

VRQA Apprenticeship and Traineeship Compliance and Quality Assurance Policy

(Review date June 2013)

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1. Introduction

This document presents the Victorian Registration and Qualification Authority's (VRQA) Apprenticeship and Traineeship Compliance and Quality Assurance policy, key elements and procedures in the context of the VRQA's regulatory environment.

This Apprenticeship and Traineeship Compliance and Quality Assurance policy and the associated procedures are subject to an annual management review, with proposed changes to the policy to be endorsed by the Apprenticeship and Traineeship Subcommittee and recommended to the VRQA Board for approval.

This document recognises that quality assurance is a key component of all relevant staff induction, training and performance management processes.

This policy should be read in conjunction with the following procedural documentation which is being progressively developed:

Procedure
Approving Employers
Establishing the form of Training Contracts
Determining Parties to Training Contracts
Administration of Training Contracts
Suspension or amendment of Training Contracts
Resolving Disputes
Approving Training Schemes
Approving Training Agents

Existing VRQA policies and procedures also apply to apprenticeships and traineeships and will be updated to reflect compliance and quality assurance requirements in this area. These policies and procedures concern administration of:

- Complaints handling
- Freedom of Information applications and documentation
- Whistleblowers Protection Policy and Procedures
- Privacy Act
- Records Keeping Policy and Supplementary Procedures
- Protocol for Legal Matters
- Ministerial Direction for Sharing of Information and Documents
- Protocol for external audit information
- Staff Gift Guidelines.

2. The VRQA context

2.1 Transfer of functions from Victorian Skills Commission

The VRQA is responsible for the regulation of apprenticeships and traineeships under the *Education and Training Reform Act 2006*.

This function was transferred from the Victorian Skills Commission (VSC) on 1 October 2012. Key regulatory functions are:

- Determining approved training schemes;
- Approving employers before they employ an apprentice;
- Establishing the form of training contracts;
- Determining who are parties to training contracts;
- Administration of training contracts;
- Approving the cancellation, suspension or amendment of training contracts; and
- Resolving disputes.

Recent reports including the *May 2011 report on Apprenticeship Regulatory Functions: Review of Apprenticeship Field Officer Roles and Governance* commissioned by Skills Victoria's Sector Operations Division and prepared by the Department of Business and Innovation (DBI) have recommended significant regulatory and operational change relating to apprenticeships and traineeships. The VRQA is currently undertaking a detailed review of the operational framework supporting the regulatory functions in line with these recommendations.

This has included reviewing VSC internal guidelines and processes to assess their relevance and updating these documents. The revised internal guidelines and processes will come into effect on 2 January 2013. This policy outlines the key principles that VRQA staff will be working within in carrying out the updated regulatory processes.

2.2 Apprenticeships Field Officers

Apprenticeship Field Officers (AFOs) historically operated as part of a system of regulatory and non-regulatory activity designed to support the apprenticeships and traineeships system in Victoria.

The model of provision of AFO services through employment contracts with TAFE institutes represented a risk for the VRQA due to the conflict of interests between the AFOs and TAFE institutes. TAFE institutions are the primary provider of off the job training to apprentices and trainees in Victoria. Conflict of interests existed when AFOs performed regulatory or advisory functions within (or provided advice to students to train at) the TAFE institution in which they were employed.

On 10 October 2012 the Board of the VRQA endorsed amendments to be made to the role of Apprenticeship Field Officers (AFOs) and the provision of field officer services. The Board:

- Agreed to tender for the provision of AFO services;
- Agreed to the continuation of current arrangements with AFOs up to 30 June 2013; and
- Agreed that regulatory activity under the new arrangements is to commence on 1 July 2013.

2.3 The VRQA's regulatory principles

The VRQA is guided in its decision making by the following five key principles for an effective regulatory framework.

Transparency - relevant information, other than private and commercial-in confidence information, is available to providers.

Proportionality - processes, incentives and penalties are proportional to the consequences of the particular risk.

Consistency and predictability - processes and decisions about any particular matter are sufficiently consistent as to be predictable to providers.

