

Change of RTO Organisational Status

Guide

**About this guide**

This guide provides advice on implementing the VRQA policy requirements where there is:

* a change in the legal status of a registered training organisation (RTO)
* substantial changes to the control, management or operations of an RTO
* other circumstances that result in an RTO ceasing operations.

**Note:** This is a guide only and where examples are given, they are not intended to be exhaustive. RTOs should contact the VRQA for additional clarification where necessary.

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| 1. Changes in RTO status and ‘Legal Entity’ | |
| 1.1 | In most circumstances where there is a change in the ownership of an RTO or an RTO business is sold or transferred to another company or business, the legal entity registered by the VRQA will remain.  Example: Jonesville Enterprises Pty Ltd/Inc buys Smithtown College RTO Pty Ltd/Inc, the registered legal entity ‘Smithtown College Pty Ltd/Inc’ remains.  [See Section 6 –Changes in control, management or operations](#control) |
| 1.2 | In some circumstances the sale or transfer of an RTO business can result in a change to the legal entity registered by the VRQA.  Example: Jonesville Enterprises Pty Ltd sells the part of its business that involves training to Rogers Pty Ltd. In this case Jonesville Enterprises remains a legal entity but effectively ceases its RTO registration; Rogers Pty Ltd has purchased elements of Jonesville Enterprises Pty Ltd’s business but – as a different legal entity – must apply for registration as a new RTO. |
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|  | **Changes in the legal entity that holds registration can also occur where:** |
| 1.2.1 | an RTO business seeks to:  • merge with another RTO or business and creates a new legal entity  • split into two legal entities and transfer the RTO business to a new entity  • cease operation as an RTO. |
| 1.2.2 | an RTO is a natural person who:  • seeks to transfer their registration to a company or partnership structure  • intends to sell the business  • who voluntarily ceases their registration or dies.  [See Section 2: Changes in legal entity – Sale or transfer of RTO](#sales) |
| 2. Changes in legal entity –sale or transfer of RTO | |
| 2.1 | The sale or transfer of an RTO business may involve a change in the legal entity where the sale or transfer involves:  • the creation (through merger, division or otherwise) of a new legal entity seeking to provide training, or  • a natural person registered as an RTO seeking to sell or incorporate their business.  In circumstances where a sale or transfer involves a change in the legal entity the person with legal responsibility for the RTO must:  • notify the VRQA as soon as practicable (preferably at least 30 days prior to) when the currently registered legal entity is to cease to exist  • carry on the role of legal responsibility and offer training and assessment services, including the issuance of qualifications and statements of attainment in accordance with the registration, until the legal entity and registration with the VRQA ceases  and where relevant:  • advise the new legal entity that they must lodge an application with the VRQA for RTO registration in its name if it intends to provide accredited training in Victoria  • place those continuing students with another registered training organisation. |
| 2.2 | If there is a change of legal entity arising from the sale, the former RTO’s registration will cease and the relevant certificate of registration must be returned to the VRQA. As soon as the contract of sale is signed the person with legal responsibility for the new entity must apply for registration to cover all continuing students and pay the appropriate fees. |
| 2.3 | The *Education & Training Reform Act 20*06 provides that the VRQA must not grant a new application for RTO registration unless a compliance audit has been conducted that shows the applicant complies with the RTO standards. However, if the new legal entity |
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|  | is an RTO registered by another state or territory registering authority, and the new entity does not propose to amend the RTO’s existing scope of registration or registration conditions, the Act provides that a compliance audit is not required. |
| 2.4 | The *Education and Training Reform Act 2006* requires the VRQA **not** to register a person, body or organisation if it is not satisfied it has met the criteria for registration. If the application is not approved by the VRQA, the applicant training organisation must not purport to be a registered training organisation. |
| 2.5 | Where a new legal entity seeks to continue to deliver government department or agency funded training provided by its predecessor, the new legal entity will need to:   * apply for registration from the VRQA as outlined above * separately contact any relevant funding department or agency and apply or re-apply to deliver funded training.   A grant of registration by the VRQA to any new legal entity does not, of itself, grant, extend or continue any funded training agreement held by any previous legal entity.  VRQA registration of any new legal entity does not require or bind departments or agencies to consider or to grant funding for the delivery of training. |
| **Steps for RTOs – Change of legal entity (proposed sale / transfer of RTO)** | |
| 1. Notify the VRQA of any proposal to sell or transfer an RTO which involves a change of legal entity at least as soon as possible, preferably 30 days in advance. | |
| 1. Continue to provide RTO services to students until the registered legal entity ceases to exist or ceases to be a training provider, RTO registration cease. | |
| 1. Return former RTO’s Certificate of Registration to the VRQA. | |
| 1. Where relevant, the VRQA will advise the new legal entity of the need to apply to the VRQA for registration as an RTO if they wish to provide training in Victoria (for the new legal entity). | |
| 1. Apply to the VRQA for registration as an RTO. | |

