

Review of the *National Vocational Education and Training Regulator Act 2011*

Victorian TAFE Association Response

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Introduction

The Victorian TAFE Association is the peak body for Victoria's public providers of Vocational Education and Training (VET), including 12 TAFE Institutes, four Victorian dual sector Universities, and an Associate member, AMES.

The Victorian TAFE Association welcomes this opportunity to respond to the *Review of the National Vocational Education and Training Regulator Act 2011*. The Victorian TAFE Association would like to endorse the views of its sister organisation, TAFE Directors Australia (TDA). All of the Victoria TAFE Association's TAFE and dual sector University members are also members of TDA.

The Victorian TAFE Association's comments speak to broad principles that it considers should guide any reform of the Act and supporting regulatory instruments, including:

- A tertiary regulation review
- Provider differentiation
- Self-accreditation
- Avoiding duplication and ensuring consistency
- ASQA
- Subordinate legislation and instruments
- VET teacher registration
- An outcomes-based approach
- Other recommendations

A tertiary regulation review

The Victorian TAFE Association considers that the review of the *National Vocational Education and Training Regulator Act* would benefit by expanding its gaze to take in the operation of the entire tertiary education sector and to each of the bodies with responsibility for its oversight. This expanded oversight would enable greater appreciation of the interconnectedness and diversity of the tertiary education sector and provide greater understanding of regulation on its whole and its constituent parts.

The VET sector is ostensibly regulated by the Australian Skills and Qualifications Authority (ASQA). While ASQA bears much of the regulatory responsibility, many important aspects of the VET sector's activities are regulated by other bodies. For example, the Australian Competition and Consumer Commission has oversight on matters relating to consumer protection; the Australian Securities and Investment Commission administers matters relating to private for-profit Registered Training Organisations; and the Commonwealth's Department of Education and Training has oversight over a number of areas, such as the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). Further, there exist regulations levied by bodies at the state government level, such as the Victorian Department of Education and Training. An understanding of the regulatory environment for the VET sector would be incomplete without consideration of these bodies.

The Victorian TAFE Association considers that the scope of the review should also be widened to consider the Tertiary Education Quality Standards Agency (TEQSA). This widened consideration recognises that:

- Many VET operators are also registered higher education providers and deliver higher education courses that are the regulatory responsibility of TEQSA. Many of those that are not registered with TEQSA hold partnerships/agreements with universities and other higher education providers that create pathways between institutions or that includes the delivery of higher education courses (at least in part) by TAFE institutes or other VET providers. The widened scope would enable this reality to be captured and give a fuller picture of the impact of regulation on the affected organisations.
- As noted above, the tertiary education sector is highly interconnected. The activities in one area can and often do ‘spill-over’. For this reason, the Victorian TAFE Association considers that TEQSA and higher education regulation should be included in the scope of this review.
- Both TEQSA and ASQA operate and make determinations through a series of standards or thresholds. The Victorian TAFE Association considers that direct comparison of the standards adopted by both and the method by which they are upheld would be worthwhile. While some standards may not be directly comparable, there is enough similarity for such an exercise to yield benefits.

Provider differentiation

A key recommendation arising from the 2016 Review of Higher Education chaired by Professor Kwong Lee Dow was for TEQSA to “detail how the principles of risk, necessity and proportionality apply to different types of providers”, including “publicly funded...for profit providers and/or not-for-profit” institutions.

A reading of this recommendation reveals the reviewers’ understanding of the vastly different risk profiles faced by public funded organisations compared with their private for-profit and not-for-profit counterparts. Further, it implies that the regulatory treatment of providers should differ in a manner that reflects these different risk realities. In addition, there seems to be an understanding of the large levels of scrutiny wielded on public providers, the swathes of information and management that results from this, and the need to bear this in mind in the design of any regulatory framework.