Sector neutrality - all providers are held to the same standards, within and across sectors, while respecting the diversity of providers and not taking a one-size-fits-all approach.

Efficiency and agility - processes deliver maximum public benefit for minimum resources; allow for flexible, case specific responses; and result in prompt decisions.

These principles are to be applied at all stages during the regulation of apprenticeships and traineeships.

2.4 Governance

VRQA governance arrangements are the foundation for integrated, holistic and effective quality assurance practices as reflected in Board accountabilities, Subcommittees' charters and this policy.

VRQA's organisational culture and the behavioural expectations which apply to staff and third-party service providers explicitly require practices which achieve quality, improvement and accountability. Quality assurance is required to be part of all position descriptions, roles and responsibility statements and performance measures of all parties involved in the regulation of apprenticeships and traineeships.

Quality assurance is a shared responsibility between VRQA management and the Board and its Apprenticeship and Traineeship Subcommittee which oversees quality assurance of apprenticeships and traineeships. The Apprenticeship and Traineeship Subcommittee was established by the Board to oversee the transfer of regulatory functions from the VSC to the VRQA and to plan the longer term model of regulation.

The Subcommittee's role is defined within its Charter which includes details of its membership requirements, meetings, roles and responsibilities, KPIs and reporting protocols. The Subcommittee makes recommendations and provides advice to the Board in relation to its roles and responsibilities.

The Audit and Risk Management Committee supports the Board in monitoring the apprenticeships and traineeships risk register which is overseen by the Apprenticeship and Traineeship Subcommittee.

2.5 Definitions (as defined within the *Education and Training Reform Act 2006*)

Apprentice - means a person whom an employer has undertaken to train under a training contract.

Parent - in relation to a child, includes a guardian and every person who has parental responsibility for the child including parental responsibility under the Family Law Act of the Commonwealth and any person with whom a child normally or regularly resides; post-compulsory education means education of persons 17 years of age or over.

TAFE - means technical and further education; TAFE institute means an institution created under section 3.1.11 and includes the TAFE division of a university with a TAFE division.

Registered education and training organisation (RTO) - means a person or body registered under Part 4.3 to deliver an accredited course or award or issue a registered qualification.

Approved Training Scheme - means a training scheme approved under section 5.5.2.

Additional relevant definitions (not defined within the Act)

Trainee - As Apprentice above except that either party may cancel the contract by signing a cancellation form or letter stating the date of cancellation. Mutual agreement is not required.

Employer - A person who is contractually bound to a worker - the employee - to give that worker money as a salary or wages, in exchange for ongoing work and for which the employer directs the work and exercises fundamental control over the work.

VRQA Staff - Employees and third-party service providers contracted to the Victorian Registration and Qualifications Authority.

Authorised Officer - A person appointed by the Secretary as a delegate to approve decisions made in undertaking the VRQA's regulatory functions.

3. Apprenticeship and Traineeship Compliance and Quality Assurance Policy

3.1 Key components of the policy

- The VRQA Apprenticeship and Traineeship Compliance and Quality Assurance policy is comprised of the following key components:
 - High levels of accountability within the context of legislative instruments;
 - Escalation of issues using a risk-based approach;
 - Strict adherence to VRQA Delegations of Authority; and
 - Quality assurance being embedded in relationships with key stakeholders including students, employers, RTOs and third-party service providers.

3.2 VRQA Apprenticeship and Traineeship Subcommittee

- The Apprenticeship and Traineeship Subcommittee of the VRQA Board is responsible for:
 - Identifying risks and recommending to the Board strategies to mitigate those risks;
 - Developing options to modernise the regulation of Apprenticeships and Traineeships;
 - Receiving reports on Apprenticeship and Traineeship regulatory activities; and
 - Scheduling regular, and/or commissioning immediate reviews of these processes as appropriate.
- The Apprenticeship and Traineeship Subcommittee Charter defines KPIs to which the Subcommittee will be held to account. Performance against the KPIs will be presented to the Board bi-annually.

