including determining nominal hours to be delivered as minimum to meet funding requirements, applicable to their jurisdiction.

UNDERSTANDING THE BOUNDARIES OF ASQA'S ROLE & RESPONSIBILITIES

VET regulators (i.e. ASQA, VRQA & TAC) are not responsible for the functions of direct consumer protection

VET regulators cannot assist VET students to resolve disputes regarding fees or contract breaches by their training provider.

ASQA's role in consumer protection is to regulate the standards for RTOs which are heavily underpinned by consumer protection principles to ensure that learners are properly informed and protected.

Regulation of higher education is the responsibility of the Tertiary Education Quality and Standards Agency (TESQA).

ASQA works with TEQSA to regulate providers that operate in both VET and higher education markets (i.e. multisector providers).

Department of Home Affairs regulates overseas students who come to Australia to study VET

through the approval and regulation of student visas. The Department's office of the Migration Agents Registration Authority (MARA) regulates Australian migration agents. ASQA's role in International education is to regulate the provision of training to these students.

The Administrative Appeals Tribunal (AAT) has the powers to set aside decisions made by ASQA.

RTOs that contest reviewable decisions made by ASQA may apply for an internal review by ASQA. If a resolution cannot be achieved after the reconciliation is completed, an RTO can then apply to the AAT for external review of the final decision.

Industry & employers



Employers and industry are integral to a quality VET system.

Employers may employ students while they undertake a VET course (sometimes through a traineeship or apprenticeship pathway) or employ VET graduates.

Group Training organisations (GTOs) provide a specific type of employment arrangement that is an option for the employment of apprentices and trainees. The GTO recruits and employs the apprentice or trainee and places them with a host employer.

Some employers have the dual role of both employer and RTO (e.g. enterprise RTOs deliver training primarily to their own employees).

Nationally recognised VET outcomes are offered in almost every industry in Australia. This diversity of industry and employers involved in the VET sector is represented by a range of bodies and associations.

PEAK BUSINESS/ EMPLOYER GROUPS

Peak business/employer groups (e.g. ACCI, AiG, BCA) represent the interests of their members i.e. business and industry, and provide input into vocational training matters.

NATIONAL INDUSTRY REGULATORS

National industry regulators have legislative authority to regulate a particular industry and determine the requirements that need to be met in order for VET graduates to be licensed and/or operate in their industry.

STATE/ TERRITORY INDUSTRY REGULATORS

State/territory industry regulators have legislative authority to regulate a particular industry in their state/territory and determine the requirements that need to be met in order for VET graduates to be licensed and/or operate in that state/territory.

INDUSTRY ASSOCIATIONS & UNIONS

Industry associations and unions represent the interests of their members in a specific vocation, business area or industry, and provide input to vocational training matters relevant to their specific industry.

VET provision



VET provision is integral to quality outcomes.

RTOs and providers are responsible for systematically monitoring, evaluating and continuously improving their practice (including services offered on their behalf by a third party) to assure quality outcomes for students, industry and employers.

RTOs/ PROVIDERS

Being a registered training organisation (RTO) is a requirement to deliver nationally recognised training or a nationally accredited VET course.

*RTOs who offer VET courses to overseas students studying in Australia must also have CRICOS registration.

*ELICOS providers offer English Language Intensive Courses to overseas students. RTOs operate in an open and competitive market. RTOs can be publicly established providers e.g. TAFE, a private for-profit RTO, a community-based not-for-profit RTO or an enterprise RTO (i.e. an employer and RTO that delivers training primarily to its own employees).

* Specific to overseas students

RTO PEAK BODIES

RTO peak bodies represent the interests of RTOs in Australia. Private peak bodies are often membership-based e.g. ITECA, CCA, ALA, NEAS* and English Australia*. The public sector is represented by TAFE Directors Australia (TDA) and enterprise RTOs are represented by the Enterprise RTO Association (ERTOAs).

*Representing providers that deliver training to overseas students

APPRENTICESHIP NETWORK PROVIDERS

Apprenticeship network providers offer advice and support services tailored to the needs of employers, apprentices and trainees throughout the apprenticeship lifecycle from pre-commencement to completion.

THIRD-PARTY AGENCIES

Third-party agencies must have a written agreement with RTOs in order to provide services related to nationally recognised training on behalf of an RTO. Those services might include recruitment or enrolment of prospective learners, provision of educational or support including services to overseas students, delivery of training and/or assessment, and issuance of qualifications.

Students & consumer protection



Students are at the centre of quality outcomes in the VET sector.

The Council of International Students Australia (CISA) is the national peak student representative organisation for overseas students studying VET, ELICOS or other higher education.

There is not one peak national body that represents the interests of all other VET students as VET students are such a diverse group.

There are a range of organisations that provide avenues for VET sector students to lodge concerns and/or provide consumer protection services for VET students.

DET NATIONAL TRAINING COMPLAINTS HOTLINE

The National Training Complaints Hotline is a joint Australian Government and state and territory governments' initiative that provides a central contact number and referral service for anyone with complaints or queries about the training sector.

