

6. Regulating and ensuring quality services and products

Key points in this section

- Skills Australia sees greater rigour and national uniformity is the way forward for tertiary education regulation and quality assurance. A three tiered approach is recommended: new national statutory arrangements, a strengthened AQTF, and more consistent reinforcement of the AQTF in States/Territories' purchasing contracts
- A national statutory regulatory body for VET would be responsible for three primary functions:
 - developing regulatory policy, assuring quality and implementation of the AQTF through registration and audit of vocational education and training providers operating in the domestic and international student markets
 - endorsing Training Packages, accrediting courses and overseeing other NTS products and
 - disseminating provider performance information, outcomes of audits, and track record on sanctions, along with other information to assist users of their services.
- Over time a merger of VET and higher education regulatory functions may be a desirable and achievable direction
- A priority for the proposed national regulatory body for VET should be strengthening of AQTF risk management protocols, scope for interventions and treatments of sanctions to enable rapid national response to poor RTO performance

A national regulatory model, more rigorous sanctioning, nationally consistent purchasing frameworks, consumer information and provider accountability are essential complementary reforms that should accompany expansion of contestability.

Responses in consultations

- Industry stakeholders and providers expressed very strong support for a national VET regulator. Reservations were expressed by jurisdictions. They emphasised the need for any new model to incorporate scope for quick local action, capitalise on use of local intelligence to identify regulatory concerns and reinforce States' priorities for service delivery. A new model must be based on best practice elements of jurisdictions' approaches (not an 'averaging' or lowest common denominator)
- An industry designed system of standards and qualifications was seen as essential as well as maintaining the core role of ISCs in driving this work



Responses in consultations continued

- The location of the course accreditation function was discussed—either within the national regulatory body or devolved to States. Industry is concerned about the risk of locally developed courses potentially overlapping and diluting the value of nationally endorsed Training Package qualifications if a devolved approach were adopted. The need for consistent and transparent treatment of course accreditation and endorsement of Training Package qualifications was also emphasised
- Submissions cautioned potential conflict of interest if there was not adequate separation of policy development and standards setting and auditing/enforcement functions within the regulatory body
- Transparency of information on RTO performance and audit outcomes is strongly supported. The nature of the information to be used was queried by providers
- There was openness to a future merger of VET and higher education regulators. All submissions were emphatic the logic and vision of establishing a single regulatory body should not compromise or lessen quality in VET or compromise the centrality of industry standards. Some indicated a timeframe for such a merger should be specified
- Very strong support was expressed for a strengthened AQTF policy framework to lay the foundation for quick action and consistent approaches on poor performance
- Consultations emphasised States' purchasing reinforces their social, economic and regional priorities as well as quality provision. Providers emphasised importance of harmonizing and 'eliminating layers' of AQTF and States' auditing requirements; a more consistent national approach to purchasing was welcomed.

6.1 National governance of regulation and quality assurance

Australia is much admired for the key pillars of our National Training System—nationally recognised qualifications, Training Packages and the AQTF. Similarly the higher education sector is internationally acknowledged for its quality assurance framework of National Protocols, National Guidelines and the role of the Australian Universities Quality Agency. Hard work of stakeholders across the system has contributed over the years to build and improve enhanced national consistency and increase quality outcomes across VET and higher education. Intense global competition means that we need a tertiary sector that supports us staying at the forefront of international practice, *'the challenge is clear, and cannot be overstated. Quite simply, those countries that out-skill us today will out compete us tomorrow'*⁶⁰.

Skills Australia sees high performing providers of tertiary education and training as fundamental to our future success. Our quality assurance systems should support quality improvement and recognise excellence and high levels of performance. Strengthened national regulation and quality assurance is a core governance function for building our capability, especially in securing an increased focus on improved outcomes from training—that is, enhanced skills and their greater utilisation. We also see it as a necessary complement and safeguard to the expansion of contestability.

We believe increased national uniformity in regulation of VET, higher education and the provision of international education is needed to overcome the complexity of varying multi-jurisdictional and sectoral requirements that undermine effective mutual recognition and seamless and rigorous regulatory practices. More than this, we wish to see a raising of

60 Joint submission to Skills Australia by the Industry Skills Councils

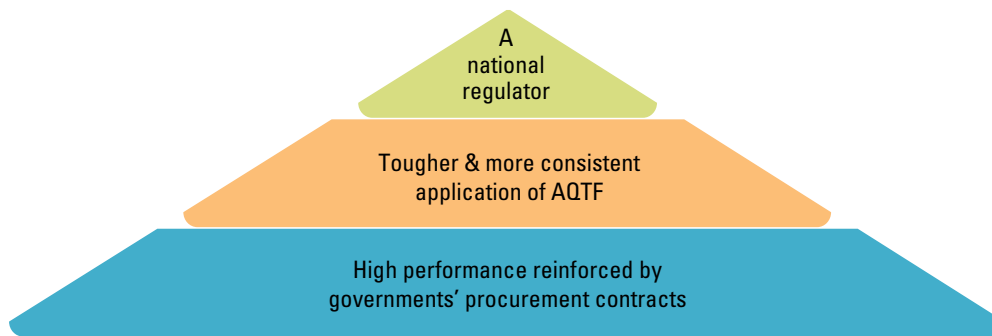


the bar, with tougher mechanisms to deal with poor provider performance and greater public transparency about the effectiveness of quality systems. This harmonisation is in keeping with regulatory reforms being undertaken in other business and service sectors as part of the COAG reform agenda. It will assist in positioning education and training services within a dynamic and expanding national market which is at the core of Australia's productivity and social inclusion agenda.

We propose, and consultations have supported, a three tiered approach to regulation and quality as a more rigorous governance platform for providers entering and operating in the training market place and to accompany VET market training reform:

- greater national consistency in regulatory implementation through new statutory arrangements and improved public information on audit outcomes and provider performance
- strengthened Australian Quality Training Framework—particularly in terms of sanctioning provisions
- nationally consistent purchasing framework to be used by States and Territories to further reinforce their contracts for high quality provision by RTOs.

A three tiered approach to regulation



The following discussion aims to clarify matters raised in consultations and further elaborate our proposals—especially to outline aspects of possible models for implementing a national regulatory approach.

