

Complaints Management Policy



Purpose

The Complaints Management Policy guides the Victorian Registration and Qualifications Authority’s (VRQA) response to, and management of, the complaints it receives in relation to organisations registered by the VRQA and home schooling.

Definitions and acronyms used in this policy are at **Appendix 1**.

Legislation that provides the basis for, and informs this policy, is at **Appendix 2**.

Policy statement

The VRQA believes an effective complaints management policy and associated procedures are integral to its overall regulatory function. As highlighted in the *VRQA Regulatory Approach Statement 2022*, the VRQA seeks to eliminate or minimise harm and the risk of harm, to children, students, apprentices and trainees receiving education and training services within our scope of regulation. Effective complaints management helps achieve this.

The outcomes of complaints investigations inform the risk-management strategies of other VRQA regulatory functions. The review and analysis of complaints investigations may also provide information that the VRQA shares with the Secretary, Department of Education and Training (DET), a Commonwealth Government Department or another registering body in accordance with information sharing provisions under the *Education and Training Reform Act 2006* (the Act).

In doing so, the VRQA contributes to continuous improvement in education and training, adding public value to the overall compliance systems for Victoria’s education and training sector.

The VRQA recognises that, from time to time, VRQA officers may receive complaints and enquiries that include allegations of sexual and physical abuse or other potentially criminal matters. The *VRQA Complaints Management Procedure* includes specific steps to enable a timely and appropriate response to such matters.

Complaints covered by this policy

The VRQA investigates complaints:

* against VRQA-registered school boarding premises
* against VRQA-registered training organisations (RTOs)
* against VRQA authorised officers or contractors engaged to undertake functions of the authority
* about the service provided by the VRQA
* about interactions with VRQA staff
* about the VRQA’s role in relation to the performance of its functions as an information sharing entity under the Child Information Sharing Scheme and Family Violence Information Sharing Scheme
* against VRQA-registered independent schools
* against non-school senior secondary or foundation secondary providers
* against parents of children registered for home schooling
* against student exchange organisations
* against VRQA-approved employers of apprentices or trainees.

Complaints against Catholic or government schools

Where complaints fall within scope, and are about government or Catholic schools, the VRQA refers complainants to the respective Review Body.

Review Bodies are approved under the Act, and defined by memoranda of understanding between the VRQA and:

• DET

• the Catholic Education Commission of Victoria (CECV)

Review Bodies investigate complaints against their respective schools according to their system policies and procedures and report the outcome of the investigation to the VRQA. All government and Catholic schools must have a complaints policy that is compliant with the minimum standards for school registration.

Complaints not covered by this policy

The VRQA cannot investigate complaints about:

• refunds/fees

• personal disputes between trainers and students

• a decision about the registration of Victorian children for home schooling, such as a decision to decline an application or not continue the registration of a child. If you are not satisfied with such a decision, you can appeal by requesting an internal review by the VRQA subcommittee.

• disputes between an employer and an apprentice or trainee about their training contract. Please note that the VRQA has a separate process for such disputes (see **Appendix 2** – The following matters are not covered by this policy)

• matters under the *Public Interest Disclosures Act 2012* (see **Appendix 2** for more information)

• outcomes of a ruling of the Victorian Information Commissioner

• reviews of grievances lodged by public service employees

• occupational health and safety (such matters would likely be referred to WorkSafe Victoria)

• payment and industrial conditions

• Reportable Conduct (under the *Child Wellbeing and Safety Act 2005*)

Handling complaints

The power to investigate

The VRQA investigates complaints under the provisions of the Act and Education and Training Reform Regulations 2017 (ETR Regulations), as well as under other Acts and Regulations.

Details of these are at **Appendix 2**.

Procedural fairness

The person or body against whom an allegation is made must be afforded procedural fairness.

Procedural fairness generally requires that decision-making is based on sound evidence, and that the person or body against whom an allegation is made has the right to:

• be informed about the substance of the allegations made against them and the evidence forming the basis for those allegations

• be given the opportunity to respond to the allegations before a final decision is made.

Where possible, the VRQA will also endeavour to ensure that the person or body against whom an allegation is made:

• is informed about the substance of any adverse comment that may be included in any report arising from an investigation

• has their side of the story set out fairly in any report.