3.3 VRQA Staff

- All VRQA staff are required to adhere to the principles outlined in this policy and to demonstrate VRQA RITE (Respect and Diversity, Integrity, Transparency, Empowerment) values.
- These values complement the DEECD CORE (Collaboration and Knowledge sharing, Outcomes, Respect and Diversity, and Empowerment) values and reflect the VRQA's role as a regulator. They are to be applied in interactions with each other, external stakeholders and the community.
- Staff are also required to comply with relevant legislation regarding Occupational Health and Safety, the management of VRQA records and information privacy, the code of conduct for Victorian public sector employees and Departmental policies and procedures, including but not limited to, DEECD Procurement policies and procedures in the conduct of their employment.
- All staff will be expected to have position descriptions and performance plan assessments in which these standards of behaviour are to be embedded.

3.4 Legislative instruments

- The VRQA is administered under the *Education and Training Reform Act 2006* (the Act) and operates in a fast changing and complex state and national policy

environment. The detailed functions relating to apprenticeships and traineeships regulation are contained in Part 5.5 of the Act.

- Training Contracts - The training contract forms a legally binding agreement between an employer and an employee for the training of Apprentices and Trainees leading to a nationally recognised qualification. The VRQA is responsible for the following key tasks in relation to training contracts:
 - Approval of training contracts;
 - Determining parties to a training contract;
 - Enforcing execution of a training contract;
 - Determining the term of a training contract;
 - Cancellation, suspension or variation of a training contract; and
 - Determining grievances in relation to the training contract.

3.5 Compliance and enforcement tools

- The following regulatory compliance and enforcement tools may be used by the VRQA in response to or upon suspicion of non-compliance with the Act or a training contract (in order of decreasing severity).

Regulatory Tool	Description
Taking a prosecution	The power to prosecute an employer who fails to meet the obligation to train an apprentice in accordance with the training contract. A court can impose a financial penalty in sentencing for a successfully prosecuted offence.
Banning or placing conditions on an employer	The power to revoke or place conditions on an employer's approval to employ apprentices or trainees.
Cancelling a training contract	The power to cancel a training contract upon the outcome of a formal grievance determination.
Formal grievance determinations	The power to determine the outcome of a dispute between an employer and an apprentice. Most commonly relating to lack of 'mutual consent' to terminate an apprenticeship training contract.
Investigation of a suspected breach of the Act	The power to investigate any suspected breach of the Act. Suspected breaches are most commonly identified through complaints made to the regulator or Australian Apprenticeship Centres.
Inspecting and copying documentation	The power to inspect and copy documentation relating to an approved training contract.
Entering an apprentice training facility	The power to enter the training facility or workplace of an apprentice (excluding private properties).

- A risk-based and proportionate approach to compliance and enforcement is taken in considering appropriate regulatory responses.

3.6 Review and appeal processes

- Part 5.5 of the Act is silent on available review and appeal processes. The VRQA will make regulatory decisions in line with its five regulatory principles.
- The VRQA has acted to discontinue the withdrawal and consultation list in order to ensure the transparency of its employee approval process. The list contains

the details of employers that were no longer approved or had conditions on approval. This list had previously been distributed to AFOs and Australian Apprenticeship Centres.

- The VRQA is currently re-defining its process to approve employers. Removing the withdrawal and consultation list from circulation will ensure that any appeals around approval decisions can be handled in a more transparent manner and only by delegates of the VRQA.

3.7 Internal audit activity

- The VRQA will allocate its internal audit resources using a risk-based approach to address emerging issues.
- The *May 2011 report on Apprenticeship Regulatory Functions: Review of Apprenticeship Field Officer Roles and Governance* prepared by DBI has provided the VRQA with significant information relating to the strengths and weaknesses of existing regulatory activities and recommendations to improve regulation of apprenticeships and traineeships.

3.8 Engagement of third-party service providers

- In regulating apprenticeships and traineeships the VRQA will engage with third-party service providers to deliver field regulatory services for apprentices and trainees undertaking an approved training scheme.
- The objective of the third-party service providers will be to confirm that apprentices and trainees are receiving appropriate, relevant and high quality formal education and on the job training and experience.
- Third-party service providers will be appointed as approved training agents by the VRQA prior to the commencement of service delivery and where appropriate, nominated staff will be trained and recognised as authorised officers.
- Authorised officers in relation to apprenticeship regulation must be appointed in accordance within the limitations under the ETRA.
- Third-party service providers will perform their duties in compliance with this policy and all additional contracted obligations.
- Third-party service providers will be appointed in accordance with the DEECD procurement guidelines.

