

What to do if you have a complaint against ASQA?

Under the *Standards for VET Regulators 2015* (“the Standards”) ASQA must have a policy to manage and respond to complaints about its regulatory practices. This is called the *Policy for managing complaints about ASQA* (“the Policy”).

Who can make a complaint?

Anyone can make a complaint about ASQA and it can be done anonymously. If you make a complaint anonymously ASQA may not proceed to investigate unless there is sufficient information provided. ASQA **must** properly consider your complaint under the Policy.

What can you complain about?

- The handling of your application for registration by ASQA;
- Information or the lack of information provided to you by ASQA; and
- The actions of ASQA employees – this includes its auditors and other staff members.

When doesn't the Policy apply?

The Policy does not apply to complaints about regulatory decisions such as deregistration of your RTO. It also does not apply to complaints relating to the activities of RTOs themselves or complaints about fees and charges of ASQA.

What is the process?

To make a complaint about ASQA, you need to fill out the ‘Make a complaint about ASQA’ form found here: <https://www.asqa.gov.au/complaints/complaints-about-asqa>.

You can send the complaint to feedback@asqa.gov.au (formal method), directly to ASQA’s postal address or in another appropriate way. Once submitted, your complaint will be acknowledged by receipt within 5 days **unless** the complaint is submitted through a non-formal method.

If ASQA considers that it will take more than 90 days to finalise your complaint, they will advise you with their reasons. Once ASQA completes the investigation, you will be notified what the outcome has been.

Procedural Fairness

Throughout the investigation of your complaint ASQA needs to follow the requirements of procedural fairness and natural justice.

ASQA must provide both you and the person/s subject to your complaint the right to be **heard**. This means that if you complain about an individual directly that unless extenuating circumstances apply, they will be provided with a copy of your complaint. ASQA must also ensure there is no **bias** in relation to the investigation or finalisation of your complaint.

Document disclosure

Throughout the investigation of your complaint, ASQA must be transparent in how and which documents they provide to you. If you are concerned that ASQA is not giving you all the information you have asked for, then you may consider submitting a Freedom of Information (FOI) request. For more information on how to lodge a FOI application please see: <https://www.oaic.gov.au/freedom-of-information/foi-resources/foi-fact-sheets/foi-fact-sheet-6-how-to-apply>.

What remedies can you expect from a complaint to ASQA?

Once you make a complaint, ASQA's Governance, Policy and Quality team will investigate the complaint and they will prepare a report. This report includes recommendations and a written response to you.

If the complaint requires further action, then this will be included in the recommendations. The written response that you receive from ASQA will detail the outcome of the investigation and any actions that will affect you.

Still dissatisfied?

If you are still dissatisfied after your complaint has been finalised by ASQA, you may seek a review of the complaint by the Commonwealth Ombudsman. This can be found here: <http://www.ombudsman.gov.au>. You **must** file a complaint with ASQA first, otherwise, the Ombudsman is unable to review the complaint.

Who is the Ombudsman?

The Ombudsman is an impartial office that investigates decisions made by government officials and agencies. ASQA is a government agency and therefore you can complain to the Ombudsman about ASQA.

Once a complaint is submitted to the Ombudsman, the Ombudsman must inform the principal officer of the department or authority of the complaint. The investigation by the Ombudsman is conducted in private. The Ombudsman also has discretion as to the way the investigation is undertaken; natural justice does **not** need to be provided to ASQA.

What remedies can you expect from the Ombudsman?

The Ombudsman's guiding principle is to "put a person in the position he or she would have been if no administrative problem had occurred". Normally this occurs through a recommendation by the Ombudsman that the agency apologises. This must be a formal apology admitting fault and must include how in future this will not occur again.

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Other available remedies to you include compensation under the *Financial Management and Accountability Act 1997* (Cth) and/or an explanation of ASQA's decision. Each year, the Commonwealth Ombudsman also publishes an annual report detailing what complaints the Office has dealt with.¹ If ASQA's conduct was such to warrant being published by the Ombudsman, then this is also a deterrent to ASQA being investigated by the Ombudsman.

For advice on your rights and assistance, speak with your lawyer.

Zmarak Zhouand, Principal Solicitor
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Disclaimer: This article has been based on Australian law and practices current as at the date of publication. Information contained in this article constitutes legal information and should not be viewed as legal advice. You should consult with a lawyer before you rely on this information.

¹ For more information on remedies generally please see <https://www.ombudsman.gov.au/data/assets/pdf/0028/35596/Providing-remedies.pdf>



rto.legal – legal and compliance services, *only* for RTOs

rto.legal is a commercial law and compliance firm operating out of Brisbane, Queensland, and focuses on exclusively supporting the legal and compliance needs of Registered Training Organisations (RTOs) and those seeking to become RTOs throughout Australia.