6.2 Rationale for a new approach

Responses in consultations to the proposal for a national statutory regulator for VET were mixed. Submissions from industry stakeholders and training providers have been very strongly in support of an improved national approach to regulation and assuring the quality of the NTS, citing enduring problems with national consistency, and more importantly poor performance or varied quality of delivery and outcomes achieved by some providers.

All governments have agreed in principle to a national VET regulatory body and are seeking more detail on the model that might be adopted (COAG April 2009). Jurisdictions' positions are dependent on the type of model that might be adopted and an understanding of how it might operate to address local contexts and conditions⁶¹.

Skills Australia's recommendations for a national regulatory framework for tertiary education, with an initially separate statutory body managing the VET arrangements have been informed by stakeholder feedback on the desirability of simplifying, providing clearer accountability and rationalising the multiplicity of authorities involved in regulation and

61 Submissions received from the ACT, South Australia, Queensland, Western Australia and consultation discussions with NSW



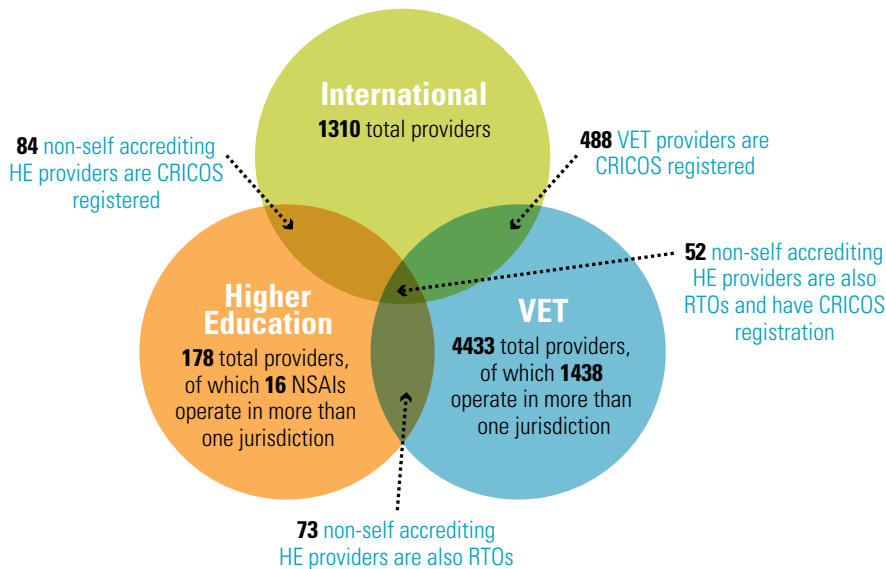
quality matters at both state and national levels. A strong case was made about positioning Australian education and training for the future and aligning with national and international advances in best practice regulation.

6.2.1 A changing market

Education and training is now part of a globalised education market—where our national reputation for high quality provision and internationally respected outcomes are intrinsic to our competitive advantage. The quality regimes in place for VET, higher education and international student regulation were conceptualised and developed for a market which was dramatically different to today’s and continues to be dynamic.

There is considerable complexity in the current governance of regulatory and quality apparatus with registration, accreditation, approval and auditing arrangements in place for the AQTF, international student provision and for user choice purchasing arrangements—as well as those running in parallel for higher education. This presents significant issues for provider responsiveness, especially those operating across the VET and higher education sectors, both domestically and internationally.

Tertiary regulatory intersections



Source: DEEWR—various sources collected for commissioned project by the Nous Group, February 2009

The expansion of competitive funding has been a further feature of a changing training market over the last decade:

- in the mid nineties, prior to user choice and the expansion of competitive tendering, there were few private RTOs receiving government funding—in 2007 there were just over 2000⁶²
- in 1999, in the early days of user choice for apprenticeship and traineeship training \$420.47 million was in the market place—in 2006, this was \$694.5 million, with a further \$100 million approximately available through competitive tendering processes⁶³. This now represents, conservatively, 20% of government funds.

62 NCVET (2008) *Australian Vocational education and training statistics 2007—Students and courses*. Table 8

63 Productivity Commission Reports on Government Services 2001 and 2008, tables 4A.5 and 5A.8 respectively

Many States and Territories have indicated they will expand the levels of funding available through contestable means. South Australia is moving to nearly 50% contestability and Tasmania is moving to 30%⁶⁴. This expansion will be highly attractive to both ethical and unethical providers⁶⁵. The Board sees more cohesive and rigorous national regulation as a fundamental and necessary safeguard in an expanding market.

6.2.2 International education

During consultations with both governments and providers, the complexity of regulation and quality assurance of the international student market was seen as an issue which had been understated in Skills Australia's earlier position paper. From the provider perspective, examples of inconsistent treatment across States and Territories were reported⁶⁶ in relation to their regulation of CRICOS⁶⁷ matters. From jurisdictions' perspectives, especially larger States facing the burden of a rapidly growing international education market, the difficulties of effectively intervening and sanctioning where there is evidence of poor performance was also illustrated in a range of examples reported to us. The interface between Australian and State/Territory governments' responsibilities for different aspects of the regulatory regime in which international education operates was highlighted as a serious issue.

The international education sector is regulated through the interaction of Australian government legislation—Education Services for Overseas Students Act (ESOS) and the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (National Code) and State governments' various legislations for the registration of providers and accreditation of courses in both the VET and higher education sectors (see attachment B for an overview of various legislations and protocols applying).

The ESOS framework overlays the VET and higher education regulatory regimes in relation to consumer protection, tuition assurance schemes and visa integrity. The Department of Immigration and Citizenship (DIAC), is also a party in regulatory environment as it determines visa standards and conditions applying to overseas students studying in Australia. In sum, the application of the AQTF, approvals for CRICOS by individual States and Territories as well as any particular migration policy focus are all factors interplaying in regulation and quality assurance of the international education environment. There is no national recognition provision for CRICOS approvals. If an organisation wishes to deliver courses in another State/Territory to overseas students, it must apply to that State or Territory directly.

