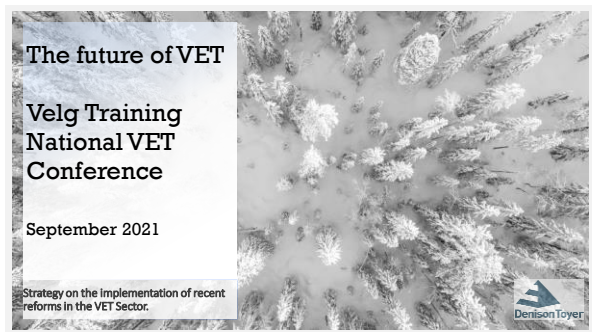
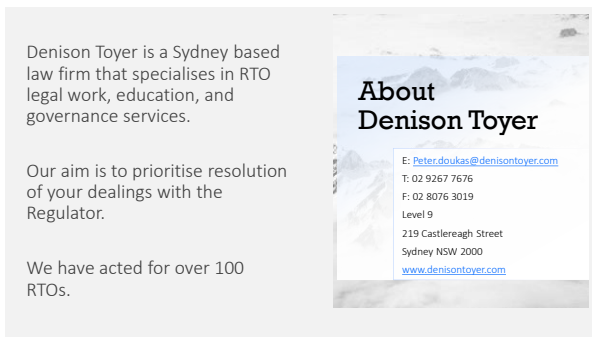








[illegible]

Changes to NVR Act

(with effect from 1 July 2020)

- demonstrating a commitment and capability to delivering quality VET
- informing ASQA if an event is likely to occur that would significantly affect the RTO's ability to comply with the VET Quality Framework
- ensuring third party arrangements with non-RTOs are undertaken with a written agreement in place
- providing information or VET student records to ASQA when an RTO closes, or on ASQA's request, in a particular electronic or other specific format
- applying for internal review (reconsideration) where available, before seeking an external review (AAT).

[illegible][illegible]

Delegate Decisions

Delegate Decisions now cannot be appealed to the AAT until after reconsideration

Reversible decision
The decision to cancel registration is a reversible decision under section 108 of the TAFHE Act.

This decision now made by a delegate on reconsideration of the decision by ASQA is available. You must apply for and await the outcome of the reconsideration process before seeking review by the Administrative Appeals Tribunal.

If you are not satisfied with this decision
Request to ASQA for reconsideration of decision
If you are not satisfied with the decision you can lodge a request for reconsideration with ASQA in writing by completing an Application for ASQA to review a decision form. You may be required to pay an application fee. Your application must provide the reasons why you think our decision is wrong and should include any supporting documentation. To access the application form and for further information about reversible decisions, please see the ASQA website www.asqa.gov.au.

You must lodge your request for reconsideration **within 90 days of receiving this notice**. If you do not submit your Application for ASQA to review a decision form within the required timeframe, you must apply to ASQA for an extension of time providing the reasons why you did not lodge in time.

ASQA will inform you of the result of its reconsideration of the decision within 90 days of receiving your application. If, upon the reconsideration, ASQA either affirms or varies its decision, you may seek a further review by the Administrative Appeals Tribunal (the AAT).

Publication of decisions
ASQA will publish information about adverse regulatory decisions on its website (www.asqa.gov.au). The decision will be published in line with ASQA's policy of publishing decisions on the ASQA website.

Stage 1: The 'New Deal'

The Steps to deal with a Delegate Decision

- Receive Delegate Decision
- Immediately instruct Consultants / Lawyers
- Obtain confirmation that a Stay (an extension to the effective date) will be granted
- Submit Internal Reconsideration Application
- Up to 90 days to obtain decision

Remember: If an internal stay is not granted – the decision will come into effect. Then the only recourse is the Federal Court!

Stage 2 AAT Appeals

After an internal review of a Delegate Decision, or after a decision made by the Commissioner, normally the only viable recourse for an RTO is to

Apply for Review in the AAT
In many instances an RTO must obtain a Stay of the Decision before the decision comes into effect!

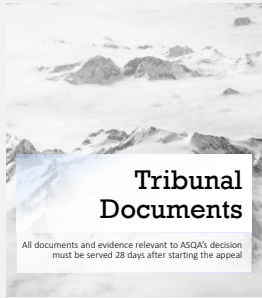
- 3. The Tribunal has identified numerous factors which are often pertinent to deciding whether to grant a stay under s 43(2):
 - (a) prospects of success (that is, that the application does not appear to be hopeless);
 - (b) the consequences for the applicant of the refusal of a stay;
 - (c) the public interest;
 - (d) the consequences for the respondent in carrying out its functions depending on whether the stay is granted;
 - (e) whether the application for review would be rendered nugatory if no stay is granted;
 - (f) any other matter, including the length of time the decision has been in place, the gap between the stay application and the hearing of the substantive application.

