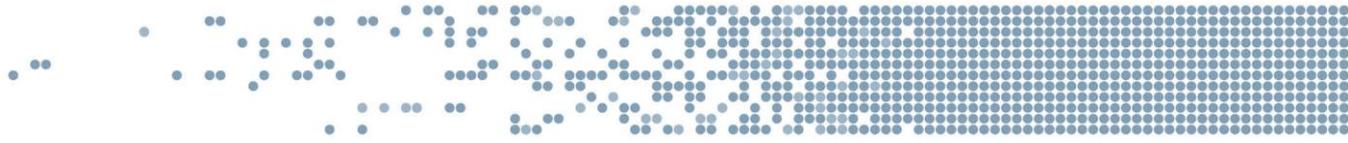


# REGULATORY RISK FRAMEWORK

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## Overview

As the national regulator for the vocational education and training (VET) sector, the Australian Skills Quality Authority (ASQA) aims to ensure the sector's quality is maintained through the effective regulation of providers and accredited courses.

As a contemporary regulator, ASQA applies a risk-based regulatory approach. This approach allows ASQA to direct its resources towards areas that pose the greatest threat to quality vocational education and training outcomes for the Australian community, while seeking to minimise regulatory burden for those it regulates.

This Regulatory Risk Framework is the vehicle by which ASQA identifies and evaluates risks to the quality of vocational education and training in Australia at the macro (whole of sector) and micro (provider) level. The framework helps ASQA to:

- respond in a proportionate but effective way to risks posed, and
- invest time and effort in risks of a significant nature.

The use of data and intelligence to inform judgements about appropriate interventions is central to this regulatory approach. Appropriate interventions aim to promote compliance and improve confidence in the sector.

ASQA's Regulatory Risk Framework will evolve over time—as information technology capability improves and allows for greater use of information from external sources.

Risk-based regulation draws on a number of principles underpinning traditional risk assessment. The way in which ASQA manages provider and systemic risk is described using the core elements of the ISO Standards for Risk Assessment (ISO 31000/2009).

## Legislative and policy context

The *Standards for VET Regulators 2015*, made under section 189 of the *National Vocational Education and Training Act 2011* (the Act), requires ASQA to implement a risk-based approach to regulation in order to:

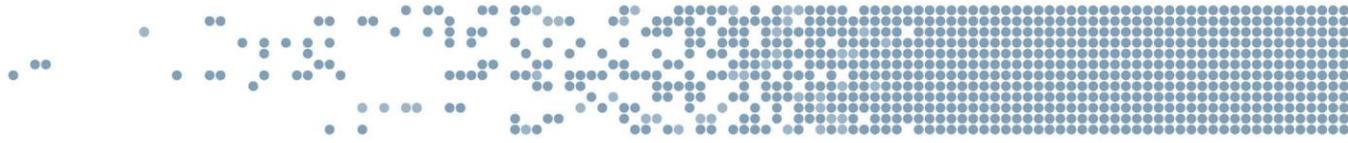
- reduce regulatory burden for high-performing providers with a history of strong compliance, and
- increase regulatory action for those providers considered higher risk.

The *Commonwealth Regulator Performance Framework* (2014) requires ASQA to minimise impacts on the regulated community while effectively and flexibly managing risk, protecting the interests of the community and supporting the Australian economy. Proportionate, risk-based regulation is a requirement of this framework.

## What risk does ASQA seek to manage?

ASQA seeks to use its regulatory authority to manage risks to the quality of VET outcomes for students, industry and the wider community. ASQA shares responsibility for managing this risk with other VET stakeholders:

- **Australian governments** are collectively responsible for approving VET policy and quality standards, endorsing training packages and funding training provision where considered necessary.
- **Training product developers** are responsible for working with industry so that training packages and accredited courses meet industry needs.



- **Industry** is responsible for working with governments, training product developers and providers to ensure training products meet workplace needs and lead to productive workers.
- **Providers** are responsible for delivering quality training and assessment that complies with relevant standards and legislation, including meeting the industry needs described in training packages and accredited courses.
- **Other VET regulators** are responsible for ensuring registered training organisations (RTOs) comply with the *VET Quality Framework* and other conditions of registration and accredited courses comply with the *Standards for Accredited Courses*.