Confidentiality

In all cases, the VRQA will contact a complainant to ascertain whether they wish that their identity be kept confidential, and whether it will be practicable to do so.

In most circumstances, the VRQA will need to disclose the complainant's identity to the respondent to afford them the ability to respond to allegations in full.

In exceptional circumstances, the VRQA may investigate complaints without disclosing the complainant’s identity. However, as a consequence the information provided to the complainant regarding the VRQA’s actions may be limited.

All information supplied to the VRQA in connection with a complaint will be held by the VRQA and such information will not be disclosed to parties outside of the complaint, with the following exceptions:

* to the VRQA’s professional advisors
* as authorised under sections 4.9.4 and 5.5.26 of the Act
* the VRQA is a prescribed information sharing entity under Part 6A of the *Child Wellbeing and Safety Act 2005* and Schedule 1 of the Child Wellbeing and Safety (Information Sharing) Regulations 2018, and can request and disclose confidential information about any person with another prescribed information entity for the purposes of promoting the wellbeing or safety of a child or group of children
* where disclosure is required under the *Freedom of Information Act 1982* (Vic.) (FOI Act)
* where use or disclosure is otherwise required, permitted or authorised by law.

Lodging a complaint

All complaints must be made in writing no more than 12 months after the complainant first became aware of the facts giving rise to the complaint.

All written complaints to be registered

The VRQA registers all complaints that are received in writing. The VRQA receives complaints through the complaint portal on the VRQA website, email, fax and the post. Further details are set out in the *VRQA Complaints Management Procedure*.

Review rights

Where a complainant is not satisfied with the outcome of their complaint, they have the right to request the VRQA reviews their matter. Further details are set out in the *VRQA Complaints Management Procedure*.

Referral of matters

If the VRQA considers that the complaint falls within the jurisdiction of another body, the VRQA will inform the complainant and on occasion may refer the matter to the other body.

Subpoenas

The VRQA must comply with subpoenas issued by courts or tribunals that require it to produce documents. In some cases, the identity of the complainant may be disclosed where documents are produced to courts or tribunals.

Defamation and breach of confidence

It is important that complaints are accurate, focus on the relevant facts and do not breach a legal duty to maintain confidentiality.

The VRQA is bound by the *Freedom of Information Act 1982* (Vic.)*, the Privacy and Data Protection Act 2014* (Vic.) and the *Defamation Act 2005* (Vic.). Further details and references about this are at **Appendix 2**.

Declining to investigate

Subject to any legislative requirement, the VRQA reserves its right to decline to investigate any complaint if it considers any one or more of the following circumstances exist:

1. The complaint is trivial, vexatious or without substance.
2. The complainant has failed to:
3. provide sufficient details to enable the VRQA to investigate the complaint or to provide sufficient details to the person against whom the allegation is made
4. cooperate with the VRQA in dealing with the complaint without reasonable excuse.
5. The VRQA is unable to contact the complainant following reasonable attempts to do so.
6. The complaint is, in the VRQA’s opinion, more appropriate to be dealt with by another person, body, court or tribunal.
7. The complainant has already made a complaint to another person, body, court or tribunal and the person, body, court or tribunal that:
8. has investigated, dealt with or is dealing with the complaint, or
9. has not yet had a reasonable opportunity to investigate or deal with the complaint.

f. The subject matter of the complaint falls outside the VRQA's functions or its legislative jurisdiction.

g. The VRQA forms the view, on reasonable grounds, that it is inappropriate to investigate the matter.

h. The complainant did not make the complaint within 12 months after first becoming aware of the facts giving rise to the complaint.

Ceasing an investigation

The VRQA reserves its right to cease investigating a matter for any reason listed in the previous paragraph.

Key principles of complaints handling

**Access and transparency** – the VRQA will ensure that the *VRQA Complaints Management Procedure* is easily accessible to the public and that the information it produces about the procedures is clear and consistent.

**Accountability** – the VRQA will ensure the *VRQA Complaints Management Procedure* is open to scrutiny by relevant stakeholders and subject to ongoing review.