In many ways, the VET sector mirrors the higher education sector. The VET sector equivalent to the public universities are the TAFE institutes, which are publicly owned VET providers many of which have pedigrees that can be traced back over 150 years. Like the public universities, TAFE institutes are established by legislation, facing rigorous reporting requirements and oversight. For example, TAFE institutes in Victoria are subjected to the requirements of Victorian legislation and related subordinate instruments, such as:

- *Education and Training Reform Act 2006* and its subordinate instruments, such as the Strategic Planning and Commercial Guidelines, and the reserve powers conferred to the Minister under section 3.1.19
- *Public Administration Act 2004*
- *Financial Management Act 1994*
- *Audit Act 1994* and the oversight of the Auditor General
- The Minister’s Statement of Expectations of TAFE institutes

- Regular oversight by the Victorian Department of Education and Training through regular Strategic Dialogue meetings to monitor TAFE performance.

Differentiation would also recognise that TAFE institutes fulfil a special place in Australia's VET sector by virtue of their large presence and educational profile. In Victoria's case, the 12 publicly owned TAFE institutes and four dual sector universities:

- operate more than 100 campuses covering every corner of the state
- provide education and training to over 200,000 Victorian students
- deliver 2 million units of training
- are responsible for training 70 per cent of all apprentices
- generate almost \$5.6 billion in revenue from international education
- employ about 10,000 staff
- manage over \$2 billion of state-owned assets

The Victorian TAFE Association considers that extensive governance and oversight of TAFE institutes, coupled with an extensive and incomparable education profile that is driven in large part by a mission to serve the social good and community wellbeing, renders TAFE institutes the VET equivalents of Australia's public universities. To use the language of the Kwong review, the principles of "risk, necessity and proportionality" recommended in the higher education sector have a similar place in the VET sector. This would grant TAFE institutes similar status to the universities and create a duality or symmetry between the regulatory systems in operation across the tertiary sector.

Provider differentiation would recognise the large diversity within the VET sector. Recent transgressions from some providers have tarnished the entire sector, but the sector is replete with high quality providers driven to provide high quality, industry relevant training. Provider differentiation would help to drive this point home, and help to limit the deleterious impacts of less reputable providers.

The adoption of this approach would provide the added benefit of freeing regulator resources so that they can be devoted to areas of greatest risk; in short to the prioritisation of enforcement. The creation of different provider profiles based at least in part on risk would create an opportunity for the regulator to rearrange and refocus priorities and resources towards high risk providers. It would also create a benchmark by which the wider sector can be measured. The Victorian Government has referred to the public TAFEs for its leadership role in the wider VET sector, acting as both a benchmark for quality and a trusted adviser to Government. Provider differentiation would make this point most strongly, and give a base by which the entire VET sector can judge, and more importantly, raise its performance.

Self-accreditation

The Victorian TAFE Association recommends that the introduction of self-accreditation status for the VET sector be explored as part of this review. Currently, self-accreditation is available in the higher education sector, giving higher education providers power to interpret the requirements associated with standards and determine whether this has been met or applied in the development, approval, delivery and discontinuance of a course of study.

The extension of this principle to the VET sector would recognise the diversity of providers and diversity of quality. Self-accreditation would be a natural consequence of provider differentiation and would help create further symmetry between the operating environments of the higher education and VET sectors.

Self-accreditation would also give the VET sector greater flexibility in meeting industry demand for skills. Providers with self-accreditation status would have a faster and more flexible platform for the creation of courses and training packages that meet industry need, particularly for new and emerging skills areas.

The Victorian TAFE Association is happy to volunteer its expertise and input to any further analysis or review to determine how the extension of self-accrediting status to the VET sector would be realised.

Avoiding duplication and ensuring consistency

In the conduct of their operation, and as noted above, TAFE institutes and the wider VET sector are required to submit information and undergo regulatory processes (such as audits) across a large number of regulatory providers. While the specifics might differ marginally from regulator to regulator, the essence of the required information or regulatory processes is often highly similar, resulting in duplication, unnecessary regulatory burdens, resource waste and inefficiencies.