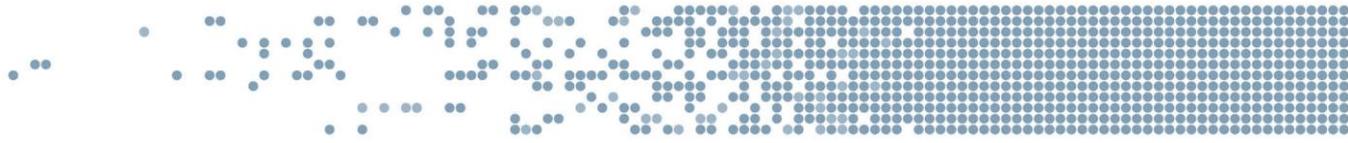
The primary risk for ASQA to manage is a Registered Training Organisation certifying that a person has competencies that do not reflect his/her skills, knowledge and attitudes. The potential damage flows not just to the individual, but to employers, and the wider community.

There are likely to be other risks—beyond those posed by individual providers—that ASQA has responsibility for managing. For example:

- Some training products might present a higher risk (at a particular point in time) due to associated funding or immigration incentives.
- Specific standards or legislative provisions may have high levels of non-compliance likely to affect training quality.
- Industry may view particular delivery modes or methods as presenting greater risk to quality of training and assessment outcomes.

ASQA acknowledges responsibility for addressing these types of risks only to the extent it has jurisdictional authority to do so.

A further risk ASQA has responsibility for managing is the risk that providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to deliver VET and English Language Intensive Courses for Overseas Students (ELICOS) courses may not be collecting and accurately reporting information relevant to the administration of student visa law.

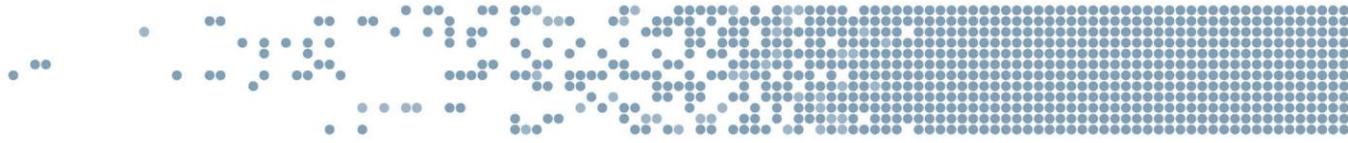


## Principles underpinning ASQA’s risk-based regulatory approach

ASQA’s regulatory approach is consistent with the principles of risk-based regulation.

ASQA:

- accepts that not all risks can be eliminated, and different strategies and approaches are required to effectively manage different types of risk
- efficiently uses resources to effectively identify and target the most serious risks and patterns of systemic non-compliance, while minimising costs on regulated entities
- seeks to minimise regulatory burden for proven high-performing providers with a history of compliance and increase regulatory action for those considered higher risk
- uses a suite of tools to respond proportionately to risks being managed (ranging from encouraging compliance through communication and advice, through to monitoring and enforcement for more serious cases or where breaches persist)
- applies procedural fairness in regulatory decisions and is transparent about frameworks that guide regulation
- aims to achieve a reasonable balance between the responsibility to deliver protection to the community and the burden imposed by external intervention
- is continuously reviewed and improved to ensure ASQA’s responsibilities are being fulfilled.



## How does ASQA’s risk-based regulatory approach work?

ASQA fulfils its responsibility to manage risks to the quality of VET outcomes for students, employers and the community on by managing risk on two levels: strategic (systemic risk) and operational (provider risk).

- *Systemic risk* is a risk likely to exist across the sector or in a portion of providers. If left untreated, significant risks of this type can have a detrimental impact on the quality of training and assessment for individuals, industry and the wider community and may lead to loss of confidence in the sector.
- *Provider risk* is the risk an individual provider presents through their choices and actions, which, if left untreated, could have a significant detrimental impact on training and assessment outcomes for students, industry and the community.

### Managing systemic risk

#### Risk identification

ASQA identifies systemic risks through environmental scanning. These environmental scans draw on inputs from a range of sources, including:

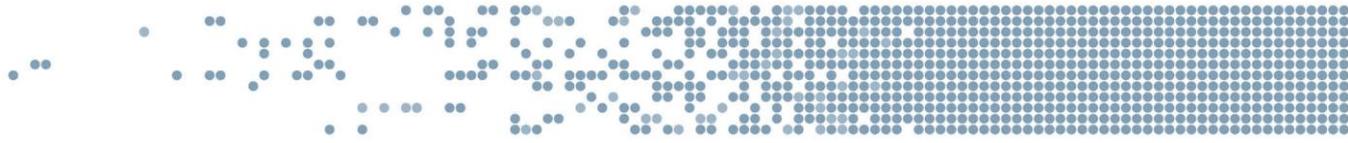
- stakeholder consultations
- print and social media
- government and industry reviews and findings
- ASQA regulatory data (registration and regulation data)
- intelligence from internal and external sources, and
- other external data e.g. National Centre for Vocational Education Research (NCVER).