**Comprehensiveness** – the VRQA will investigate complaints to the level warranted by the seriousness of the complaint.

**Confidentiality** – this is dealt with in the ‘Handling complaints’ section of this policy. Generally, the VRQA will treat complaints confidentially and maintain the anonymity of complainants where possible and requested except where the law otherwise requires. When handling complaints, the VRQA will comply with any requirements of the *Privacy and Data Protection Act 2014* (Vic.) in relation to use of personal information.

**Fairness** – the VRQA will handle complaints in accordance with the requirements of procedural fairness set out in the ‘Handling complaints’ section of this policy.

**Responsiveness** – the VRQA will set and follow timeframes for responding to and investigating complaints.

Responsibility

Overall responsibility for this policy rests with the Chief Executive Officer (Director) of the VRQA.

Associated Documents

The *VRQA Complaints Management Procedure* details the process and timeframe that will be followed in handling and investigating complaints made to the VRQA.

Resource Documents

• National Code of Good Practice for Responding to Complaints about Vocational Education and Training Quality

• Code of Conduct for Victorian Public Sector Employees

• Victorian Ombudsman’s Guide to Complaint Handling for Victorian Public Sector Agencies

• Victorian Model Litigant Guidelines

Appendix 1  
Definitions

**The Act** means the *Education and Training Reform Act 2006* (the Act).

**Authorised officer** means a person appointed by the VRQA under Part 5.8 of the Act.

**Complaint** includesanywritten complaint, grievance or accusation made to the VRQA.

**Delegate** means the Chief Executive Officer (Director), VRQA or the Deputy Chief Executive Officer, Students and Services, VRQA.

**Employer** meansa person/company/association approved to enter into a training contract with an apprentice or trainee.

**ETR Regulations** mean the Education and Training Reform Regulations 2017.

**FOI Act** means the *Freedom of Information Act 1982* (Vic.).

**Non-school senior or foundation secondary provider** means an organisation other than a registered school that is approved by the VRQA to deliver an accredited senior secondary or foundation secondary qualification.

**Registered home schooling** means registered for home schooling under section 4.3.9 of the Act.

**Registered school** means a school registered by the VRQA under section 4.3.1 of the Act.

**Registered school boarding premise** means a school boarding premises registered by the VRQA under Part 4.3 of the Act.

**Registered training organisation (RTO)** means a person, body or school registered as a training organisation by the VRQA under section 4.3.16 of the Act.

**Student exchange organisation** meansa person or an organisation approved by the VRQA to provide a student exchange program.

**VRQA** means theVictorian Registration and Qualifications Authority.

**VRQA staff** means the employees and third-party service providers contracted to the VRQA to undertake the functions of the VRQA.

Appendix 2  
Acts and provisions

The relevant Acts and provisions under which the VRQA may deal with complaints are detailed below.

Complaints covered by this policy

*a. The Act, section 4.6A.6 – Complaints by students against RTOs*

Section 4.6A.6 of the Act enables a past, current or prospective student of a registered training organisation (RTO) to make a complaint to the VRQA concerning an alleged contravention by the RTO of the Act, ETR Regulations or standards that apply to RTOs.

This section also sets out the procedure the VRQA must follow in investigating any complaint~~.~~

This section only applies to RTOs registered by the VRQA, and not to RTOs that operate in Victoria that are registered by the Australian Skills Quality Authority (ASQA) or the Training Accreditation Council Western Australia (TAC (WA)).

*b. The Act, section 5.8.3U – Complaints against VRQA authorised officers*

This section enables a person to make a complaint to the VRQA against a VRQA authorised officer exercising a power under Division 3 of Part 5.8 of the Act in relation to a RTO. Section 5.8.3U requires the VRQA to investigate the complaint and provide a written report to the complainant on the results of the investigation.

*c. ETR Regulations, Part 9 – Breach of the principles*

These regulations require the VRQA to investigate complaints from members of the public alleging a breach by a registered school, RTO, non-school senior secondary or foundation secondary providers, of the principles in s1.2.1(a),(c),(e) or (f) of the Act.

The RTOs referred to in this regulation are those registered by the VRQA, and not to RTOs that operate in Victoria that are registered by ASQA or the TAC (WA).