64 Tasmanian submission to Skills Australia

65 ACTU submission raises a range of concerns and also highlights negative market experiences of unscrupulous providers in the initial stages of expansion of user choice in the late 1990s

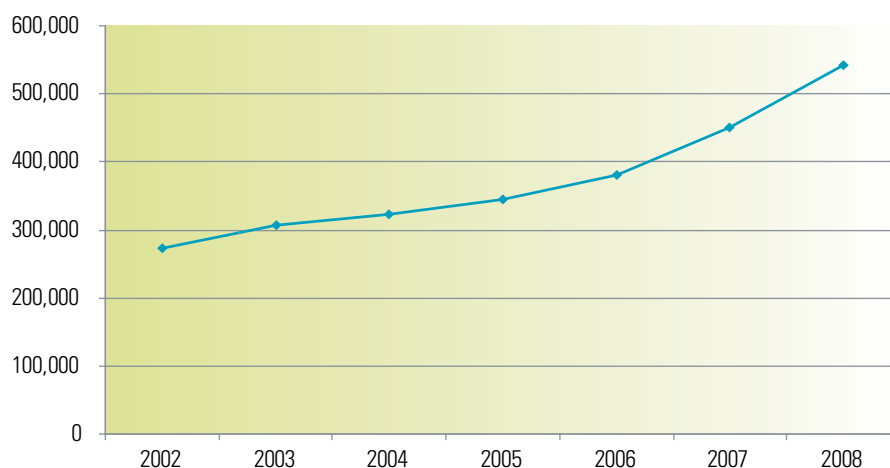
66 See also the ACPET March 2009 submission to the Productivity Commission's Review of Regulatory Burdens on Business

67 Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)



Enrolments of international students for all education sectors have increased almost 100% in just seven years (from 273,584 in 2002 to 542,218 in 2009).

International Enrolments Growth by Year, all sectors



Source: AEI International student data: Enrolments longitudinal analysis, April 2009

Vocational education and training has recently become part of the international education commercial phenomenon. International VET business has expanded dramatically in recent years with student enrolments increasing over 225% from 2002 to 2008 (from 53,668 to 174,691) and now parallels that of higher education.

International Enrolments by Sector and Year								
Sector	2002	2003	2004	2005	2006	2007	2008	Difference
Higher Education	115,340	134,763	150,692	162,673	169,664	174,449	182,225	58%
VET	53,668	56,911	58,222	65,565	82,519	119,762	174,691	226%
ELICOS	57,433	62,090	61,724	64,539	76,820	101,824	125,681	119%
Schools	23,211	26,935	27,305	25,096	24,476	26,813	28,522	23%
Other	23,932	25,948	25,948	26,255	26,431	27,397	31,099	30%

Source: AEI International student data: Enrolments longitudinal analysis, April 2009

The major growth in international student business has occurred in NSW and Victoria. In consultations, departmental officials from these States emphasised the complexity of multiple parties dealing with regulatory matters related to the quality of provision to international students.

The effectiveness of this co-operative intergovernmental approach has been recently challenged due to the rapid expansion of the market and questionable behaviour of operators. Confidential examples were provided in consultations of difficulties or contradictions occurring in inter-jurisdictional authority which limited the ability to swiftly deal with under-performers.

6.2.3 Risk to reputation

In NSW and Victoria there are currently investigations into the quality of education and training in the overseas student VET sector as well as recruitment practices following recent high profile media coverage of suggested exploitation and victimisation of international students⁶⁸. In NSW a Ministerial Taskforce has been established that is reviewing welfare, safety issues and social inclusion of overseas students⁶⁹. This follows similar investigations in Victoria in 2008⁷⁰. The Victorian inquiry, whilst focusing on student welfare matters, recommended that the Victorian Registration and Qualifications Authority, together with Australian government departments undertake a 'rapid audit of high risk Victorian providers'. These actions have been ramped up through national agreements by Ministers announced at the June 2008 Ministerial Council. Resolutions taken encompass fast tracking the review of the ESOS Act (2000) and the associated National Code as well as stepping up audits of providers identified as not delivering services to the required standards.

6.2.4 Effectiveness and complexity

While various reforms have been undertaken in each of the regulatory sectors—for example, the introduction of the new AQTF 2007, the revised National Code of Practice 2007 related to regulation of international students, and the revised National Protocols and Guidelines for Higher Education Approval processes 2007—the integration of these approaches in what is essentially a state-based and administered 'national system' has faltered.

Consistency/complexity and duplication issues continue to be reported. A range of confidential case study examples were provided to us during consultations, particularly by those providers operating across States and Territories and multiple sectors. These highlighted:

- differing requirements on RTOs occur in States and Territories
- lack of synergy, especially between State and Commonwealth arrangements for international students—a high risk market
- complexity in compliance and approvals for RTOs/higher education providers operating across States in the international student market
- varying jurisdictional timeframes and audit approaches for accreditation and registration processes, and
- the option of using NARA was noted as a 'ninth VET regulatory agency' overlaying the existing complexity of the eight State and Territory bodies.

Effectiveness issues have also been identified which potentially diminish the quality of outcomes being achieved by the system

- sanctioning arrangements—the current system controls at entry point and is not good at intervening without complaints from students, and is cumbersome in addressing poor performance
- insufficient rigour is applied to accreditation of courses and duplication of Training Packages occurs⁷¹ potentially undermining national industry controlled standards
- insufficient attention is focused on the quality of provider assessment practices and outcomes of training.

68 The Age 14 April 09 'Pressure to rein in 'corrupt' colleges'; *Campus Review* 11 May 09 'Greens call for inquiry into international student experience'.

69 Press release The Hon Minister Verity Firth MP 22 April 2009
https://www.det.nsw.edu.au/media/downloads/aboutus/ministerial/yr2009/apr/mr220409_iei.pdf

70 See http://www.diird.vic.gov.au/corplivewr/_assets/main/lib60069/victorian%20overseas%20student%20experience%20taskforce.pdf

71 Joint submission from Industry Skills Councils; Manufacturing Skills Australia submission; and meeting with Australian Qualifications Framework Council



6.2.5 Related developments

Elsewhere nationally, the COAG Regulation Reform Agenda has been progressed by governments working towards removing differences in regulation across borders in 27 areas. The intention of these reforms is to develop a more seamless national economy and to minimise red tape across the nine jurisdictions. Included among these developments are regulatory reforms relevant to education and training and providing models which might be mirrored in changes contemplated for the tertiary education sector:

- a new national consumer policy framework, which includes a national generic consumer law, enhanced consumer law enforcement and more efficient consumer policy development and decision-making processes⁷²
- a national registration and accreditation agency for health professionals⁷³,
- a national trade licensing system for seven initial occupations to remove the need for multiple licences when working across borders⁷⁴
- nationally uniform occupational health and safety legislation and nationally consistent rail safety legislation and associated regulation.

