Review of the National Vocational Education Training Regulator Act 2011

Submission by

National Australian Apprenticeship Association

1. About AASN and NAAA

The National Australian Apprenticeships Association (NAAA) is the peak agency for providers in the Australian Apprenticeships Support Network (AASN). There are 11 Network Providers that deliver "Universal" services to 100% of apprentices, trainees and their employers in Australia. Network Providers also provide "Targeted" services such as recruitment support (Gateway) and mentoring (In-Training) to a large sub section of the apprenticeship market.

There are currently 265,000 apprentices and trainees that operate under a Training Contract, overseen and administered by Network Providers.

It's worth noting from the outset that regulatory breaches by Training Providers are rare under Training Contract arrangements, largely because of the oversight that Network Providers play.

Most large-scale breaches occur in the contestable training markets that are run by the Commonwealth and State governments. These are not currently covered by Training Contract arrangements. As funding has shifted from the apprenticeship market to the contestable training market in recent years regulatory breaches have increased – such as the well documented cases in the VET- Fee Help market.

Network Providers have an intimate understanding of:

- regulation in each jurisdiction
- funding and incentive arrangements
- employers training needs
- the candidate base for apprenticeships
- the needs of apprentices and trainees
- the relative strengths of Registered Training Organisations
- The intersection of funding and regulation

As such the Network has valuable insight about how the regulatory and funding arrangements need to align if employers and their staff are to have access to world class nationally accredited training.

This paper raises a number of high level issues that the regulatory review may want to consider in more detail.

2. Regulation is costly and technologically archaic

The real annual cost of VET regulation is probably between $700m and $1b. We estimate that this is comprised of:

- $50m ASQA and Commonwealth DET staff
- $50m state regulators and STAs
- $100m Universal services of AASN providers
- $500m to $750m compliance staff in RTOs

The largest component being the staff costs for compliance related positions in RTOs. Whilst this is tricky to accurately quantify, most RTO have at least one dedicated compliance manager, with larger RTOs having many compliance related positions. There are around 5,000 RTOs so most likely between 5,000 to 7,000 compliance staff working in the sector.

$1b is a very significant proportion of overall government investment in VET. Probably between 15% to 20% of the budget overall.

If a modern multinational corporation was spending $1b on quality and compliance it would be looking for opportunities to:

- Use "big data" to manage risk
- Take a meta compliance viewpoint to drive efficiency and effectiveness
- Enhance the value chain by using real time data to provide quality information to customers

By comparison VET data collection practice is archaic. The National Centre for Vocational Education Research (NCVER) that receives the aggregated data from each jurisdiction is best placed to provide insight on how the current system works. But from a customer and support system perspective VET data collection is massaged, contested and slow.

Provider data offered to customers is procedural rather than insightful. Outcome data is not timely and so poses a risk to an outcome based regulatory regime as well as for iterative policy and program development.

For example, the data reporting system is currently unable to flag an unusual or aberrant commencement pattern by an unscrupulous RTO.

Yet all RTOs require sophisticated software to run their workflows, track students and courses, and generate claims and reports for funding agencies.

To draw an analogy, if an individual makes an enquiry through a hotel website about the availability of accommodation, they, and mostly likely their household will be served web adverts from that hotel and other booking sites within a matter of seconds.

If an RTO has only 5% completion in a particular course it may take many months for funding agencies and regulators to become aware of it and the information may never be made available to potential customers of that RTO.

The current regulatory regime places a high focus on administrative compliance with the standards but is unable to quickly respond to the few RTOs that choose to abuse the funded training system.

The recent changes to the regulatory regime that follow the customer journey are a welcome step in the right direction. But whilst most RTO data collection software has the potential to track this journey in real time the regulatory system is not designed to do so.

The regulatory system should ensure consistent minimum standards of provision for nationally recognised qualifications and be able to act swiftly and rigorously to deal with abuses of the standards that affect customers. The system currently focuses on the former but does not have the capability to act in real time on the latter.

3. Understanding the Provider base

The challenges faced by Public Providers and the large private providers such as Vocation and Careers Australia are reasonably well known. Interrupted and reduced funding can have a devastating effect on quality and financial viability.

What seems to be less well appreciated is that most of the 5,000 RTOs are small organisations that are even more vulnerable to changes in funding. This often results in the loss of key personnel which makes consistent regulatory compliance challenging.

Small RTOs in particular find the task of compliance complex and opaque with multiple opportunities for failure. When a key compliance staff member moves on these risks are amplified.

The training system collectively funds poor practice because there are too many providers able to bid into tax payer funded training. Running an RTO is not a magic pudding – any training organisation needs consistent revenues to underpin the quality of delivery and compliance with the standards. The various State and Commonwealth training markets struggle to provide this consistency, instead preferring constant tweaking and annual allocations.