*d. Privacy and Data Protection Act 2014, section 62(1)(h) and Health Records Act 2001 section 51(1)(h).*

The above sections state that the Victorian Information Commissioner and Health Services Commissioner may decline to investigate a complaint if the complainant has complained to the respondent (that is, the VRQA) about the act or practice and either:

i. the respondent has dealt, or is dealing, adequately with the complaint

ii. the respondent has not yet had an adequate opportunity to deal with the complaint.

The VIC and HSC may also decline to investigate a complaint if the complainant has not first complained to the respondent, in this case the VRQA.

These provisions provide a discretion for the VRQA to receive and determine complaints under those Acts in respect of the actions of the VRQA or its staff that interfere with the privacy of the individual.

e. *Ombudsman Act 1973 (Vic.)*

The Victorian Ombudsman’s Guide to Complaint Handling for Victorian Public Sector Agencies says that, ‘Members of the public rightly expect high quality, timely services from government and decisions that are transparent and fair. Handling complaints is part of core business and good service delivery. The challenge for public sector agencies is to do it well.’

The above paragraph expresses the Victorian Ombudsman's expectation that the VRQA will have established complaint handling procedures.

The type of complaints that could be made under this expectation potentially cover a very wide area. It could cover complaints against VRQA staff, or the conduct of an audit of a RTO by the VRQA or the review of a registered school or registered school boarding premise by the VRQA.

*f. The Act, section 4.2.2(nd) – Functions of Authority*

Under this section the VRQA has the power to investigate complaints, in relation to a failure to comply with the Act, ETR Regulations, a Ministerial Order or a condition of registration or approval, made against the following:

1. a person, body, school or institution registered or approved under Part 4.3 or 4.5A of the Act
2. the parent responsible for home schooling of a student registered under section 4.3.9
3. a provider of school boarding services.

*g. Matters subsequent to this policy*

Legislation that creates complaint rights after the date of this policy may, at the VRQA's discretion, be dealt with under this policy, either fully or as modified at the VRQA's discretion, and subject to the requirements of the legislation.

The following matters are not covered by this policy:

1. Matters under the *Public Interest Disclosures Act 2012* (formerly the Protected Disclosure Act 2012). Further information can be found at https://www.vrqa.vic.gov.au/aboutus/Pages/protected-disclosure.aspx.
2. a decision to decline or not continue the registration of a child for home schooling. If you are not satisfied with such a decision, you can appeal by requesting an internal review by the VRQA subcommittee. Requests for review must be made within 28 days.

b. Questions or differences arising between an employer and an apprentice about a training contract, or the dismissal of an apprentice. These matters are conducted under section 5.5.17 of the Act and the VRQA Dispute Resolution Policy (April 2018).

c. Referrals back to agencies by the Victorian Information Commissioner under section 49L of the *Freedom of Information Act 1982* (Vic.)(the FOI Act). These will be conducted in accordance with the provisions of the FOI Act.

d. Matters under section 4.6A.5B of the Act. This section enables the Minister to approve a dispute resolution and student welfare scheme for students engaged in vocational education and training. The Minister has delegated the power to approve a scheme to the Director, VRQA.

e. Reviews of grievances lodged by public service employees under regulation 6 of the Public Administration (Review of Actions) Regulations 2005. These reviews are conducted in respect of VRQA staff under procedures established by the public service body head (that is, the Secretary, DET).

f. Complaints made in respect of the following RTOs that operate in Victoria:

i. RTOs registered by the Training Accreditation Council (TAC) under the *Vocational Education and Training Act 1996 (WA)* (VET Act (WA))

These RTOs may operate only in Western Australia or in Western Australia and Victoria. They must comply with the RTO standards in order to continue to operate in Victoria. However, the TAC is the main body responsible for investigating complaints against these RTOs for failing to comply with the RTO standards or the VET Act (WA)

ii. RTOs registered by Australian Skills Qualifications Authority (ASQA) under *the National Vocational Education and Training Regulator Act 2011* (NVETR Act).

These RTOs may operate in any state or territory of Australia. The effect of section 9 of the NVETR Act is that the Act does not apply to these RTOs.

These RTOs must comply with the equivalent RTO standards (called the NVR standards) in order to continue to operate in Victoria. However, ASQA is the main body responsible for investigating complaints against these RTOs for failing to comply with the relevant standards or the NVETR Act.