In the European Union, there has been a trend to convergence of regulatory systems for education and training, with the objective of increased occupational mobility for graduates, embedding international education objectives and promoting trade advantage. For instance, the Bologna process plans to align the higher education qualifications and regulatory frameworks of 45 European countries by 2010, bringing together a disparate array of systems and working towards a consensus model—the development of a European Qualifications Framework. It also aims for consistent approaches to quality assurance amongst signatory countries. Similarly, the Copenhagen process for VET is endorsed by 31 European countries and is creating common frameworks and tools to enhance the transparency, recognition and quality of competences and qualifications.

6.3 The role of a national VET regulatory body

6.3.1 Proposed functions

Following consultations, Skills Australia continues to favour the establishment of a national statutory regulatory body for VET. We see the body having authority for the following primary functions:

- developing regulatory policy, assuring quality and implementation of the AQTF through registration and audit of vocational education and training providers operating in the domestic and international student markets
- accreditation of courses and regulation of Training Packages and National Training System VET Products (ie competency standards, qualifications and training content) and
- dissemination of provider performance information⁷⁵, along with other information to assist users of their services.

A number of stakeholders requested clarification of the determinative responsibility for the significant policy functions which underpin quality assurance and regulatory functions and guide the ultimate work of a national regulator. These are largely functions currently carried out by the National Quality Council—policy in relation to operation of the National Skills Framework, including Training Packages, Australian Quality Training Framework standards and other quality assurance improvement work. There were varying views expressed in relation to this function, with some seeing it pertaining to a national quality and regulatory

72 See Australian Treasury (February 2009) consultation paper *An Australian Consumer Law: Fair markets – Confident consumers* at <http://www.treasury.gov.au/contentitem.asp?ContentID=1482&NavID=037>

73 The health workforce National Registration and Accreditation Scheme has commenced implementation through the passing of the 'host' legislation in Queensland which will be enacted across States. See <http://www.legislation.qld.gov.au/LEGISLTN/ACTS/2008/08AC062.pdf>

74 See Intergovernmental agreement signed 30 April 2009 http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/National_Licensing_System_IGA.pdf

75 Note the information functions of the recently established Australian Curriculum Assessment and Reporting Authority for school education



body as a core element of its work, while others see it residing elsewhere, to prevent a potential conflict of interest⁷⁶.

An underpinning concern appears to be that industry retains authority and control of the ultimate recommendations on the policy framework for the quality system, Training Package standards and approval of Training Packages and qualifications. This is also our concern and intention that industry continues to have this pre-eminent determinative role in setting of competency standards and the quality of training.

Skills Australia does not see policy development functions as incompatible or conflicting with the role of a national regulatory body. We are influenced in this position by the example of regulatory frameworks being established in other sectors. For instance, the proposed National Licensing Body is to be charged with developing policy⁷⁷. In the new National Registration and Accreditation Scheme for the health workforce, policy functions, including development of professional standards, accreditation of courses, as well as those relating to registration and disciplinary matters are to be undertaken by the national health profession boards. Such approaches are usual in other regulatory spheres. The role of the Australian Communications and Media Authority in regulating telecommunications, granting/sanctioning licences and developing television content and radio program standards is a further example.

However, consultations have emphasised that there should be suitable operational separation between policy-making, standards setting and 'enforcement' arms of the new body to ensure neutrality and impartiality. Skills Australia accepts this important point and feels it can be addressed through the separation of the business units of the new body.

Industry is concerned that there is thorough stakeholder engagement in the development of regulatory policy and want to see appropriate channels and representative arrangements established for this part of the new body's functions.

Skills Australia sees the functions of the national VET regulatory body being reinforced by formalised industry linkages to the national Industry Skills Councils who would have a central and ongoing role in development of industry standards and policy advice in relation to quality and national consistency.

Industry Skills Councils will need to have direct linkages with the regulatory body and make the final recommendations on Training Packages and advise on national course accreditation. These would need to be formalised in legislation of the new arrangements as would communication and consultative mechanisms to allow input from other peak industry groups.

We see this as a more streamlined and effective process for Training Packages approvals and quality/regulatory policy development—overcoming shortcomings of the present governance structure, which have strained under the weight of representational decision making models. It also reinforces industry's role in the final recommendation and endorsement of Training Packages and more effective national sanctioning of inadequate quality.

The pitfalls of a national course accreditation function were raised in consultations, with some suggesting it should be undertaken at the local level to preserve local flexibility, innovation and responsiveness. We believe such a model risks proliferation of locally developed courses that potentially dilutes the value of nationally endorsed qualifications. Industry submissions reinforced this concern. At the same time, Skills Australia is aware that some state regulatory authorities have provision in their legislation for delegations, and exercise this in relation to functions for course accreditation. This facility might be incorporated into new arrangements to decentralise the function of national course accreditation, particularly where low risk applies and service standards are rigorous.

⁷⁶ ACTU submission

⁷⁷ Op cit page 33, Regulatory Impact Statement



6.3.2 Membership and reporting lines

Skills Australia proposes the national VET regulator should be an independent ‘arms length’ body—with clear authority and capacity as the arbiter on matters to do with regulatory policy, standards, provider registration and sanctioning and the quality of national VET products. It would be responsible for implementing operational uniformity, and at the same time responding quickly and resolving local problems.

As a statutory authority it would be appointed by and report to the Ministerial Council. An alternative suggested in consultations was for a line of accountability to the Commonwealth, as opposed to Ministerial Council as this was seen to give clearer and simpler authority, compared to a model where accountability is to all governments. On balance, we see the latter approach as important given the principal investment role of States and Territories, and the federated nature of training delivery. This approach was confirmed in consultations, with the majority of opinion noting the importance of shared oversight by governments⁷⁸.

The independent membership of the proposed national VET regulatory body would be predominantly drawn from industry on the basis of an individual’s depth of experience or specialist knowledge rather than following a representative stakeholder model. We see other stakeholders and their interests can be represented in other domains of the governance framework. No member of such a body should be actively involved in business as an RTO, or closely associated with providers of education and training services.