AUSTRALIAN CONSUMER LAW REGULATORS

Australia has state, territory and Australian Government consumer law regulators. The Australian Competition and Consumer Commission (ACCC) regulates Commonwealth consumer law and considers student claims regarding breaches of contracts for VET services.

OMBUDSMAN

An ombudsman is a publicly-funded official who acts as an independent intermediary between individuals and governments. Two specialist Commonwealth ombudsmen roles exist with relevance to the VET sector: the VET Student Loans (VSL) Ombudsman and the Overseas Student Ombudsman (OSO). State and territory Ombudsmen operate in their law-making jurisdictions.

TUITION PROTECTION

The Standards for RTOs 2015 (regulated by ASQA) set out requirements for RTOs with regards to pre-paid tuition fees. The Australian Government Department of Education, Skills and Employment (DESE) administers tuition assurance arrangements for VET student loans as well as the Tuition Protection Service (TPS) to assist international students to complete their studies or receive a refund in cases where their provider is unable to fully deliver their course of study.

List of Acronyms

AAT	Administrative Appeals Tribunal	GTO	Group Training Organisation
ACCC	Australian Competition and Consumer Commission	IRC	Industry Reference Committee
ACCI	Australian Chamber of Commerce and Industry	ITECA	Independent Tertiary Education Council Australia
AiG	Australian Industry Group	MARA	Migration Agents Registration Authority
AISC	Australian Industry and Skills Committee	NEAS	National ELT Accreditation Scheme Limited
ALA	Adult Learning Australia	NCVER	National Centre for Vocational Education Research
ASQA	Australian Skills Quality Authority	OSO	Overseas Student Ombudsman
BCA	Business Council of Australia	RTO	Registered Training Organisation
CCA	Community Colleges Australia	SSO	Skills Service Organisation
CISA	Council of International Students Australia	STA	State Training Authority
CISC	Council of Australian Governments Industry and Skills Council	TAC	Training Accreditation Council (Western Australia)
COAG	Council of Australian Governments	TAFE	Technical and Further Education
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students	TDA	TAFE Directors Australia
DESE	Department of Education, Skill and Employment	TPS	Tuition Protection Service
ELICOS	English Language Intensive Courses for Overseas Students	VET	Vocational Education and Training
ESOS	Education Services for Overseas Students	VRQA	Victorian Registration and Qualifications Authority
ERTOA	Enterprise RTO Association	VSL	VET Student Loans

Disclaimer: This document provides a brief, introductory overview to assist in navigating the VET system. You should not rely solely on this document to understand the complexity of the roles and responsibilities of the organisations mentioned. Please contact the relevant agency to determine what conditions or eligibility requirements may apply to the services or programs mentioned. Information current as of February 2018.

ASQA welcomes conviction against misleading advertising

25 September 2020

An ASQA investigation into misrepresentation of vocational education training (VET) courses has led to a conviction and \$10,000 fine for Qualify Me! Pty Ltd in the NSW Local Court.

Qualify Me! Pty Ltd was found by the Downing Centre Local Court to have contravened section 123A of the *National Vocational Education and Training Regulator Act 2011* (the NVR Act) by advertising a VET course without identifying the issuer of the VET qualification.

Qualify Me! Pty Ltd describes itself as an ‘education facilitator’ and is not a registered training organisation (RTO). The NVR Act outlines that non-RTOs may advertise courses on behalf of RTOs but must accurately and honestly represent those courses in all marketing and enrolment activities. Part of ASQA’s role as the national VET regulator is to monitor and act when alerted to misleading advertising in relation to VET courses.

ASQA Chief Commissioner and CEO, Saxon Rice, said the conviction was an important reminder for any non-RTO to ensure that they accurately and honestly represent the courses they advertise so that students can make a fully informed decision prior to enrolment.

“It is vitally important that current students, potential students and the wider public have complete and clear information when choosing a course to enrol in, including about with whom they are enrolling.”

The Court found that Qualify Me! Pty Ltd made representations on its website www.qualifyme.edu.au about the availability of the following VET courses without identifying the name and registration code of the RTO that would be providing the qualifications:

BSB51315 Diploma of Work Health and Safety

BSB60615 Advanced Diploma of Work Health and Safety

FNS40615 Certificate IV in Accounting

SIT50316 Diploma of Events

SIT60116 Advanced Diploma of Travel and Tourism.

“ASQA receives a number of complaints and informal queries from students who are unclear on the RTO to which they are enrolled. This lack of information can compound problems for students if things go wrong with their course in areas such as payments, course progression or receiving their qualification. It is crucial that students have access to complete and accurate information about courses prior to choosing to enrol in a VET course,” said Ms Rice.

The ASQA website provides the top three tips for students who are considering a VET course. Before signing up to a VET course, students should understand:

what they are committing to

what the course costs

what the course will deliver.

As the national VET regulator, ASQA continues to play a crucial role in supporting greater transparency, provider quality and student outcomes across the sector.