Environmental scanning identifies areas of concern for ASQA, towards which regulatory effort can be targeted. Scanning may also identify issues outside ASQA’s jurisdiction that ASQA might nonetheless seek to influence because of the impact on its ability to regulate effectively.

#### Risk analysis and evaluation

Areas of concern identified through scanning activities are analysed and evaluated against a range of ‘likelihood’ and ‘impact’ measures to produce a list of systemic risks prioritised for treatment. Likelihood and impact measures include:

Likelihood	Impact
<ul style="list-style-type: none"> <li>• Prevalence of the concern amongst VET stakeholders</li> <li>• Prevalence of the concern in regulatory data (e.g. complaints or compliance activity outcomes for training products, modes of delivery, compliance with particular obligations etc.)</li> <li>• Prevalence of the concern in media reports (social or print media).</li> </ul>	<ul style="list-style-type: none"> <li>• Impact on students (e.g. number of students enrolled for a particular qualification or unit of competency; number of providers registered)</li> <li>• Impact on industry (e.g. relationship to licensing or occupational registration, safety considerations)</li> <li>• Impact on the reputation of sector more broadly</li> </ul>



## Risk treatment

ASQA takes a project-based approach to analysing and treating the most serious systemic risks identified. The number of systemic risk projects approved for implementation is determined by the nature of treatment strategies recommended and ASQA's capacity to undertake the work.

Treatment strategies will vary according to the nature and scale of the risk, but may include:

- information and education campaigns
- collaboration with regulators and other key stakeholders
- stakeholder engagement activities, or
- targeted audits or investigations of providers.

## Communication and consultation

ASQA actively engages with stakeholders when identifying systemic risks, including through formal consultation with stakeholders during environmental scanning. ASQA also engages with stakeholders on an ongoing basis through mechanisms such as:

- provider consultation roundtables
- ongoing dialogue with Australian governments and industry bodies (including those ASQA has a memorandum of understanding [MoU] with)
- regular analysis of regulatory data and provider reports, and
- media scanning.

The systemic risks ASQA has prioritised and aims to treat will be published annually in ASQA's Regulatory Strategy. This strategy communicates to all stakeholders where ASQA will focus its regulatory effort for the coming year. ASQA's first Annual Regulatory Strategy was published in 2016.

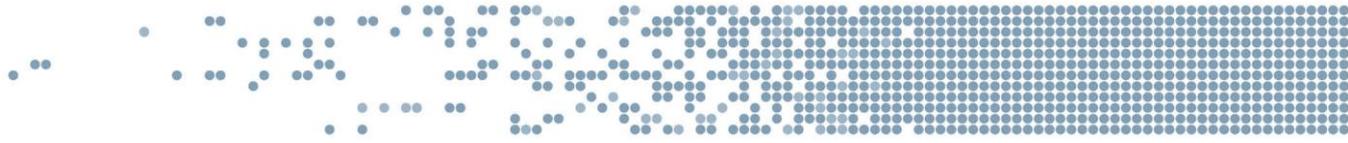
## Monitoring and review

ASQA actively monitors the environment for new and emerging risks through ongoing scanning activities. When new systemic risks are identified, ASQA may review the Annual Regulatory Strategy and reprioritise regulatory effort to ensure the most significant risks are treated in order of priority and as the environment shifts.

In monitoring the treatment of priority risks, ASQA implements evaluation strategies for each risk to determine the:

- effectiveness of the treatment in reducing the risk
- point at which the level of risk becomes tolerable, and
- level and type of effort to be invested in continuing to treat each risk.

The outcomes of these evaluations are used to review and reprioritise any residual risk as part the subsequent systemic risk management cycle.



## Managing provider risk

### Risk identification

ASQA has established a range of mechanisms for identifying and assessing provider risk. These enable ASQA to monitor providers at all times to identify those providers who present greatest risk of adversely affecting the community (by not complying with regulatory requirements and producing poor quality training and assessment outcomes). As ASQA's risk-based regulatory approach matures, the number of mechanisms ASQA uses to monitor provider risk is likely to increase.

ASQA has made a significant shift in how it manages provider risk—moving from a 'provider risk rating' to 'provider profiling'. Risk ratings are often used in transactional regulatory models where regulation focuses largely on assessing applications for licensing approval to enter a market. They are also used to inform how often a regulated entity should be scrutinised thereafter. A risk rating is a traditional method for comparing one regulated entity with another; however, this is not the ASQA approach.