3.9 VRQA Apprenticeship and Traineeship Compliance and Quality Assurance Risk Model

- The VRQA Apprenticeship and Traineeship Compliance and Quality Assurance Risk Model is shown in Figure.1. The risk model provides an overview of the key functions, responses, risks and core principles that the VRQA apply to regulating apprenticeships and traineeships.
- The outer ring of circles within the model depicts the VRQAs seven key regulatory functions within Part 5.5 of the Act. The inner ring depicts the seven key regulatory responses within the Act from the least severe (green) to the most severe (red).
- The grey segments depict the eight key risk categories that the VRQA considers when making decisions in relation to the regulatory functions or responses. Detailed risks within each risk category are outlined within Attachment 1. The impact of each regulatory decision or action is reviewed in the context of these risks.
- The centre circle depicts the VRQAs five core regulatory principles. All actions undertaken in regulating apprenticeships and traineeships are guided by these principles.

Figure.1 - VRQA Apprenticeship and Traineeship Compliance and Quality Assurance Risk Model



Attachment 1

VRQA Apprenticeship and Traineeship Compliance and Quality Assurance Risk Model

The table below outlines key considerations within each of the eight risk categories for undertaking VRQA's regulatory functions relating to apprenticeships and traineeships as they apply to apprentices/trainees, employers/RTOs and the VRQA.

Risk Category	Apprentice / Trainee	Employer / RTO	VRQA
Apprentice vs Trainee	<ul style="list-style-type: none"> Apprenticeship contract is bound by 'mutual consent'. Traineeship contract can be terminated by employer or trainee. 	<ul style="list-style-type: none"> Typically small number of apprentices employed by each employer. Typically higher number of trainees employed by each employer. 	<ul style="list-style-type: none"> Training contract administration and execution to be conducted in line with ETRA.
Industrial	<ul style="list-style-type: none"> Wages and Conditions (including superannuation). Release from training contracts - Apprentices vs. Trainees. 	<ul style="list-style-type: none"> Employer's knowledge of and capacity to comply with industrial obligations. 	<ul style="list-style-type: none"> On recognition of potential breaches, advise appropriate authority in accordance with MOU (to be established).
Geographic Location	<ul style="list-style-type: none"> Access to apprenticeships and traineeships across Victoria. 	<ul style="list-style-type: none"> Density of apprenticeship and traineeship employers/trainers in the area. Alternative local employers for apprentice or trainee should contracts be terminated or employers approval revoked. 	<ul style="list-style-type: none"> Regulation to be conducted across Victoria within existing resource limitations. Requirement to meet skill gaps and training needs within geographic area.
OH&S	<ul style="list-style-type: none"> Age of the apprentice or trainee (e.g. whether under 18 years). Gender of apprentice or trainee. Consideration of special requirements of apprentice or trainee (e.g. disability, learning issues). Bullying (physical and psychological effects). 	<ul style="list-style-type: none"> Premises in which the apprentice or trainee is to be employed and trained. Nature of training to be performed. Equipment and methods used to deliver training. 	<ul style="list-style-type: none"> Consider safety record of employer / RTO upon advice from relevant regulatory authorities. Determination of parties to contract if apprentice or trainee is under 18 years (e.g. parent).