6.4 Possible models

6.4.1 Objectives for national regulatory reforms

Important reform objectives for a strengthened regulatory framework for vocational education and training considered by Skills Australia include:

- incorporation of best practice features for enhanced regulatory efficiency and effectiveness. These features should address concerns that a new model might result an ‘averaging’ or the ‘lowest common denominator’ driving the principles underpinning new arrangements. At the same time stakeholders were concerned to ensure a new model should be streamlined and not create additional obstacles to business operations
- harmonisation of legislation through a single, uniform law for both domestic and international student to give greater certainty to RTOs and other stakeholders of the ‘same outcome in the same circumstances’
- balancing the need for increased national consistency in the application of regulation against the need for flexibility and agility to deal with unique characteristics of particular regions
- transparency about the results of regulatory enforcement and improvements to consumer information about provider performance or unscrupulous operators
- elimination of unnecessary regulatory compliance burdens

A key consideration emphasised by some jurisdictions was the degree to which a national regulatory body might engage the States and reinforce the operational capacity to deal quickly with local developments or resolve issues at the local level. A number of responses from state regulatory bodies indicated that “*optimal governance arrangements should build on the virtues of federalism*”⁷⁹. This concern underpinned States’ requests to Skills Australia to articulate a range of operational models which might support the objective to local responsiveness. Skills Australia recognises the importance of local responsiveness.

⁷⁸ See for example, submission from Australian Industry Group

⁷⁹ Submission from state regulatory authority (confidential)



As one submission put it—‘Any VET regulatory body needs to have an ear to the ground requiring intimate knowledge and capacity to act quickly to address quality issues’⁸⁰. Both of the models below allow for an operational presence at the jurisdiction level.

6.4.2 Comparison of possible models

Model 1: Single agency model (law and administration)

The model provides for uniform and integrated national legislation for regulation and administration of both domestic and international training provision and the establishment of a single national regulatory agency. Characteristics include:

- a single legislative and statutory framework would apply across all jurisdictions (the most appropriate legislative vehicle for this would need to be determined)
- a single operational and administrative system would be used nation-wide
- at least one ‘one-stop-shop’ administrative presence of the national agency would operate in each State and Territory to enable stakeholders to easily do business and to facilitate operations of the regulator.

Examples include:

- the Australian Securities and Investment Commission (ASIC) is Australia’s corporate, markets and financial services regulator. ASIC began operating in 1991 as the Australian Securities Commission replacing the National Companies and Securities Commission and the Corporate Affairs offices of the States and Territories. It became the Australian Securities and Investments Commission in 1998. It has offices in the capital city of each State and Territory. It has four externally focussed divisions: compliance, consumer protection, enforcement and regulation. The regulation division develops and maintains the framework in which regulated activity takes place, including developing policy.
- the national health workforce Registration and Accreditation Scheme will be enabled through single host legislation enacted in all States, a Ministerial Council, an independent Australian Health Workforce Advisory Council, a national agency, national profession-specific boards, a national office to support the operations of the scheme, and at least one local presence in each State and Territory.

Model 1	Comment
Advantages	<ul style="list-style-type: none"> • A single national statutory administrative system and operational framework—regulatory ‘layers’ and statutory bodies reduce with the melding of legislation, codes and systems into an integrated model • Opportunity for greater consistency in application and enforcement of single law and uniform operational and administrative practices • Provides a more compatible platform for future interface with a single national higher education regulatory authority
Disadvantages	<ul style="list-style-type: none"> • Excludes State/Territories’ direct means of managing regulation and reduces States’ comprehensive authority over matters to do with education and training • Potentially reduces focus on local priorities and familiarity with regional issues • Raises potential complexity at the State/Territory level in dealing with a national authority.

80 Submission from Victorian TAFE Association



Model 2: Uniform law, national agency and 'federated' operations

The model provides for uniform and integrated national legislation and regulation of both domestic and international training provision. It would be implemented under the authority of a single, statutory regulator together with delegated or contracted local implementation arrangements. Characteristics include:

- agencies of each jurisdiction would be responsible for the operation of the legislation
- a common national administration scheme would be in place, implemented locally
- this model might include a delegation arrangement which could be delivered through service agreements between the national body and jurisdictional agencies.

Example:

- Food Standards Australia and New Zealand is a statutory authority operating under the *Food Standards Australia and New Zealand Act 1991*. All States and Territories are committed to the use of a uniform Food Standards Code. Government food authorities or health departments in each Australian State and Territory and New Zealand have operational responsibility for food and premises and the enforcement of the *Australia New Zealand Food Standards*.

Model 2	Comment
Advantages	<ul style="list-style-type: none"> • Common and integrated law, standards, guidelines etc are developed by an independent body responsive to all national stakeholders and independent of jurisdictions. • Jurisdictions adopt and utilise the common laws/codes. States and Territories conduct regulatory activities and operate under an agreed national law and administrative framework and control resources that are applied to these functions • Minimal resourcing or service level standards can be agreed through agreements/MOUs or contracts • Potentially reduces impact on State/Territory personnel and local arrangements
Disadvantages	<ul style="list-style-type: none"> • Benefits of a uniform legislative approach may be undermined if not supported by uniform administrative, sanctioning and enforcement approaches • Model clauses in State and Territory legislation have already been introduced. Stakeholders report ongoing inconsistency in mutual recognition and administration differences remain an issue.

6.4.3 Considerations for models

Skills Australia emphasises the development of any local administration models, while building capacity for local decision making and customising service solutions to meet the needs of people and communities they directly affect, should guard against undermining a nationally uniform approach.

Models 1 and 2 provide a mechanism for the primary functions proposed for a national VET regulatory body to be implemented, that is policy and standards, registration and audit, accreditation and consumer information (see section 6.3).

Australian governments have committed to addressing ways to reduce the regulatory burden on business and enhance productivity and workforce mobility in areas of shared Commonwealth and State responsibility. Part of this agenda also includes continuous



improvement in regulatory processes. The Office of Best Practice Regulation⁸¹ has outlined the preferred requirements for consideration of regulatory change and its impact. Determination of the most suitable model for VET regulation will need to be undertaken in keeping with those best practice protocols which are based on extensive stakeholder consultation.

As part of this process, thorough assessment of the most appropriate co-operative legal mechanisms will need to be undertaken to determine which arrangement best suits the preferred operational model to be adopted.