'Provider profiling' enables ASQA to continuously review provider performance through a centralised report. The provider profile contains:

- information about a provider's historical performance in complying with its regulatory obligations including those related to timely and accurate data provision and fee payment (Compliance History)
- other measures of performance against established predictive risk indicators, and
- information reported by internal or external stakeholders.

A provider profile is fluid in nature and does not translate into a single score or rating of any kind.

The intelligence-led, risk-based regulatory approach ASQA applies means that provider review is less likely to be triggered by application activity and more likely to be triggered by events, such as:

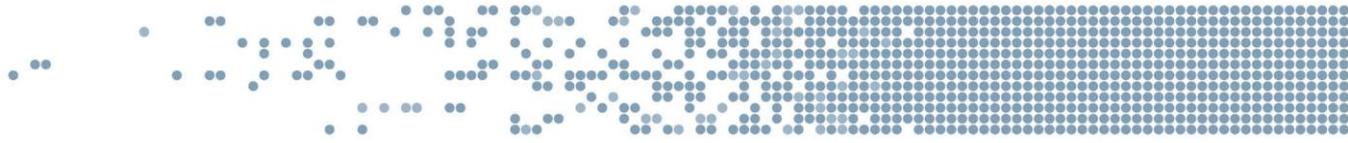
- credible and reliable provider reports, or
- unusual provider activity.

In this context, provider profiling enables better judgments about the proportion of regulation to be applied in response to such events.

### Risk analysis and evaluation

When ASQA identifies concerns about a provider through its monitoring regime, it then assesses risk using an assessment matrix. This matrix combines risk assessments relating to:

1. regulatory obligations (standards or legislative provisions) breached or alleged to have been breached; and
2. the provider and case.



### Risks relating to regulatory obligations

Risks relating to regulatory obligations are the risks ASQA assigns to each regulatory obligation in its jurisdiction. These risks are reviewed annually and informed by the finding of ASQA’s annual environmental scan. The level of risk assigned to each regulatory obligation is decided using the following measures:

Likelihood	Impact
<ul style="list-style-type: none"> <li>Level of non-compliance with the obligation in regulatory data (e.g. complaints or compliance activity outcomes)</li> <li>Prevalence of concern about regulatory obligations amongst VET stakeholders</li> <li>Level of technical difficulty, resources or infrastructure required to comply with an obligation</li> <li>External drivers or incentives likely to affect degrees of compliance</li> </ul>	<ul style="list-style-type: none"> <li>Impact on students (e.g. skills not obtained, safety issues)</li> <li>Impact on industry (e.g. integrity of the qualification, economic impacts)</li> <li>Reputational impact on ASQA and the sector more broadly</li> </ul>

The outcome is the rating of each regulatory obligation as low, medium, high or extreme. For example, regulatory obligations relating to assessment practices are likely to remain rated as high or extreme because of their relationship to the primary risk ASQA is responsible for managing, i.e. the certification of student competencies as an outcome of poor assessment practice.

### Risks relating to the provider and the case

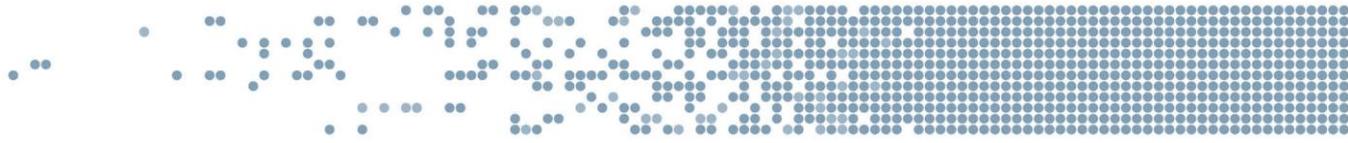
The risk relating to the provider and the case comprises:

- the risk presented by a provider, and
- the circumstances of the case under review.