Risk Category	Apprentice / Trainee	Employer / RTO	VRQA
Resources	<ul style="list-style-type: none"> • Access to offsite training for apprentices and trainees. • Appropriate information on apprenticeships and traineeships is available. 	<ul style="list-style-type: none"> • Employer's resources to employ and train apprentices or trainees. • RTO resources to provide out of work training to apprentices and trainees. 	<ul style="list-style-type: none"> • Availability of human resources to perform regulatory functions. • IT infrastructure available to support regulatory functions. • Financial cost of undertaking regulatory activity.
Quality	<ul style="list-style-type: none"> • Apprentice / trainee to be trained in accordance with an approved training scheme. • Length of training contracts to be determined based on existing knowledge and skills. 	<ul style="list-style-type: none"> • Appropriate qualifications and skills are held by employers / RTOs to train apprentices and trainees. • Quality of training delivered to apprentices and trainees by employers and RTOs in line with AQTF Standards. 	<ul style="list-style-type: none"> • Decisions relating to the regulation of apprenticeships and traineeships are subject to the VRQA Delegations of Authority. • Sharing of existing knowledge relating to employers and RTOs with HESG. • Employer / RTO compliance with prescribed contract and performance measures. • Continuous improvement through process review.
Conflicts of Interest	<ul style="list-style-type: none"> • Conflicts of interest to be disclosed by all parties prior to entering into training contract. 	<ul style="list-style-type: none"> • Conflict of interests between employers and RTOs to be disclosed prior to the commencement of a training contract. 	<ul style="list-style-type: none"> • All staff need to ensure any advice provided to employers, apprentices, trainees and other stakeholders is consistent with the ETRA 5.5. • Issues outside the jurisdiction of the VRQA should be acknowledged and individuals should be referred to the appropriate authority/source of information. • Conflicts of interest to be disclosed by all parties.

Risk Category	Apprentice / Trainee	Employer / RTO	VRQA
Legal Framework	<ul style="list-style-type: none"> • Compliance with ETRA. • Compliance with Training Contract. 	<ul style="list-style-type: none"> • Compliance with ETRA. • Compliance with Training Contract. • Compliance with AQTF Standards. 	<ul style="list-style-type: none"> • Regulation to be conducted in accordance with ETRA 5.5. • Transparency and consistency of application of enforcement tools for known breaches. • Refer to other regulators if appropriate (e.g. WorkSafe, Equal Opportunities Commission).

Attachment 2

VRQA Apprenticeship & Traineeship legislative framework

1. The legislative framework

1.1. The administration of VRQA regarding education and training in Victoria

Education and Training Reform Act 2006 (ETRA Act)

1.2. The agreement between an employer and an employee

Apprenticeship/Traineeship Training Contract

1.3. Other components of the legislative framework

Ministerial Direction - Sharing of Information and Documents 2012

Charter of Human Right and Responsibilities Act 2006

Information Privacy Act 2000

Freedom of Information Act 1982

Public Administration Act 2004

The Public Records Act 1973

The Financial Management Act 1994

(Public Finance and Accountability Bill)

1.4. The Australian Quality Training Framework (AQTF)

AQTF Essential Conditions and Standards for Initial Registration

AQTF Essential Conditions and Standards for Continuing Registration

Attachment 3

Service standards for core activities

There are no specific service standards prescribed within the ETRA relating to regulatory activities. VRQA service standards are to be developed as processes and procedures for regulating apprenticeships and traineeships are designed and implemented.

Service standards that the VRQA is responsible for monitoring (but relate to other parties to training contracts) are outlined below.

5.5.12. Execution of training contract

- Training contracts are to be executed by the parties and lodged with the Commission or a person or body nominated by the Commission within 14 days after the date the employment of the apprentice commences or any further time allowed by the Commission; and
- A copy of the training contract to be given to the apprentice within 14 days after the date of execution of the training contract.

5.5.13. Apprentice to be enrolled in training

- Apprentices to be enrolled in a vocational education and training course provided by a registered education and training organisation, as required by the approved training scheme, within 3 months after the date of commencement of the training contract; and
- A copy of the training plan to be lodged with the Commission, a person or body nominated by the Commission or an approved training agent within 3 months after the date of commencement of the training contract.

5.5.22. Review of decisions of approved training agents

- A person who is aggrieved by any decision of an approved training agent made under section 5.5.6, 5.5.7, 5.5.11(2), (3) or (4), 5.5.14 or 5.5.16(2) acting as a delegate of the Commission under section 5.5.21 may apply to the Commission for a review of that decision within 14 days after the person was notified of that decision by the approved training agent or within any longer period that the Commission allows.