

VET regulation that's clear as mud

CLAIRE FIELD

By **CLAIRE FIELD**

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Regulation is a thankless task. I know this from first-hand experience, having had senior roles in a former state vocational education and training regulator and the commonwealth's first VET regulator, the National Audit and Registration Agency.

It's thankless because when you get things right no one notices, and when you get things wrong everyone does and your actions can have serious consequences.

I was moved to share some thoughts on VET regulation following a recent significant difference of opinion on the extent of "organised crime" in the VET sector.

The Australian Skills Quality Authority's deputy chief commissioner is referenced in former High Court justice Ian Callinan's statutory review of the Administrative Appeals Tribunal as suggesting that organised crime is "sometimes, perhaps even regularly, benefiting from counterfeit vocational training programs and colleges". That's quite a claim.

An ASQA spokesman subsequently clarified that the statement had not been made, but as *The Australian's* higher education editor, Tim Dodd, later tweeted: "they can't both be right".

Not only is Dodd right in his pithy reflection — but the general public and those in the sector can't tell if the claim is right either.

That's because of the paucity of data ASQA releases on its regulatory activities and the lack of transparency in its decision-making.

Recent evidence accepted by the AAT indicates there has been at least one group of providers operating together and involved in highly non-compliant activity. ASQA's recently released strategic review into international education also includes what it describes as "anecdotal

evidence” that some providers “appear to consider limited or no attendance of scheduled classes as a legitimate ‘business model’ ”.

This behaviour is obviously deeply concerning and must be stamped out. Unfortunately what can't be determined, despite ASQA's lengthy strategic review, is the extent of the activity.

The data that ASQA does release shows much higher rates of noncompliance at audit following the introduction of its risk-based audit model. This is presented as evidence that its risk-based approach is working.

The theory is if ASQA targets “high-risk” providers and finds lots of noncompliances, then it's focusing its activities on the bad guys and letting good providers get on with delivering training.

The problem is ASQA appears to be conflating risk with performance and then looking for evidence (often in the form of “administrivia”) to reinforce its preconception that higher risk providers equate to the “bad guys”. It's a point Andrew Laming, the federal member for Bowman, made in an excellent speech.

To be clear: high risk does not automatically equal poor practice. By way of example, airlines are exposed to multiple potentially catastrophic risks each and every day as part of their operating model, yet despite this air travel is reportedly the safest means of transport.

Similarly in the VET sector, good people, systems and management can and do mitigate risk.

In recent reviews of the VET sector Terry Moran, Valerie Braithwaite and Steven Joyce have all called for changes to ASQA's approach.

What they lay out in their detailed reviews is captured eloquently by Laming when he reminds us that government should act as a model litigant.

It is difficult to conceive of ASQA as a model litigant when you consider the evidence from the AAT. Data provided by ASQA for the period July 1, 2011, to March 31 this year shows 446 applications to tribunals or courts were finalised in that timeframe.

Of these, 52 per cent were settled between the applicant and ASQA, and a further 13.9 per cent were dismissed, had the ASQA decision set aside or had the ASQA decision varied. That's almost two-thirds of cases concluding with the original ASQA decision not being enforced. In a further 29.6 per cent of cases the applicant withdrew — some no doubt because they had a weak case,

others because they couldn't afford to continue the appeal, especially where they were unable to enrol new students while the appeal was heard.

Despite the claims by some ASQA officials, these figures are not evidence that ASQA's regulatory approach is working.

The impact on students from drawn-out decisions in the AAT was brought home in the experiences shared by delegates at this year's Council of International Students Australia conference.

The impact on providers (particularly small and medium enterprises) is evident in the declining number of registered training organisations — down from 4098 at June 30, 2017, to 3854 at March 31 this year.

The publication of all ASQA audit reports would be an immediate step towards greater transparency. It would allow the sector to confirm the veracity of auditors' decisions and provide proof that ASQA's audit practices are nationally consistent.

Swift and genuine implementation of the other recommendations of the Braithwaite review is also urgently needed. Most important, we need cultural change within ASQA. No one wants rogue operators in the sector but we can't continue to lose good training organisations because of ASQA's regulatory approach.

Claire Field is the principal of Claire Field and Associates, a tertiary education consulting practice.