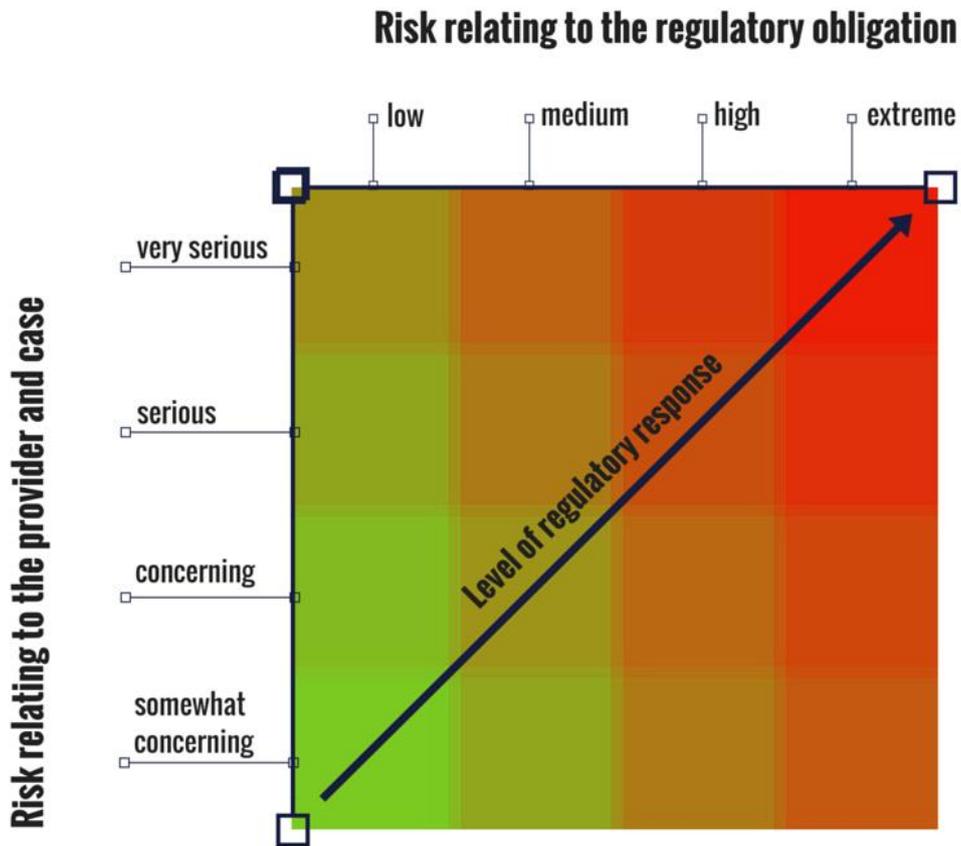
This risk is determined using the following likelihood and impact measures, information about which is drawn from a provider’s profile:

Likelihood	Impact
<ul style="list-style-type: none"> <li>Provider’s past performance</li> <li>Provider’s conduct in this case</li> </ul>	<ul style="list-style-type: none"> <li>Impacts on students (e.g. number and types of students)</li> <li>Impacts on industry (e.g. connection to licensing or occupational registration, safety issues)</li> <li>Impacts on the sector more broadly</li> </ul>

The outcome of this risk assessment is a rating for the provider and case of somewhat concerning, concerning, serious or very serious.



When the two risks are combined in an assessment matrix, a level of response proportionate to the risks posed is determined. For example, a provider with a poor compliance history is likely to receive a stronger regulatory response than a provider with a strong compliance history where the same regulatory obligation has been breached and the factors relevant to the case are similar.

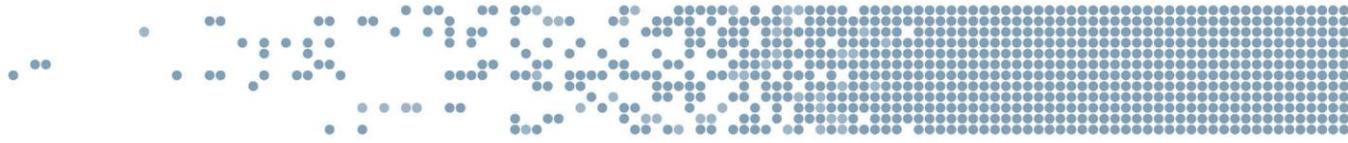


ASQA uses this assessment matrix to determine levels of response when testing or addressing breaches of regulatory obligations within its jurisdiction.

### Risk treatment

In responding to alleged or proven breaches of regulatory obligations, ASQA draws on a range of escalating regulatory responses. As already described, the regulatory response will be proportionate to:

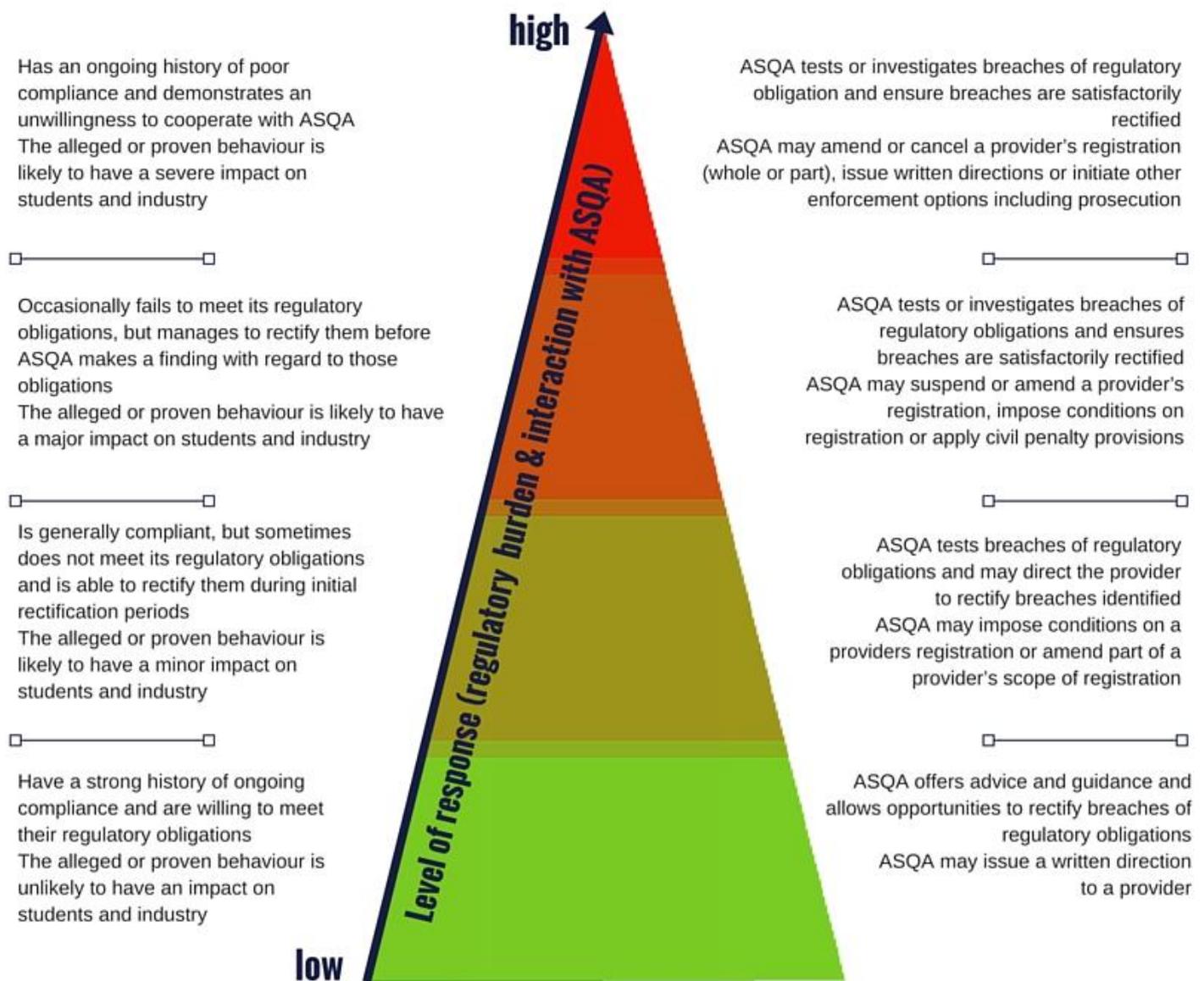
- the regulatory obligation breached or alleged to have been breached
- the provider's past performance and attitude to compliance, and
- other factors relevant to the case, including the impact on students, industry and the sector.

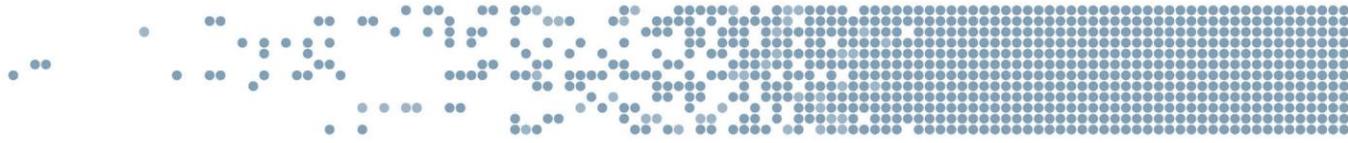


The diagram below shows the hierarchy of regulatory responses ASQA uses relative to the risk posed by an allegation or proven breach:

## Provider profile and conduct

## Regulatory response





In determining the most appropriate response, ASQA considers whether the response:

- is within ASQA's legislative authority and justified by sufficient evidence
- is the most effective method for obtaining evidence to test compliance (where breaches are alleged or suspected)
- involves an escalated response (where previous attempts to encourage compliance have been unsuccessful or where circumstances warrant)
- would be viewed by the public as proportionate and reasonable in the circumstances
- minimises unnecessary impacts on clients and learners (where possible and appropriate)
- is consistent with precedents set by treatment of other providers in similar circumstances, and
- is the most likely to promote compliance and engender confidence in ASQA as a regulator.

