



Food
Authority

Summary of RTO compliance report

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About this document

This document reports high level findings from the first round of compliance checks for Registered Training Organisations (RTO) against the Authority's three key monitoring indicators used to manage aspects of RTO noncompliance with the FSS program. The audits as well as the analysis of complaint data received from the beginning of the FSS program took place from October 2012 and concluded in March 2013.

Introduction

The primary objective of the NSW Food Authority (the Authority) is to reduce foodborne illness in NSW. The Food Safety Supervisor (FSS) program contributes to this objective by improving the skills and knowledge of food handlers within the hospitality and retail food service sector. Under this program certain retail food businesses are required by law to appoint a trained and qualified food safety supervisor.

To provide food businesses with high quality and consistent training, RTOs are approved by the Authority, in addition to meeting national training provider requirements regulated by the Australian Skills Quality Authority (ASQA)¹. The Authority's approval criteria builds upon the foundations set by the ASQA.

RTOs and their trainers must demonstrate they meet the Authority's criteria to be considered for approval. Once approved, it is mandatory that RTOs comply with the conditions of approval established under the program.

The RTO Management System (the RTO system) model is based on the assumption of a skilled and compliant RTO base. To maintain quality service delivery to food businesses receiving FSS training, the Authority acts in accordance with the RTO compliance policy, performs monitoring and verification activities and follows administrative procedures correctly.

This report demonstrates the importance of monitoring one of the risks identified under the FSS program, which is RTO noncompliance. This risk is managed under the RTO system and is significant, given that a compliant RTO base is a fundamental assumption of the program.

What we monitor and why

One of the objectives identified under the RTO system is to monitor, measure and report on RTO compliance. The monitoring program achieves this objective by collecting and assessing data through three key monitoring indicators:

1. Audits of compliance against conditions of approval (onsite and website)
2. Complaints related to RTOs
3. Information provided by ASQA

¹ ASQA is the national regulator for Vocational Education and Training. They register RTOs and enforce the national standards.

Data supporting three key monitoring indicators

1.1 Audits of compliance against conditions of approval (onsite and website)

Onsite audits

RTOs selected for onsite audit were chosen as result of purpose risk sampling as well as complaint risk analysis. Purpose risk sampling looked at two factors; the number of certificates issued by an RTO and the amount of approved trainers per RTO.

Onsite audits commenced on 14 November 2012 and concluded on 20 March 2013. An annual sample size of 10% was determined to be an appropriate total for audits. In addition, verification on RTOs with previous complaint history (high risk only) was also to the sample. This equated to a total of eighteen RTOs out of the 144 approved RTOs.

Nine RTOs were located in the Sydney metro region, five RTOs were located in regional areas and four RTOs were interstate. Audits of interstate RTOs took place via a questionnaire which was emailed to the authorised contact and had 1.5 hours to complete it.

On average, onsite audits took 1.5 hours to complete and training and assessment materials took 2–3 days to audit per RTO.

Findings

All eighteen RTOs audited had a form compliance action taken against them as a result of a breach of condition of approval. Primarily, inaccurate advertising and technical errors in training/assessment materials² were the most common breaches. Nine of these RTOs had minor training material inaccuracies which were addressed through mediation and conciliation. The other nine RTOs were served a *Notice of intention to suspend RTO approval*, as their materials contained both technical and legislative errors.

Examples of technical inaccuracies in training materials include but are not limited to:

"The temperature for frozen foods should be no lower than minus 15°C"

"Best by date"

"Store food at 4°C or below (cooked and raw)"

"Federal, state and local government laws state that all food businesses must have and follow a food safety program/plan"

"Gloves must be worn at all times when handling all types of food"

"Use thru dates"

In some cases national (Australia New Zealand Food Standards Code) and state based (NSW) food safety legislative references were not present or incorrect.

RTOs were provided with detailed comments in the materials. In all cases RTOs rectified the errors and therefore compliance action was not further escalated.

Table 1 (see Appendix 1) highlights two other prevalent breaches identified during audits, these are conditions of approval h) and j).

Ten of the eighteen RTOs audited failed to meet the requirement to issue the FSS certificate within five working days of assessing the student as competent. In most circumstances this was as a result of a breakdown in procedure. Noncompliance of condition of approval h) was addressed through mediation and conciliation.