Some of the legal mechanisms that might be considered include a reference of power from States to the Australian Government so that agreed legislation might be enacted by it; templated law where a 'host' jurisdiction enacts the law which is then subsequently adopted by other jurisdictions; or complementary law, involving both Commonwealth and state legislations relating to matters within the constitutional powers of each. Depending on the legal course adopted, this would mean that States and Territories may need to repeal, amend or modify legislation which is inconsistent with the new national regulatory approach and also agree not to introduce legislation that would be inconsistent with, or alter the effect of a new legislative regime.

A number of consultations and submissions urged the effective resourcing of a new regulatory model. There was a view that resourcing and effectiveness of regulation has not kept pace with the growth of the market place, and had allowed poor practices to go under the radar⁸². Whether there is one national regulator or a system of networked regulators across the jurisdictions with delegated power, there will be a continued need for resources to be devoted to moderation, sharing of information and sharing of good practice in regulation across the jurisdictions.

6.5 Implications for existing regulatory and support structures

In terms of the existing regulatory and quality structures at the national level, including the functions of TVET Australia in relation to the National Quality Council (NQC) and National Audit and Registration Authority (NARA)⁸³, Skills Australia sees these being largely absorbed into the new operations of the proposed national VET regulatory body. As noted above, the policy functions of the NQC related to development of quality and regulatory frameworks should be referenced in new legislation encompassing the agreed national model. Skills Australia does not see the extension or 'embedding' of NARA's role as a way forward for the future. The weakness of this model is that it is based on delegations from state authorities (some of whom are yet to agree to enact such delegations) and does not overcome the fundamental complexity of nine co-existing regulatory regimes.

Through its TVET Product Services arm, TVET Australia is a centralised point of reference for a comprehensive range of Commonwealth and state-owned training resources as well as materials from private publishers. TVET Australia is also responsible for providing the national training system with access to a range of catalogues listing quality teaching, learning and assessment resources, including nationally endorsed training packages. The submission from TVET notes *"TVET Australia's company structure provides a unique opportunity for key stakeholders within the sector to work collaboratively on areas of strategic national importance, under the oversight of the Board of Directors. The Company structure also provides for close scrutiny by, and accountability to the Company's owners—members of the Ministerial Council for Vocational and Technical Education"*.

Skills Australia suggests that the TVET Product Services functions might be undertaken as a discrete business unit within the new national VET regulator. As the regulator would have a reporting line to Ministerial Council, this would enable ongoing accountability to all governments for national products.

81 Australian Government (2007) *Best Practice Regulation Handbook* <http://www.finance.gov.au/obpr/docs/handbook.pdf>

82 Submission from the Australian Council of Trade Unions

83 As of February 2009, NARA has delegations from Victoria, Tasmania, ACT, South Australia for AQTF and CRICOS registrations, and from Queensland for the AQTF, http://www.nara.tvetaustralia.com.au/nara_news



TVET Australia's responsibilities also include the provision of secretariat support services to several advisory bodies of the national training system including the Flexible Learning Advisory Group (FLAG), and the National VET Equity Advisory Council (NVEAC). Skills Australia sees the work of these bodies continuing to support ongoing development of the national training system's responsiveness. We suggest the support role for these bodies be undertaken through the new Ministerial Council secretariat arrangements.

Implications for broader tertiary sector

In terms of the interface with higher education, Skills Australia anticipates that over time a merger of VET and higher education regulatory functions may be a desirable and achievable direction. However, there is substantial interim work in achieving a national VET regulatory apparatus and determining an appropriate operational model engaging States and Territories. VET regulatory responses and relationships also need to be established in regard to the introduction of a National Licensing System for occupations and this will be a priority focus.

Skills Australia envisages a priority for a national higher education regulatory approach as announced by the Deputy Prime Minister will be a substantial reorganisation of higher education accreditation and quality responsibilities previously undertaken by States and Territories. Skills Australia believes a staged approach may be needed to bring higher education regulatory arrangements together and to ensure a smooth transition. The two national regulatory bodies should be required to achieve an aligned quality framework over twelve months. Once these new arrangements are transparent and stable, the most appropriate form of interaction, and a time frame for eventual merger of the national regulators can be progressed. The distinctive requirements of both sectors would need to be accommodated within such a merger.

We suggest that over time, the functions of the Australian Qualifications Framework Council could merge with those of a single national regulatory body, once the alignment of VET and higher education sectoral regulation has matured. Consultations have queried the rationale for this proposal. Skills Australia sees the Australian Qualifications Framework is the pivotal element of Australia's quality assurance for nationally and internationally recognised and portable qualifications. It is the foundation for a seamless, internally coherent and consistent education and training system. The Framework is core plank of tertiary education regulation and quality, protecting and guiding the rigour, value and transparency of Australian qualifications. We believe the functions supporting the Framework have an essential place in a more integrated apparatus for governance of regulation and quality.

6.5.1 Recommendations

It is recommended that:

- vii. Australian governments undertake legislative reform to establish an independent national regulatory body, absorbing the functions of State and Territory regulatory authorities, TVET Australia and reporting to Ministerial Council, noting Skills Australia's advice on:
 - a single national agency model with a presence in each State and Territory to enable responsive service across regions and informed delivery of States/Territories' regulatory needs
 - the recognition in legislation of Industry Skills Councils' roles in establishing nationally agreed benchmarks for the skills and knowledge required by the workforce.
- viii. Australian governments agree the national VET regulatory body be responsible for regulatory policy, the registration and audit of VET providers operating in the domestic and international markets, accreditation of courses, final endorsement of training products based on the recommendations of Industry Skills Councils and dissemination of provider performance information on service quality and outcomes to assist users.



- ix. Australian governments agree in principle that the national VET and higher education regulatory bodies and the Australian Qualifications Framework Council would merge as the alignment of the new regulatory arrangements mature and become more stable.

6.6 System architecture—strengthening regulation and quality

A central challenge for the VET system is achieving consistency in its quality assurance arrangements so there is public confidence in the training system's capacity to produce graduates who can perform at the level expected of a person with an industry endorsed qualification. Within the national training system architecture, there are two levels at which Skills Australia sees quality improvements can be driven—at the national level through the AQTF and at the state level through purchasing arrangements.

6.6.1 Strengthening the AQTF

Skills Australia believes any training market reforms or extension of competition should occur in parallel with robust regulatory development to ensure improved safeguards and enhanced quality of outcomes. The ongoing strengthening of the Australian Quality Training Framework (AQTF) will be central to these developments. We see this as the 'second tier' of strengthened regulation.