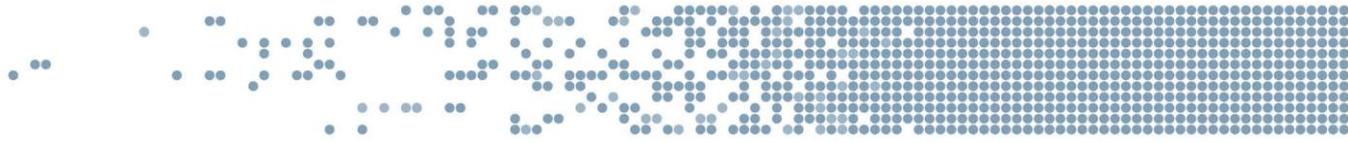
In some cases providers with a strong history of compliance may be offered the opportunity to seek delegation to manage their own VET scope of registration without the need to apply to ASQA and pay a fee each time they wish to add a new qualification or unit of competency to their scope. Providers meeting the required criteria that take up this opportunity are known as ASQA delegates. Further information on the eligibility criteria for an ASQA delegation can be found on the ASQA website.

## **Monitoring and review**

ASQA reviews its provider monitoring approach by:

- analysing data to identify emerging risk indicators that may contribute to an assessment of historical or predictive risk
- annually reviewing the risk level assigned to regulatory obligations using the findings from its annual environmental scan
- annually reviewing factors contributing to the assessment of the risk relating to the provider and case
- reviewing the alignment of regulatory responses relative to the assessment of risks relating to regulatory obligations, the provider and the case
- reviewing business processes in response to feedback from stakeholders obtained through provider consultation roundtables and a range of stakeholder surveys conducted, and
- reviewing the effectiveness of regulatory responses in detecting and promoting compliance with regulatory requirements.

Consistent with a contemporary risk-based regulatory approach, ASQA may from time to time conduct compliance tests across a sample of providers to validate the mechanisms used to identify, test and address concerning provider behaviour. These tests may occur as isolated activity or as part of other targeted regulatory work, including during the treatment of systemic risks.



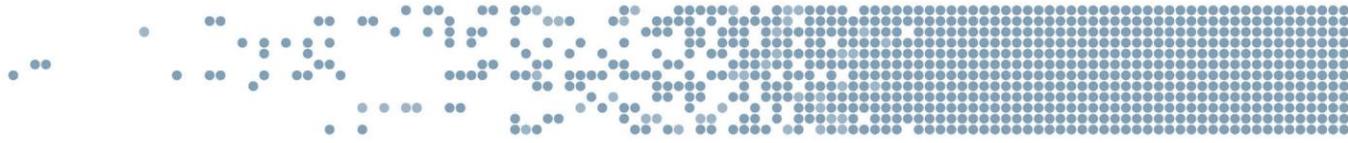
## Communication and consultation

In managing and reviewing provider risk, ASQA draws on the experience of staff to help identify and review risk indicators. It also reviews business processes in response to the outcomes of stakeholder consultation, (roundtables and annual stakeholder surveys). ASQA also relies on reports about provider performance (including complaints) from a range of external stakeholders including students, industry stakeholders and other community members affected by provider behaviour. These reports inform ASQA's regulation at both the systemic and provider levels.

ASQA publishes information about certain regulatory decisions it makes, in order to:

- assist students and potential students to make informed decisions about choosing a provider, and
- provide industry, government and the public with accurate information on ASQA's regulatory activity.

ASQA only publishes information about an adverse decision after the provider has exhausted its natural justice provisions (reconsideration or appeal) in relation to the decision.



## Impacts of ASQA's risk-based regulatory approach

### What risk-based regulation means for providers

ASQA's risk-based approach to regulation means that a provider with a history of good performance, that does not exhibit concerning or unusual behaviour, is less likely to experience regulatory intervention by ASQA than a provider with a poor performance history particularly where ongoing concerns are detected or reported. The type of intervention by ASQA will be proportionate to the extent of a provider's previous performance and seriousness of the current behaviour.

