



Reviewing an ASQA Decision

There are **three options** available for review of an ASQA decision:

1. Internal review (may not be available in all circumstances);
2. Merits review - Administrative Appeals Tribunal (AAT); and
3. Judicial review - Federal Court.

Preparing to go to the AAT

This article briefly discusses the merits review and provides a few tips for consideration. The merits review undertaken by the AAT involves the capacity of the AAT to ‘step into the shoes’ of the regulator. This means that if the regulators decision is found to be incorrect, the AAT may then remake the administrative decision based on the merits of the individual case.

Tip 1. Immediately Begin the Rectification Process

Once the RTO has received the regulators initial audit report (identifying alleged non-compliances) the RTO should immediately begin the rectification process. In this way, by the time the parties reach the AAT hearing the rectification process should have been corrected. It is important to note that the AATs decision is based on the RTOs level of compliance at the date of the *final hearing*.

Tip 2. Helping the AAT make a positive decision

The RTO should *only* retain highly qualified VET professionals to audit the rectifications (**Note:** there are literally 100s of ‘so called education consultants’ in the VET sector – and many are not adequately qualified and do not have the skills and knowledge necessary to support RTOs at this level).

The professional VET consultant’s role will be to audit the RTO rectifications and advise the RTO of any remaining non-compliances, and if necessary provide assistance to the RTO with regard corrective actions. In addition, the consultant will compile the analysis of evidence within a comprehensive audit report. The report will be supplied to the RTO, then forwarded to the RTOs lawyers, and associated parties.

Tip 3. Careful

Some RTOs may decide that they will use their own staff to complete the rectification review. This may not be a wise decision, due to the fact that the internal staff may not be proficient in completing this form of evidence analysis. There are many other reasons why the rectification review should be completed by an independent professional.

Tip 4. Expert Witness

Depending on the severity of the non-compliances, the RTOs lawyers may advise the RTO to retain a person to give expert or opinion evidence.

The person selected must have specialised knowledge which is based on the persons training, study and experience where the expert opinion is relevant to the relevant matter. We recommend that the person is a highly qualified VET professional.

The person must not have an actual or perceived conflict of interest, for example, if the person had been engaged by the RTO to complete the rectification audit report (outlined in Tip 2) then they may not be able to complete the expert analysis.





The overriding duty of the expert witness is to provide impartial assistance to the Tribunal (AAT). Lawyers will brief the expert to ensure the experts opinion is expressed in a way that it is admissible and useful to deciding the issues in dispute. The experts reasoning as to whether she or he agrees or disagrees with the ASQA report must be based on objective evidence and clearly expressed within their report.

Tip 5. There are many more steps than outlined above.

Contact your lawyer for legal advice.

If you require the services of a professional consultant in preparation for a merits review in the AAT or a judicial review in the Federal Court, contact Raymond Earl at Skynet Corporation. We are proficient in supporting RTOs with Audit Rectifications or as an Expert Witness.

Please Note: This article provided a few tips that the RTO may consider in order to help it prepare for a review. The information in this article is for general informational purposes only, it is generalist in its approach. The information presented in this article is not legal advice or a legal opinion, and it is not intended to be tailored to the specific circumstances of any particular case and should not be relied upon as such. Persons should seek professional legal advice before acting upon any of the information in this article.

Raymond Earl DipQA, DipVET, LL.B (Hons), GDLP, MEI, M.Ed
Principal Consultant
Skynet Corporation Pty Ltd

E: ray@skyneteducation.com.au

M: 0409 855 986

W: www.skyneteducation.com.au

L: <http://www.linkedin.com/in/skynetbusinessconsultants>

5 September 2016