The Victorian TAFE Association considers that this review should give consideration to identifying duplicate requirements, and once identified, to determining how they might be streamlined. The streamlining should, where possible, ensure that there is congruence between the requested information, so that a VET provider need not expend resources on recasting the same or similar information to satisfy the appetite or 'template' requirements of a specific regulator.

In many cases, requested information sits on the public record in various formats, or has already been provided to a regulatory agency. In terms of the latter, where possible, and where confidentiality is not contravened, there should be scope for the sharing of information between agencies to minimise the impost on providers of repeatedly submitting the same or similar information to different bodies.

Related to the above, the Victorian TAFE Association recommends for greater consistency and reduced complexity in the requirements between levels of government and between regulatory agencies. For example, differences exist with identification requirements: a Medicare Card is sufficient to obtain a Unique Student Identifier, but for the purposes of Skills First eligibility in Victoria one must use a Medicare Card and Drivers Licence, while for VET Student Loans, one is required to produce an Australian Passport or Birth certificate of

student and parents and grandparents or a Citizenship confirmation certificate. These kinds of inconsistencies are costly and create uncertainty. Such inconsistencies create transition and funding problems due to differences between state and Commonwealth legislative requirements for trainees, apprentices and VET in Schools students.

The diversity of regulatory players makes it difficult when clarification is sought on a matter or when there are potential overlaps. It is not uncommon for a provider seeking clarification to be confronted with issues of demarcation over regulatory responsibility. In such a case, a provider seeking clarification from one regulator is pushed on to another, only to be pushed back again. Related to this, ambiguities in the application of standards by different regulators can create an unequal playing field for providers: it is not uncommon for an ASQA interpretation to differ from those of other regulators (such as the Victorian Registration and Qualifications Authority), creating the possibility for different requirements across jurisdictions.

ASQA

The Victorian TAFE Association recommends the following with respect to ASQA:

- The VET sector has grown markedly in recently years, affecting ASQA's ability to provide appropriate oversight. ASQA's ability to regulate could be facilitated (at least in part) by moving towards provider differentiation and to 'outcomes' based regulation (see below). However, the Victorian TAFE Association considers that even with the adoption of such changes, the current resource level given to ASQA is insufficient. There is scope to give ASQA power to delegate some of its regulatory functions to other, similar regulators (such as those at the state government level), but even after doing this, the Victorian TAFE Association considers there is need to raise the level of funding to enable ASQA to properly discharge its functions.
- Consideration should be given to providing ASQA with the power to conduct 'spot' or random checks on those listed as part of industry consultation during course registrations. This would enable greater scrutiny and testing of the claims made by providers with respect to claimed industry connections and links.
- ASQA could be given authority to penalise (financially or otherwise, such as through suspended enrolments) providers found to be misleading students via false or unfair marketing practices, student loan rorts, short duration training, or poor or unqualified teachers. In extreme cases ASQA could:
 - Require the RTO to transfer students (and their fees) to other approved RTOs
 - Be given authority to freeze the assets of an RTO
 - Strengthen market oversight to investigate quality concerns
- Consideration should be given to providing ASQA with powers to respond to concerns expressed by students, industry and the sector itself on matters relating to a provider in a more timely manner.
- ASQA should be instructed to publish an online RTO best practice register with reliable information that enables ready, realistic and simple comparison of providers on a credible and meaningful set of output measures.

- That ASQA be given powers to respond in a manner that is proportionate to risk and takes into account systems issues versus one-off grievances. This is related to the discussion in the section above regarding provider differentiation.
- The Victorian TAFE Association recommends that ASQA be required to provide advice to an individual provider's questions and requests for support or advice in a more timely manner.
- The Victorian TAFE Association considers that as part of its auditing activities, ASQA should move beyond 'process auditing' to also provide advice and input on teaching quality.