The AQTF 2007 has introduced a new regime for the registration, auditing and risk management of providers. The KPMG *Formative Evaluation of the Implementation of the AQTF 2007*⁸⁴ reported positive progress in the implementation of the new AQTF and strong support for the reform intent and outcomes-focused principles has been expressed by all stakeholders.

However, we note that a range of inconsistencies were pointed out in the KPMG evaluation of AQTF 2007. The report finds '*continued focus on building national consistency is necessary to facilitate successful implementation*'. Some of the challenges for improvement identified in the report include:

- variation in the linkage between the risk management protocols and the treatment of risk by Registering Bodies and variation in the implementation of auditing arrangements by Registering Bodies
- inconsistencies in requirements for registration and approaches across States/Territories
- inconsistencies in the approaches of auditors within and across jurisdictions, and
- communication, networking, and information sharing between Registering Bodies.

The new AQTF requires that registering bodies adopt a risk management approach to registration and audit—which will allow them to have a 'light touch' on those providers deemed to be low risk and therefore to focus their regulatory resources at areas of greatest risk.

In a system with well over 4,000 providers operating in States and Territories, risk management is necessary. However, risk management depends on drawing up a risk rating for each provider—this has not happened yet as the quality indicators to support this are still to become operational and easily transparent to users⁸⁵.

84 KPMG (2008) *Formative Evaluation of the Implementation of the AQTF 2007*
http://www.training.com.au/documents/formative_evaluation.pdf

85 Under AQTF 2007, the essential standards for RTO registration also include Quality Indicators. The Quality Indicators are learner engagement, employer satisfaction and competency completion. These have not been implemented yet, but when they have, RTOs will be required to collect and use data on these three indicators and this data will be used for two purposes:

- for continuous quality improvement
- to assist Registering Bodies assess the risk of an RTO's operations



Skills Australia is concerned that a significant issue related to the efficiency and effectiveness of the AQTF relates to the scope for sanctions to be applied once risks have been assessed and also in the case of provider poor performance. Our concerns were strongly echoed in submissions, 'urgent action needs to be taken to ensure that poorly performing RTOs are not allowed to continue to deliver training services'⁸⁶.

There are limitations on the speed or ways in which the state Registering and Course Accrediting Bodies (RCABs) can react to emerging problems. For example, the agreed practice under the AQTF is for an RTO to be audited by an RCAB in the first year of registration and again within five years. An RCAB must have a good reason for any additional audit, such as a complaint lodged by a student indicating problems with quality. Without a complaint of this sort the RCAB has to find considerable cause to justify an additional audit. We are aware that 'indirect' approaches have been adopted, such as the use of strategic industry audits, where concerns have been raised about the practices of several providers in an industry. While such actions are appropriate and allow system wide remedial responses for continuous improvements, they are not a direct route to readily sanction individual providers.

This contributes to the slowness in dealing with problems which appear to be widely known, illustrated in recent media reports about clearly inadequate delivery to international students by a few providers. This weakness was confirmed in consultations and considered an area for urgent attention. Skills Australia believes that ways of speedily detecting dubious performers, immediately instigating audits and applying sanctions need to be better addressed in the application of the AQTF or in revisions to the AQTF.

We see the introduction of a national VET regulatory body provides a much stronger platform for consistent and stringent auditing practices, treatment of sanctions and operational culture in implementation of the AQTF across Australia. A priority for the policy program of such a body will be a review of the AQTF to ensure the effectiveness of its impact in dealing with poor performance.

Skills Australia also recognises the importance of the procedures underpinning regulatory regimes being proportionate to the risk of poor performance. Audit and oversight of those with track records of consistently high performance should be appropriately managed according to risk.

6.6.2 Recommendation

It is recommended that:

- x. the proposed national VET regulator, as a priority, strengthens AQTF risk management protocols, scope for interventions and treatment of sanctions to enable rapid national response to poor RTO performance.

6.6.3 Purchasing of training and quality assurance

While Skills Australia recommends a national legislative and governance framework for the regulation of training, it recognises that State and Territory governments, as the principal purchasers of services, have significant leverage of quality and control of provider performance through purchasing agreements, performance standards and sanctions. This is another mechanism to drive quality and achievement of outcomes and it can be strengthened to complement the quality arrangements under the AQTF.

⁸⁶ Submissions from AiG; also TAFE Teachers Association NSW



Each State/Territory regulates the flow of funds and desired outcomes in their training markets using a range of policy levers to guide the implementation of contestable program funding.

Purchasing levers currently used include overall resourcing levels, pricing differentials applied to priority programs, geographic restrictions, capping of commencements, ineligibility of interstate providers to funding etc. Pricing levels, capping and related restrictions also curb the attractiveness of certain programs to particular user or provider types. Levers such as these have a legitimate place in regulating the strategic outcomes of contestability and in protecting against market dysfunction, particularly in remote, rural or regional locations.

Skills Australia proposes any extension of contestability in the National Training System must be accompanied by appropriate regulatory reform and increased safeguards. Tightening of checks and balances are also necessary to ensure consistency, rigour, best practice and simplicity in the way markets are managed and providers' performance and outcomes are monitored.

6.6.4 The role of contracts and contract auditing in assuring quality

Skills Australia sees scope for further strengthening of national regulation and quality assurance through the reinforcement of States' purchasing arrangements. We see this as the 'third tier' of strengthened regulation. We see the national regulator setting the norm for provider behaviour and States reinforcing quality requirements and controls through their procurement and contract management.

States 'regulate' provider performance through parameters such as limits to the scale of provider delivery (particularly newcomers to publicly funded delivery); providers' track records; completion rate benchmarks; history of complaints or non compliances in prior AQTF audits. A number of States have in place contract monitoring, compliance, expected performance and evidence standards over and above those deployed through AQTF registering and accrediting bodies. The potential power of contract auditing compared to AQTF audit processes is the linkage of payment to satisfactory delivery of outputs and performance standards (where these are required).

Victoria has also introduced more rigorous requirements for market entry whereby private providers must demonstrate their financial viability and have a track record of qualifications on scope. Providers need to provide an independent auditor statement and also meet additional criteria in relation to their liquidity, solvency, profitability, economic dependency and statutory compliance before they become eligible for public funding⁸⁷.

Currently an RTO receiving public funding may experience two levels of audit by the government—an AQTF audit and audit by government as purchasers of training. In some cases these are integrated. But RTOs or companies receiving funds from various state governments may be subject to varying purchasing audits regimes.