Defamation and breach of confidence

It is important that complaints are accurate, focus on the relevant facts and do not breach a legal duty to maintain confidentiality.

For documents released under the FOI Act

Section 62 of the FOI Act protects the author of a document against legal actions for defamation or breach of confidence. This protection applies to complaints in writing released under the FOI Act, but not to complaints released outside the FOI Act.

For documents released outside the FOI Act

a. The *Defamation Act 2005* (Vic.) provides general defences and protections to complainants for the contents of documents released outside the FOI Act. Relevantly, section 25 protects a complainant if the statement is substantially true, and section 30 protects a complainant if the complainant and the recipient (that is, the VRQA) have an interest in the subject, and the actions of the complainant are reasonable.

b. There are no defences or protections available to complainants for breach of confidence in respect of complaints made under this policy.

Other relevant provisions

The VRQA has extensive powers under the Act to regulate education and training in Victoria. Those powers provide a further avenue to investigate complaints. Section 4.2.3(1) provides that for the purpose of performing its functions, the VRQA has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions. The functions of the VRQA under section 4.2.2, include:

• ‘exercise the powers of the Authority to ensure the minimum standards are maintained— (i) by providers and organisations it has registered; and (ii) in home schooling’, section 4.2.2(1)(g)

• ‘exercise the powers of the Authority in relation to the regulation of apprentices and related matters’, section 4.2.2(1)(ga)

• ‘protect the interests of students as consumers of education and training services, whether delivered in schools or by providers of vocational education, higher education or technical and further education’, section 4.2.2(1)(na)

• ‘monitor compliance with, and enforce, the requirements relating to the provision of education or training in Chapter 4 or relating to apprentices under Part 5.5 of the Act’, section 4.2.2(1)(nb)

• ‘investigate complaints against authorised officers’, section 4.2.2(1)(nc).

Breach of the principles in section 1.2.1 of the Act

Section 1.2.1(a) of the Act states:

a. all providers of education and training, both Government and non-Government, must ensure that their programs and teaching are delivered in a manner that supports and promotes the principles and practice of Australian democracy, including a commitment to—

i. elected Government

ii. the rule of law

iii. equal rights for all before the law

iv. freedom of religion

v. freedom of speech and association

vi. the values of openness and tolerance

c. information concerning the performance of education and training providers should be publicly available

e. a school community has a right to information concerning the performance of its school

f. a parent of a student and the student has a right to access information about the student's achievement.

Regulations 97 to 101 of the ETR Regulations describe the role of the VRQA in investigating complaints alleging a breach of the above principles.

Regulation 97 provides that:

‘Subject to this Part, the Authority must investigate complaints from a member of the public alleging any breach of an obligation under these Regulations to implement any of the principles in section 1.2.1 (a), (c), (e) and (f) of the Act by —

a. a registered school

b. a person, body or school registered under Division 3 or 4 of Part 4.3 of the Act.’

Regulations 98 and 99 contain the following provisions:

a. the VRQA is not required to investigate a complaint that is not made in writing or is made more than 12 months after the date of the facts giving rise to the complaint.

b. before proceeding to investigate a complaint, the VRQA must be satisfied that the complainant has first raised the complaint with:

i. in the case of a registered school, the relevant person or body under any formal system for complaints established by the school and if there is no formal system, the principal of the school

ii. in the case of a RTO or non-school senior secondary or foundation secondary providers, the relevant person or body, the principal or the governing body.

The provider must also be given a reasonable time to respond to the complaint and have failed to respond or failed to resolve the complaint to the complainant’s satisfaction.

Regulation 100 exemption to complaints procedure

A complainant does not first have to raise the complaint with the organisation pursuant to regulation 99 if the VRQA is satisfied that there are reasonable grounds for the complainant failing to do so.

Regulation 101

The VRQA may refuse to investigate on the grounds that:

a. the complaint is trivial, frivolous or without substance, or

b. the complaint is, in the VRQA’s opinion, more appropriate to be dealt with by another person, body, court or tribunal, or

c. the complainant has already complained to another person, body, court or tribunal and the person, body, court or tribunal –

i. has investigated, dealt with or is dealing with the complaint; or

ii. has not yet had a reasonable opportunity to investigation or deal with the complaint.