Subordinate legislation and instruments

The Victorian TAFE Association welcomes the call for this review to consider regulation in primary as well as subordinate legislation. While primary legislation provides the head of power, it is in subordinate legislation that the impacts are felt most acutely.

Among the matters that should be considered are:

- The Victorian TAFE Association recommends that the review explore the drafting of standards so that they have less emphasis on processes and more consideration of quality aspects and outcomes. Process driven administrative and reporting requirements are a distraction from quality delivery, with the time, energy, and cost spent on reporting better invested in teaching quality. Such process driven requirements stifle innovation and absorb time that could be put towards the development of innovative teaching, critical thinking and enterprise skills. The standards should instead emphasise and incentivise excellence and quality in the VET sector. The Victorian TAFE Association recommends that the standards be developed with an eye to other education sectors and to how they define and measure quality (for example, Quality Indicators for Learning and Teaching data in Higher Education).
- With respect to the standards, the Victorian TAFE Association recommends that ASQA provide advice on how to apply or interpret the standards. This would overcome issues when encountered with differences in interpretations from individual ASQA auditors. As the regulator, ASQA should provide exemplars of quality and provide clarity on how the standards should be interpreted. A process of moderation could alleviate the issue of varied interpretations of the standards.
- Work should be undertaken for the design of a quality review program and the provision of a set of quality risk indicators to effectively measure the student experience and outcomes (using both qualitative and quantitative measures).
- Greater attention should be paid by ASQA to the quality of a provider's assessment strategies. Assessment strategies determine a student's measure of success and the suitability of a course for an individual student, and is the measure of success in a competency based environment.
- Standards for teaching quality should be developed, which would enable teaching quality to be gauged and compared. Currently, there is no national benchmark for teaching practice and quality. The development of such standards would enable more objective identification of excellent teaching practice.

VET teacher registration

To operate as a secondary or primary teacher requires one to undergo registration. In Victoria, registration to teach in schools is managed by the Victorian Institute of Teaching, which manages standards of professional practice for entry into the teaching profession and for continuing membership of the profession and develops/maintains a framework to support and promote the continuing education and professional development of teachers. Teachers gain registration upon demonstrating proficiency in meeting Australian Professional Standards for Teachers; their ability to maintain professional practice; and their suitability to teach.

The registration of teachers is undertaken to meet an overarching purpose, namely, to ensure quality and engender confidence that teachers employed in schools meet prescribed minimum standards.

The Victorian TAFE Association considers that the review should explore mechanisms that would introduce standards for the registration of VET teachers. Like secondary and primary teachers, VET teachers would be required to demonstrate the meeting of standards both for entry and for continued practice. The registration process would monitor their qualifications, look at their industry engagement, provide standards, monitor continuing professional development activities, and consider measures such as student feedback, professional conduct and performance.

The aim of such registration is to guarantee a teaching quality standard and to engender confidence in the VET sector's teaching practitioners. It would assist VET providers in their hiring, so that they can be confident that a teacher/trainer hired to deliver a course meets set thresholds and help to raise confidence in the sector's quality.

Such a registration process is likely to require cross-jurisdictional collaboration, with the management of a register at the state level and the development of national standards and continuing professional development occurring through the COAG process.

In the development of such a registration, the Victorian TAFE Association recommends that the process be one that is not overly burdensome, or that erects barriers to the participation of highly qualified and desirable teachers. The VET sector is renowned for its industry links that make its training industry relevant. Care must be taken to ensure that any teacher registration process does not jeopardise this, and while ensuring quality, facilitates and continues to encourage the participation of teaching practitioners from industry.

Teacher registration would give VET teachers certainty. The VET sector is currently characterised by its constant changes to the qualifications that its teachers must hold. The impacts of these changes are compounded by their industrial relations implications for the existing workforce, as well as barriers for the recruitment and attraction of new teachers. A teacher registration process with clearly defined and stable requirements would mitigate and help to stem many current problems.