² Condition of approval o).

Nine of the eighteen RTOs audited failed to adequately notify enrolling students that their personal information would be provided to the Authority. Whilst this breach of condition of approval is rated as high and should have resulted in a service of a *Notice of intention to suspend RTO approval*, auditors were able to mediate on this issue. This is because in the majority of cases a general disclosure was present however it did not explicitly state that personal information will be provided to the Authority.

Website checks

Website checks were conducted to identify noncompliance with condition of approval o), in particular advertising material accuracy for the promotion of NSW FSS certificate.

Website checks commenced on 3 October 2012 and concluded on 26 November 2012, the check involved the assessment of information presented on RTOs websites. An annual sample size of 15% of 144 RTOs was determined to be an appropriate. This resulted in twenty RTOs being subject to the website checks.

Findings

Of the twenty website checks conducted eight RTOs had compliance action taken against them. In seven of these cases mediation and conciliation was taken due to a common error. For example, RTOs were stating "all" food businesses as opposed to "certain" food businesses are required to appoint a FSS.

For these RTOs it appeared there was no deliberate attempt to mislead students, most of the RTOs offer the FSS training units to interstate students and had catered advertising information on their website to jointly suit interstate as well as NSW requirements.

Where mediation and conciliation took place RTOs promptly rectified the website information to ensure compliance with NSW FSS requirements. In one circumstance a NOIS was served, this issue was deemed to be more severe in its nature and hence resulted in a higher form of compliance action.

For the remaining ten RTO website checks, it was found that nine of those made no reference to the NSW FSS requirements/certificate and one RTO website was undergoing maintenance at the time of the check.

1.2 Complaints related to RTOs

Being the inaugural report, it provides an opportunity to present the complaints data since the commencement of the program, 1 October 2010 to 25 March 2013. A total of 14 complaints have been investigated, the Authority has actioned all complaints within the required timeframe (10 business days). Complaints are mainly referred to the Authority by Environmental Health Officers, training participants or RTOs.

In 60% of cases, the complaint allegations directly relate to a breach of an RTO approval condition. Complaints of a more general nature relate to trainer performance and training quality (30%). The issues identified in these cases are also referred to ASQA (via the MOU) as they fall within its scope.

As a result of complaint investigations seven mediation and conciliation events have taken place— two *Notice of intention to suspend*, three *Notice of suspension* and two *Notice of cancellations* have been served.

1.3 Information provided by ASQA

The Authority's approval criteria build on the foundations established by ASQA. Part of the Authority's approval criteria for RTOs is that they must be registered by ASQA, and offer the relevant units on scope to deliver FSS training.

The Authority relies on two sources of information to ensure RTOs are complying with their registration with ASQA. The first is a review of ASQA's compliance decisions made publically available on the training.gov.au website. During the RTO Audit period (1 October 2012 to 20 March 2013), the Authority reviewed this website against all RTOs approved under the FSS program, to identify any issues with their ASQA registration.

All but one of the Authority's approved RTOs was compliant with ASQA's requirements, in the case of the noncompliant RTO the issue of 'non current status' was indicated. After consulting with ASQA, this meant that the RTO was no longer registered and therefore did not offer the relevant units on scope. The Authority took escalated compliance action and cancelled the RTOs approval as the RTO no longer met the Authority's approval criteria. Further, this RTO had also breached approval condition (n) Pay any amount due to the Authority under the Act by the specified time.

The second source of information the Authority relies on is the MOU with ASQA. The primary objective of the MOU is to provide a mechanism for information sharing between the two parties. The information provided by ASQA relates largely to the interpretation of legal requirements of the NVR Standards. This information may assist the decision maker when considering cases of noncompliance under the Authority's RTO system. The information provided by the Authority informs ASQA's risk management and regulation of the VET sector.

Summary of monitoring results

Overall, monitoring has proved to be successful in identifying events of noncompliance by RTOs. Table 2 summarises all the compliance events taken as a result of audit results, complaints received since the commencement of the FSS program and information provided by ASQA. Out of 144 RTOs approved since the commencement of the FSS program, a total of 69 compliance events have occurred.

Compliance events presented in Table 2 have all been finalised and closed. In cases where a *Notice of suspension* or a *Notice of cancellation* was served, the Authority first issued a *Notice of intention to suspend/cancel*. Because these notices are an escalation to a higher form of compliance action, they are counted in the total figure for either *Notice of suspension/cancellation*.