The firm provides support to RTOs through the delivery of high-quality and cost-effective legal and compliance services based on a deep understanding of the RTO business, and a flexible and highly competitive fee structure.

Why rto.legal

Because we've been there, and we understand.

We understand: (a) what you went through to establish your RTO; (b) how much time, money and hard work you invested to make it a success; and (c) in the current environment, what you need to do to keep your investment safe.

The investment required start and operate an RTO is significant.

This risk of potentially losing everything because of regulatory non-compliance is ever present.

ASQA is growing increasingly intolerant of non-compliant operators and is more inclined to impose sanctions including cancelling existing registrations or rejecting initial applications for registration.

Many people, despite having strong cases, cannot afford to pay the legal fees needed to challenge ASQA decisions.

Consequently, they accept decisions that they may feel were baseless or unfair.

There is no doubt that adherence to the VET Quality Framework is a must for all RTOs and those seeking to become RTOs.

However, no-one should have to accept a baseless or unfair decision because of the potentially high legal fees associated with challenging such a decision.

We are here to help by supporting you with high-quality legal and compliance services and a flexible and highly competitive fee structure.

Services and capabilities

We offer a full commercial law and compliance services including in relation to the following.

- Contesting ASQA decisions – internally with ASQA, through the Administrative Appeals Tribunal or the courts.
- Applying for initial registration, meeting the requirements of ongoing registration, making changes to a registration and renewing or withdrawing registration.
- Continuing compliance with the VET Quality Framework.
- Representation on ASQA audits.
- Training partnerships, sub-contracting and training delivery.

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- Business disposals and acquisitions.

Our Principal

The firm is led by its principal, Zmarak Zhouand.

- Zmarak is a lawyer qualified in Australia and New York with almost 20 years experience.
- He focuses exclusively on the vocational education and training (VET) sector.
- Zmarak has worked in-house and in private practice in Australia and abroad – with leading law firms and major businesses.
- He has owned and been the CEO of CRICOS and domestic RTOs.
- Zmarak understands RTOs and the complex legal and compliance environment in which they operate.
- He is technically strong, commercial and provides high-quality, practical and cost-effective services.
- Zmarak’s services are based on a deep understanding of his clients’ requirements in the context of their business objectives.
- He works with his clients to build strong relationships and is generally available 24/7.

Admissions/Memberships	Qualifications (University/HE)	Qualifications (VET)
Legal Practitioner, New South Wales, Australia, 2011	(Post-Grad) Bachelor of Laws, University of New England, 2000	Diploma of Training Design & Development
Member New York Bar Association, 2014	Bachelor of Arts, Southern Cross University, 1998	Diploma of Quality Audit
Member, Queensland Law Society, 2019	Graduate Diploma in Legal Practice, College of Law, 2001	Graduate Diploma in Strategic Leadership
Fellow, Chartered Institute of Arbitrators, 2017	Diploma in International Commercial Arbitration, Chartered Institute of Arbitrators, 2016	Graduate Diploma of Portfolio Management
		Advanced Diploma of Leadership & Management
		Diploma of Leadership & Management

Fees

- Our fees are very competitive and we are generally flexible regarding fee arrangements.
- We understand that clients may have different levels of ability to pay costs.
- We provide full costs disclosure on every matter, both initially and on an ongoing disclosure basis.
- We are open to both fixed-fee and time-based costing (with or without a fee cap).
- In dispute matters involving ASQA, we are also happy to look at contingency fee arrangements – where you only pay if we succeed in your case against ASQA – subject to conditions. We will consider contingency fee arrangements on a case by case basis.
- Overall, we believe that fees for my services should be fair and reasonable, having regard to all the circumstances of the instructions. The circumstances which may affect the level of fees include the following.
 - Time spent on the matter
 - Monetary amount involved
 - Specialist legal knowledge required

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- Number and length of documents
- Place and time of day at which the work was carried out
- Importance and urgency of the matter to you
- Complexity of the matter.
- Time spent on a matter will be one, but not the only factor considered in assessing the level of fees to be charged.

We will always be willing to discuss the basis for charging a matter at the outset.

Our values

- It is an honour to serve our clients in their moments of need.
- We serve our clients with a dedication to excellence, responsiveness, and caring and always with a sense of humble appreciation for the trust placed upon us.
- Our lifeblood has always been and always will be the recommendations of clients.
- Our success depends the satisfaction of our clients.
- The best marketing we can do is good work.
- We aim to exceed expectations.
- We focus on results, not activities.
- We view every client's problem as if it were our own.
- We believe that every client should receive not only a high level of legal representation but also a feeling of service and caring.
- No result is positive and no victory is absolute if a client has felt that their needs were not understood and addressed or that they did not receive our very best.

Contact

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