One unintended consequence of this is that the primary point where RTOs innovate is by finding novel ways to minimise delivery costs. They do this to make a commercial margin in current programs to see them through uncertain funding arrangements ahead. At one end of the spectrum this is a sound risk minimisation strategy, at the other end it surfaces as sharp and unethical practice.

4. Nexus of funding and regulation

Understanding the nexus between funding and regulatory compliance should be a major focus of the review.

Funding drives provider behaviour, regulation seeks to reign it in. The two are codependent.

Given that most RTOs are small there may be a point below which organisations do not have the economies of scale, consistency of revenues or cash reserves to be able to participate in the delivery of nationally recognised qualifications.

Any provider rationalisation should not be achieved by increasing the regulatory burden as has occurred in the past, but rather through dialogue with the Departments that run the state and territory training markets.

Shrinking the "approved" provider lists in each state and territory over time to provide market stability for a smaller number of training providers will, more than any other measure, underpin regulatory compliance.

To complement this there is an opportunity to expand the notion of volume of learning and approve various delivery models which can then be funded at different levels based on market conditions and specific workplace requirements.

So, for example where a course is delivered face to face over three years to new entrant apprentices it is funded at high level, whereas the same course could be delivered through blended learning to existing workers over 12 months and could attract a lower funding arrangement.

Having the regulatory regime collaborate on a joint approach to the agreed volume of learning required for each pathway could significantly reduce market confusion and the opportunity for sharp practice (where currently a provider can be funded on the expectation of one type of delivery but opts for the cheaper delivery method).

These decisions are largely made by providers at the time of designing the Training and Assessment Strategy for each particular course. But there are only a handful of rigorous delivery pathways so we argue that in principle these could be standardised and encoded in provider learning management software.

If RTOs were getting consistent and long-term funding assurance they wouldn't need a primary focus on saving money on delivery costs. The focus could then be on the customer rather than the RTO's business model. This is important because RTOs play a significant role in responding to Skills Shortages and the system needs to retain this flexibility.

5. Regulation of Trainers

Full time teaching staff in VET are the exception not the rule. With so many small RTOs most trainers have been casualised and work for multiple RTOs. Their qualifications, experience and currency being mapped by each RTO.

This is both a significant duplication of effort and a point of non-compliance.

Other industries manage their delivery workforce in a more coordinated fashion overseen by a single accrediting industry body with annual or bi-annual refresher training and a common understanding of the tasks those staff are able to perform.

Since most Training Packages have now been developed the initial industry based VET architecture of Industry Training Accreditation Boards and Industry Skills Councils has been rationalised or dismantled. The Australian Industry and Skills Committee could be tasked with determining how best to regulate the trainers for each industry. Have the industry determine what currency means for trainers for different qualifications and have trainers "mapped" centrally rather than by multiple providers.

This centralisation of effort may at first glance be seen to be increasing the overall regulatory burden but in fact it's the opposite. We currently pay all RTOs to undertake this work – often multiple times for each trainer with inconsistent results.

6. Quality learning materials

Another area that RTOs often fall foul of the regulator is where they use learning materials purchased from a supplier that do not meet agreed standards.

Only a very few training organisations currently have the economies of scale to develop their own learning materials from scratch.

Most smaller RTOs purchase their materials and customise them to their students and workplace client's needs.

Given that this is the reality, and a common point of failure, it may make more sense for the regulatory architecture to include approval of learning resource *providers*. So that the materials they develop follow a format that will always comply with the standards. There are perhaps ten companies that provide learning materials in Australia so it would not be an onerous task.

7. Understand Providers common business model

All training providers have a number of common elements to their business model if they are to offer nationally recognised qualifications:

- Access to funding support to provide a level playing field for their industry clients
- Business process and workflows that are compliant and supported by appropriate policy and software
- Quality learning materials
- Access to Trainers
- Approved delivery models that meet client needs
- A process for customisation to workplace and learner needs

The Association would argue that the regulatory and funding arrangements for the first five common elements determines the ability of the provider to customise the training product for the workplace and their learners.

This is where the rubber hits the road for most employers using nationally recognised training. "Does the training relate to my business and the way in which I work?" is the key quality question businesses ask.

This is the point where innovation should occur and resources should be deployed to ramp up the quality experience for customers.

Involving businesses in the customisation process is an important site of their leadership of the VET system.

The current regulatory regime makes RTOs introspective and focused on compliance administrivia instead.

8. Principles

When thinking about how best to improve the regulatory environment for VET it is useful to design some guiding principles. Here are the suggestions of the Association:

- Reduce the regulatory burden overall.
- Regulate inputs for common points of failure to improve efficiency
- Drive quality through workplace engagement and assessment customisation
- Industry should fund innovative practice that meets a specific business need
- Tax payers should fund national qualifications that provide social and employment outcomes

9. Ideas for consideration

9.1 Meta compliance approach

The Association suggests taking a meta compliance approach where common inputs are regulated. The aim being to reduce the regulatory burden overall by minimizing the common points of failure and centralising functions that are currently duplicated.