However, ASQA may also undertake regulatory action in relation to providers whose history would not normally warrant regulatory intervention as part of its systemic monitoring. For example, ASQA may sample providers to test mechanisms used to detect poor performance or during systemic risk projects where ASQA seeks to understand provider behaviour or broader issues in the sector. In such circumstances, ASQA will aim to minimise the regulatory burden that such action may entail.

### What risk-based regulation means for industry

Industry stakeholders contribute to ASQA's risk-based regulatory approach in a number of ways. During its annual environmental scan, ASQA seeks input from peak industry and business groups.

Peak industry and employer groups representing specific industries have the opportunity to contribute to the environmental scan by engaging with ASQA's Industry Engagement Team at any time. The Industry Engagement Team is responsible for working with industry to:

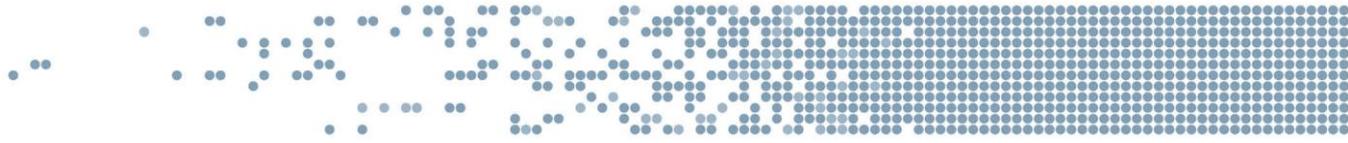
- communicate ASQA's regulatory approach, and
- identify concerns about the quality of training and assessment delivered in specific industries or more broadly.

Industry stakeholders are also able to report their concerns about providers directly through the complaints portal on ASQA's website. Information relating to specific providers gathered either through the complaints portal or the Industry Engagement Team will be used as an input to manage provider risk. In deciding how a provider report will be used in this context, ASQA will assess:

- whether the information provided is within its regulatory authority to consider
- if the assertions in the report can be supported by evidence
- the regulatory obligation breached, and
- factors relevant to each case.

This means that ASQA may not act on some information immediately, but may use it to inform future regulatory activity, including the assessment of further reports about a provider. Regardless of the treatment, all reports are used as an input to ASQA's environmental scanning activities.

In implementing systemic risk treatment projects, ASQA may seek to collaborate with other industry bodies, particularly industry regulators, to better understand underlying causes or contributing factors to a priority risk. ASQA may also seek to work collaboratively with industry bodies in implementing treatment strategies aimed at reducing the risk. In these instances, the level and type of engagement will be determined by:



- the nature and scale of the risk, and
- the information or regulatory authority that the other industry party holds.

Where ASQA works with industry bodies in managing provider or systemic risk, these arrangements are often formalised in MoUs. ASQA's Industry Engagement Team is responsible for negotiating these MoUs.

The Industry Engagement Team can be contacted through ASQA's Infoline on **1300 701 801**.

## **What risk-based regulation means for state and territory training authorities**

State and territory training authorities are consulted during ASQA's annual environmental scan. They can communicate ongoing concerns affecting the VET market to ASQA through the Regulatory Operations Manager for their state or territory.

Where state and territory training authorities have concerns about specific providers, they can report these concerns using ASQA's website complaints portal or through their local Manager, Regulatory Operations. In considering provider-specific reports, ASQA will assess whether the information provided is within its regulatory authority to consider, whether the information can be supported by evidence, the regulatory obligation breached and factors relevant to each case. As with information from industry, this means that ASQA may not act on some information immediately, but may use it to inform future regulatory activity, including the assessment of further reports about a provider. Regardless of the treatment, all reports are used as an input to environmental scanning activities conducted by ASQA.

## **What does this mean for other stakeholders?**

There are a number of other stakeholders impacted when poor quality training and assessment is delivered by training providers. These include students (current and past), their sponsors, community advocates and other training providers. Where stakeholders have concerns about training quality offered by an ASQA regulated training provider, they can report these concerns using ASQA's complaints portal on the ASQA website.

Reports about providers will be assessed to determine whether they are within ASQA's jurisdiction to regulate, before further consideration is given. Where reports are made by students, ASQA generally requires the student to have tried to resolve the matter with their provider through its internal complaints and appeals process if relevant before reporting the concern to ASQA. ASQA acknowledges that sometimes the issues surrounding the report make this requirement unreasonable.

In assessing reports from other stakeholders, including students, ASQA considers the regulatory obligation breached and factors relevant to each case in determining its level of response consistent with the approach already outlined for managing provider risk. Regardless of the treatment, all reports are used as an input to environmental scanning activities conducted by ASQA.