Final Test



Timeline of the Asylum Process:

- Delegate Decision
- Apply for Internal Stay
- Internal Reconsideration
- Decision
- Stay
- T-Buys
- Applicant Evidence
- ASQA Further Evidence
- Conciliation
- Hearing



Tribunal Documents

All documents and evidence relevant to ASQA's decision must be served 28 days after starting the appeal

s. 37 AAT Act states that the Decision-maker (ASQA) must lodge material documents

(1) Subject to this section, a person who has made a decision that is the subject of an application for review ... by the Tribunal must, within 28 days after receiving notice of the application (or within such further period as the Tribunal allows), lodge with the Tribunal a copy of:

(a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and

(b) subject to any directions given under section 18B, every other document that is in the person's possession or under the person's control and is relevant to the review of the decision by the Tribunal.



Primary Evidence for an Applicant

Remediation

- Fixes to dynamic elements, often needing much more work:
 - Reassessment of students
 - Completing CPD for staff
 - Re-training of students

Rectification

- Fixes to static elements of evidence, such as:
 - TAS
 - Assessment Tools
 - Contracts
 - Leases



Essential Evidence for an Applicant

Expert Reports

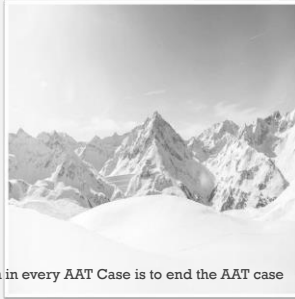
Witness Statements / Affidavits

Rectifications / Remediation

Conciliation

Agreement under s. 42 (1) a, b or c of the AAT Act – parties are able to resolve a set of Orders and Conditions to resolve proceedings

- Orders could include:
 - To set aside ASQA's decision
 - To agree to withdraw all or part of an application
 - Could involve a Hybrid orders
- Issues Papers will likely need to be prepared to include:
 - The matters in issue
 - Any areas of agreement



The aim in every AAT Case is to end the AAT case



The general principle in AAT ASQA De Novo Proceedings is to :

1. Prove compliance at final hearing
2. Establish a clear reason justifying the non-compliances that were found in the audit report
3. Satisfy the Tribunal that the cause of any alleged non-compliances will not recur

The priority for any RTO that runs all the way to hearing is to set aside ASQA's decision.

The Hearing



Recommendations for the 'New Deal'

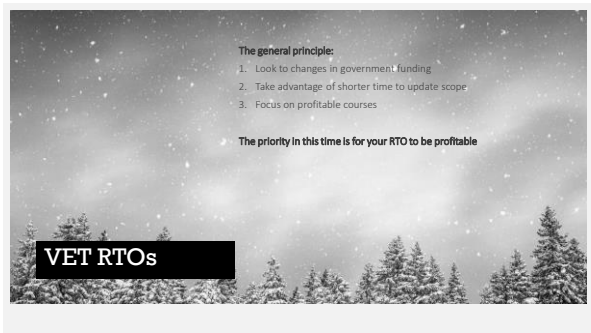
- Establish a clear Board of Directors / Management that meets monthly and minutes all decisions
- Always be ready for a protracted audit process. Keep funds set aside to be able to engage professionals to help you
- Engage or retain a lawyer on a full time basis to sit on this board
- Engage or retain a compliance professional to also sit on and advise this board
- Update your audit policies and have all staff trained in audit emergency situations
- Invest in compliance checks periodically

The RTO Business in 2021 – 22

CRICOS

- RTOs must incorporate Hotel Quarantine and a cap on student entries into Australia
- Local students will likely have more pressure to work stemming from Government policy than ever before
- Australia has an edge over the rest of the world however, and CRICOS RTOs should prepare for a higher cost of tuition for 2022





The general principle:

1. Look to changes in government funding
2. Take advantage of shorter time to update scope
3. Focus on profitable courses

The priority in this time is for your RTO to be profitable

VET RTOs

The Future of Compliance



Less AAT Cases

- Likely that there will be less cases in the AAT

More Internal Reviews

- Likely that most of ASQA's negative audit results will be determined internally. Ensure you engage a compliance and legal adviser in audits

Disclaimer:

This presentation and any associated speeches or materials do not constitute legal advice nor does it represent the views of the writer. We strongly recommend independent legal advice is obtained before taking any action.

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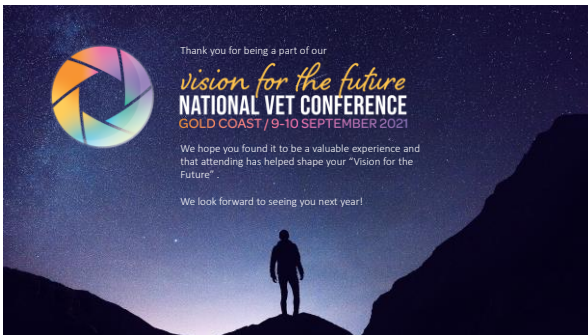
Thank You

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Thank you for being a part of our

vision for the future

NATIONAL VET CONFERENCE

GOLD COAST / 9-10 SEPTEMBER 2021

We hope you found it to be a valuable experience and that attending has helped shape your "Vision for the Future".

We look forward to seeing you next year!