There are several ways in which this could occur by having:

- Approved learning management software providers
- Approved learning resource suppliers
- Industry approved training workforce
- Agreed volume of learning requirements by delivery type

Where Training Providers are in receipt of funding support for nationally recognised training they could be required to use learning management software that provides alerts or flags to the regulator if agreed workflows are not being implemented, unusual commencement activity occurs or where course completions are abnormally low.

This could be achieved through an Application Program Interface with the data analysis centre at the regulator. Data compliance experts could then follow up rapidly with providers – potentially identifying sharp practices and nipping them in the bud.

The software providers would willingly participate in this because that would solidify their market share. Most providers would not oppose this if it was part of a recalibrated regulatory regime that reduced the burden overall.

Similarly, the regulator could formally approve certain learning resource suppliers. This occurs informally at the moment. Certain providers are favoured by the audit staff because they are known to be of higher quality. But this can change without providers being aware of it. So, formalising this system provides certainty and transparency for the RTOs and a commercial advantage for the learning resource providers that strive to meet the current standards.

If each industry sector were to maintain a register of trainers that have been mapped to deliver certain qualifications and units of competency this would massively reduce system duplication. The advantage for casual trainers is clear, they would be available for employment by any provider with the qualification on scope – potentially improving the regularity of their work. Whilst permanently employed trainers may be restricted from working for multiple RTOs. Either way it would increase trainer's buy in to the regulatory regime.

This would significantly simplify trainer recruitment and retention by RTOs and make it clear where workforce shortages exist.

Working with state and territory colleagues to agree funding models for each delivery mode at each qualification level would provide consistency and transparency to an area which is currently open to abuse. The agreed delivery modes, volume of learning requirements and funding arrangements could be encoded in the software so the Training and Assessment Strategy undertaken by RTOs could be simplified.

This would allow resources to be dedicated to the customisation of the training program (within an agreed delivery mode) to maximise the involvement of the business in the tailoring of the program to their workplace.

9.2 Tiered provider types

The VET system is not funded at a level where it can support 5,000 RTOs to deliver nationally recognised qualifications that are subsidised by the tax payer. At the same time the system needs to allow for innovation and new entrants to ensure training is responsive to workplace and student needs.

The Association envisages a two-tiered approach to regulation.

Tier 1 Funded RTOs. That benefit from reduced regulation overall so agree to participate in the meta compliance approach. The number of funded RTOs would be determined in each jurisdiction to meet the training needs of that economy. It would more closely resemble the approved provider lists for the contestable training market in each jurisdiction now.

Tier 2 RTOs providing fee for service. Would meet the standards but would not be required to share data in real time with the regulator and would have the flexibility to innovate on delivery modes as long as these met the needs of the workplace that funded them.

This would allow industry another point of leadership in the VET system. Where new approaches became favoured by industry they could advocate for their adoption in the funded training market. Obviously minimum volume of learning requirements would still apply.

A subset of Tier 2 would be training organisations that did not want to offer nationally recognised qualifications but instead focused on designing non-accredited or bespoke professional development programs for industry. Training Providers may still want to meet the national standards to prove their baseline quality systems, but there would be very light touch regulation of this group of providers.

9.3 Training Contracts in the contestable market

Finally, consideration should be given to extending formal Training Contract arrangements into the contestable training market. This would have the effect of having AASN providers verify the bona fides of the training arrangement and being a first point of contact to support students to ensure they get a quality training experience.

This quality assurance mechanism has worked well in the Australian Apprenticeships market since 1998 and has largely prevented the periodic outbreaks of rorting that have occurred in other training programs for time to time.

Obviously the AASN contract arrangements would need to be renegotiated to achieve this additional role, but it is similar in nature to what used to occur with the Commonwealth funded Existing Worker Traineeship program that was wound back in 2012.

10. Conclusions

The review of the National Vocational Training Regulator Act is timely in light of recent abuse of the VET Fee – Help system.

The review needs firstly to grapple with how RTOs run their businesses in light of their size and the funding and compliance challenges they face. It needs to come to terms with the multiplicity of providers that exist for a relatively small funded training market.

The review also needs to understand what is possible in terms of technological oversight, which has developed significantly since the current Act was passed just 6 years ago.

The key to reducing the regulatory burden overall whilst simultaneously improving compliance with the standards is to recognise the true cost of regulation, where it occurs, and how regulating key inputs can drive efficiency and effectiveness.

Finally, the review needs to understand the nexus between the funding arrangements that drive provider behaviour and the regulatory system that seeks to reign it in. Reducing the burden overall cannot occur unless a more rational approach is found to restricting the number of training providers in a way that is coupled with a tiered regulatory approach.

The ideas for consideration put forward in this paper focus on:

- A meta compliance approach
- Tiered provider registration
- Training Contracts for the contestable training market

The Association is willing to participate in the further exploration and development of these ideas.