An outcomes approach

The terms of reference to this review indicate a desire for the regulator to consider student *outcomes* [emphasis added] in making regulatory decisions. The Victorian TAFE Association

considers that this point outlines the spirit that should inform the review more widely. Specifically, the focus on regulation that is driven and shaped according to *outcomes*.

In short, legislation and regulation should be cast such that providers need not be required to follow prescriptive regulatory processes, but to demonstrate the attainment of verifiable minimum outcomes.

The kinds of outcomes that could be included would be those that enable the regulator to gain an understanding of the provider's activities and effectively manage its risk. For example, student outcomes could be measure through (*inter alia*) student feedback, student retention figures, employment outcomes, and employer/industry feedback on the quality of the graduate.

A benefit of this approach is that providers can adopt whatever approach to achieving said outcomes in a manner that best suits their circumstances and structures. It recognises and supports the diverse types of providers that currently operate in the sector. Finally, it encourages efficiency, since providers avoid the costs and resources associated with erecting structures to meet prescriptive procedural requirements.

For the regulator, this approach enables greater focus of effort and resources on the management and enforcing of non-compliance and creates a simple mechanism (that is, have the outcomes been met or not) to determine adherence to the regulatory framework.

The Victorian TAFE Association recommends that the outcomes-based approach take into account the provider type and the risk profile, so that the outcome indicators that are measured and reported upon are designed with the different risk and provider profile in mind.

Other recommendations

The Victorian TAFE Association recommends that the review consider the following:

- The VET sector has experienced unethical and highly misleading marketing practices from many providers, accompanied by unrealistic claims, poor training delivery and low quality outcomes. The Victorian TAFE Association recommends that the review explore mechanisms to address this form of 'malpractice' without creating an additional tier of regulatory burden on 'low risk' providers.
- The VET sector would benefit from a national communication strategy. Such a strategy could highlight examples of excellent training and educate students on what they should expect and to identify quality training when shopping for courses/qualifications.
- ASQA should develop a stakeholder engagement strategy that is benchmarked against national and international best practice.
- Greater notice should be given when implementing regulatory reform/changes. Such changes can have massive organisational impacts, which could be lessened and better managed with clearer notice and improved communication.
- The review should consider complexities associated with the transition and 'teach-out' of qualifications. Current arrangements are extremely difficult to manage, particularly for qualifications that involve large numbers of apprentices, providers and employers (where industrial relations issues can – and do – arise).

- The VET sector is known for the industry voice that informs it, but this voice should be broadened and made more inclusive. There is an over reliance on industry peak bodies for the industry perspective in the design of training packages, potentially missing smaller voices and risking the loss of perspectives with respect to new and emerging industries and skill requirements.
- As noted in the point above, industry provides input into the development of training packages but is often removed from their regulation. As a consequence, many employers do not fully grasp the regulatory requirements associated with training, instead thinking them to be the requirements of the training provider, manifesting itself as employer/industry exasperation with RTOs. The Victorian TAFE Association recommends that work be undertaken to give employers/industry a better understanding of the obligations and reporting requirements associated with training regulation.
- That through the regulatory function, support and resources be provided to enable the development of a high quality VET sector. Examples of the type of support that can be provided are in evidence from other sectors. For example, the Victorian Curriculum and Assessment Authority provides professional development support during the roll-out of new or reformed curriculum, while in the higher education sector, funding models support a greater balance for academics to undertake research, educate, benchmark and support their communities of practice. The Victorian TAFE Association considers that similar initiatives could be framed for and adopted in the VET sector. They would do much to improve teacher training and educative practice with flow-on benefits for quality.
- That inconsistency in approach to AQF levels 5 and 6 in regards to teacher qualification levels be addressed. Currently a VET teacher delivering a course/training in AQF 5 or 6 requires qualifications at the same AQF level, whereas in higher education, the teacher requires AQF 5, 6 or higher. There is a need for better alignment between the two sectors, since both are delivering to the same AQF level. The current approach implies that the VET teacher is a lesser educator than his/her higher education counterpart.

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