Mediation and conciliation accounted for 74% of compliance events. This figure highlights the Authority's escalated enforcement approach when dealing with minor and medium risk issues.

Serious cases of noncompliance that resulted in regulatory action being taken accounted for 26% of compliance events (18 notices). A further 27% (5 notices) of these compliance events resulted in an actual suspension or cancellation.

Table 1 (Appendix 1) identifies the top three reasons for compliance action. These are represented by the number of notices served for a particular breach of condition of approval. These reasons are:

- Training and advertising materials inaccurately represented the requirements of the *Food Act 2003* and Food Regulation 2010.
- Food Safety Supervisor certificates were not being issued within five working days of assessing students as competent for the prescribed FSS units.
- RTOs were not adequately notifying enrolling students that personal information would be provided to the Authority.

Moving into the future of the program consideration will need to be given to reducing the incidences of these breaches.

Conclusion

The Authority has been able to identify key areas of improvement for RTOs via the first round audits. Despite the identification of noncompliance RTOs were cooperative and moved to rectify issues in a timely and effective manner. Open communication assisted RTOs progress to a compliant status. Mediation and conciliation has been a successful compliance action tool for addressing low and medium breaches. The Authority will commence its 2013–14 compliance checks in the coming months.

Appendices

Table 1. Reasons for compliance action and type(s) of compliance action taken

Conditions of FSS program approval	Type of compliance action				
	M/C	NOIS	NOS	NOIC	NOC
Conduct Food Safety Supervisor training for the purposes of issuing Food Safety Supervisor certificates only with trainers agreed to by the Authority in writing					1
Notify the Authority in writing of any change of details	3	1			
Not use recognition of prior learning (RPL) for the purposes of issuing a Food Safety Supervisor certificate	1				
Not issue a Food Safety Supervisor certificate for circumstances under which the Authority will issue a Food Safety Supervisor certificate (as published on the Authority's website)					
Use the Authority's SmartForm system to issue Food Safety Supervisor certificates to competent students		1			
Comply with the Authority's procedures with regard to the security of certificate print images					
Issue the Food Safety Supervisor certificate within 5 working days of assessing the student as competent for the prescribed Food Safety Supervisor units	11	1			
Not subcontract any training conducted for the purposes of issuing an Food Safety Supervisor certificate to any non-approved RTO, or to a trainer that has not been accepted for your RTO by the Authority			1		
In compliance with privacy laws, notify enrolling students that personal information will be provided to the Authority	9				
Limit class sizes to fifteen students where face to face delivery of training for the purposes of issuing a Food Safety Supervisor certificate is conducted	2				
Store blank Food Safety Supervisor certificate stationery in a secure location					
Keep a record where a replacement Food Safety Supervisor certificate is issued (eg if original has been lost or damaged)	5	1			
Pay any amount due to the Authority under the Act by the specified time				1	1
Not produce training or advertising material that inaccurately represents the requirements of the <i>Food Act 2003</i> and Food Regulation 2010	17	11			
Other (RTO approval criteria, training quality and performance, 'certificate of competency' being issued, impersonating a EHO)	3		1		1
Total	51	15	2	1	3

Note: The figures presented in column 'NOIS' for Table 1 differ from Table 2. This is due to some NOIS containing multiple conditions of approval breaches and therefore multiple 'reasons' for compliance action.

Table 2. Compliance action taken as a result of monitoring

Types of compliance action	Number of compliance events	Percentage of total compliance events
<i>Mediation and conciliation (M/C)</i>	51	74%
<i>Notice of intention to suspend approval (NOIS)*</i>	12	18%
<i>Notice of suspension of approval (NOS)</i>	2	3%
<i>Notice of intention to cancel approval (NOIC)</i>	1	1%
<i>Notice of cancellation of approval (NOC)</i>	3	4%
<i>Notice of intention to vary or impose conditions of an approval (VC)</i>	0	0%
Total	69	

NSW Food Authority
6 Avenue of the Americas
Newington NSW 2127
PO Box 6682 Silverwater NSW 1811
Phone 1300 552 406
Fax 02 9647 0026
www.foodauthority.nsw.gov.au