Skills Australia supports consistency and the adoption of best practice across state purchasing arrangements through their introduction of standard or core clauses and the harmonisation of currently varied purchasing frameworks across States/Territories. Consultations have also indicated that these variations cause significant burden to providers⁸⁸. States/Territories' purchasing contracts should more consistently specify the required minimum outcomes, performance standards and suitable examples of evidence of performance.

87 Department of Innovation, Industry and Regional Development (DIIRD) *Guidelines for Assessing the Business Viability of Private Registered Training Organisations* September 2008

88 Submission from Australian Council for Private Education and Training



Of course there will be unique requirements that States may purchase over and above core contract features related to their varying regional, social or economic agendas.

Strengthened purchasing arrangements should also provide for clear and swift interventions and sanctions of poor outcomes. More stringent financial criteria for provider eligibility for public funding are also a desirable mechanism for excluding vulnerable or potentially unreliable operators from the training market.

Within a national regulatory framework for training, it is important that State and Territory purchasing contracts and provider quality assurance processes work in harmony with a national regime and avoid additional complexity or layers of monitoring over and above AQTF audits and monitoring.

We see the proposed national VET regulator can play a leadership role in working with States and Territories on opportunities to streamline, integrate and harmonise contract auditing with AQTF audit processes. This could commence with a national mapping of best practice approaches to contract management with a view to their uniform adoption by all States and Territories.

6.6.5 Recommendations

It is recommended that:

- xi. Australian governments, while recognising jurisdictions' specific contract needs related to their varying regional, social or economic agendas, agree to introduce core standards for States/Territories' purchasing contracts, focusing on RTO performance requirements and evidence samples
- xii. Australian governments introduce a consistent national approach to checking the financial viability and track record of RTOs as quality providers, as a standard requirement for their eligibility for public funding
- xiii. the proposed national VET regulator work with States and Territories:
 - to develop agreed core standards for purchasing contracts
 - to advise on mechanisms for implementing harmonised AQTF audit and State/Territories' audit of purchasing contracts under a new national regulatory regime.

6.6.6 Training Packages and the development of NTS quality architecture

Skills Australia's proposed governance structure identifies responsibility for Training Package development and endorsement as one of the three main functions of the national VET regulatory body. Currently they are nationally endorsed by the National Quality Council and then agreed by the State/Territory ministers for vocational education and training. Comments to Skills Australia about the Training Package approval process, have noted the need for greater industry authority in the final endorsement process and there was concern over training package development and implementation processes being lengthy and not responsive to changing job requirements. The role of the proposed national VET regulator as the independent Training Package approving and endorsing body is seen by Skills Australia as responding to these views in creating greater system responsiveness.

6.6.7 Qualifications and inter sectoral integration

The Australian Qualifications Framework Council's review of the Australian Qualifications Framework (AQF) is underway to modernise its structure and descriptors, to develop it in consideration of international trends and labour market mobility, and also in relationship to Australian sectoral linkages.

Skills Australia notes the AQFC's Discussion Paper proposes a 'volume of learning' measure to create a 'common language' and assist both parity and clarity of qualifications' value as



well as portability. We are keen to support ease of mobility between the sectors and students' progression to higher level skills, however we emphasise it is important to sustain the industry focus of qualifications in Training Packages and significance of this primary objective.

Skills Australia also emphasises the importance of retaining the broad suite of qualifications in the VET sector to suit learners across the range of entry level and para-professional qualifications who are interested in courses designed and delivered according to industry standards and the currency of workplace contexts.

Regarding the overlap between VET and higher education at the Diploma and Advanced Diploma levels, Skills Australia recognises the need for a consistent approach, particularly to reduce complexity in the public's perception of qualifications or proliferation of 'like' qualifications. We note most enrolments in Diploma and Advanced Diploma qualifications are predominantly in the VET sector and have considerable industry involvement⁸⁹. For many individuals, Diplomas and Advanced Diplomas are an exit point for VET more than they are an entry level for university. Further investigation of these courses needs to be undertaken through the AQF review.

Consultations revealed divergent views on this matter. ACPET for instance argues for 'deregulation' to permit accreditation on merit of more innovative and differentiated VET courses especially above Certificate IV, to cater for individuals wishing to acquire advanced technical qualifications of a cross disciplinary nature. Industry stakeholders on the other hand were strongly opposed to the dilution of industry led development of qualification standards, with concern about the risk of proliferating narrowly based skills and reduced portability of qualifications if this occurred⁹⁰.

This issue is also most important in relation to considerations of applying the higher education resourcing entitlement at the Diploma level and above courses.

Any reforms to access, to funding, regulation and content of these courses should take account of arrangements that best suit the needs and aspirations of students and employers' use of these skills and learning and employment pathways of individuals studying at these levels.

6.6.8 Recent developments

Skills Australia notes the findings and recommendations of the National Quality Council (NQC) and COAG Joint Steering Committee on *VET Products for the 21st Century*⁹¹. We see the outcomes of this work reflect our interest in the next generation of Training Packages having sufficient flexibility for the emerging labour market where enterprises and individuals require innovative and productive capacity and where personal competencies feature more predominantly as a generic workplace requirement.

In particular we note proposed developments to:

- revise the definition of competency to reflect the need for individuals to transfer and apply skills and knowledge in new situations
- simplify and streamline the content of Training Packages and avoid duplication of units
- reduce the need for a proliferation of accredited courses
- ensure articulation arrangements are built into Training Packages and that collaboration will occur between the NQC and the Australian Qualifications Framework Council to introduce a national credit system to enable improved articulation between the sectors.

6.7 Reporting on system and provider performance

This aspect of the national VET regulator's role is developed more fully in the next section.

89 Over 90 per cent of the Diploma and Advanced Diploma students were in the VET sector in 2007. In the public sector, there were 166,000 students in Diplomas and Advanced Diplomas recorded in the NCVET VET statistics and less than 5,000 Diploma and Advanced Diploma students in the public universities recorded in the DEEWR Higher Education statistics

90 Submission from the Australian Council of Trade Unions

91 Joint Steering Committee of NQC/COAG (2009) *VET Training Products for the 21st Century*
http://www.nqc.tvetaustralia.com.au/work_plan/vet_training_products_for_the_21st_century