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| 3. Change of legal entity - merger of two RTOs / RTO splits | |
| Example:  a. Smithtown College Pty Ltd/Inc and Jonesville Enterprises Pty Ltd/Inc are both RTOs and agree to merge to form a single RTO.  b. Smithtown College Pty Ltd/Inc is an RTO that decides to split into Smithtown Training Pty Ltd and Smithtown Academy Pty Ltd. | |
| 3.1 | One RTO cannot automatically assume or take over the registration status of another RTO. This applies in a merger of two RTOs, even where both organisations are owned and/or staffed by the same people. |
| 3.2 | In the case of the merger of two RTOs, the person with legal responsibility for the relevant RTO must:  • provide full details of the proposed merger to the VRQA including assurances as set out in section 5 of this Guide regarding continuing students  • apply for an Addition to Scope for the RTO that is seeking to continue registration (to the extent relevant)  • notify the VRQA of the RTO that wishes to relinquish its registration.  [See: Section 5 – Changes of legal entity – Provisions to protect students](#students) |
| 3.3 | Where the merger of two RTOs involves a substantial **change** in the structure of the continuing RTO (according to clause 3.2 above) the VRQA may determine that an audit of the merged RTO is necessary. |
| 3.4 | If an RTO splits into two or more separate legal entities, the VRQA registration can only be retained by one entity. The entity intending to continue their RTO registration must contact the VRQA as soon as practicable to advise of changes to its legal structure, control, management or operations. Any new entity(s) created as a result of the changes must apply for separate RTO registration if they wish to provide accredited training in Victoria. |
| 3.5 | The person with legal responsibility for the relevant RTO must:  • provide full details of the proposed division to the VRQA including assurances as set out in Section 5 of this Guide regarding continuing students  [See: Section 5 – Changes of legal entity – Provisions to protect students](#students)  • notify the VRQA of the person responsible for the new entity seeking registration  • lodge the new registration in accordance with Section 1 of this Guide.  [See: Section 1 – Changes in RTO status and ‘Legal Entity’](#status) |
| Steps for RTOs – merger of RTOs / RTO splits | |
| 1. | Provide details of the merger/split to the VRQA as soon as practicable. |
| 2. | In mergers – continuing RTO must apply for an Addition to Scope and ceasing RTOs to return Certificate of Registration. |
| 3. | In splits – new entity to lodge application for RTO registration. |

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| 4. Cessation of RTO registration | | | | | | | |
| Example:   1. Smithtown College Pty Ltd/Inc operates a business that includes training. Smithtown College Pty Ltd/Inc wants to sell the business to Jonesville Enterprises. Jonesville Enterprises wishes to operate the business but does not wish to provide training. 2. The death of John Smith, an individual holder of RTO registration. 3. Marytown RTO wishes to cease RTO registration. | | | | | | | |
| 4.1 | | If an RTO is sold, transferred or otherwise assigned to an organisation that does not wish to be an RTO then steps must be taken to ensure that all continuing students either complete their training or are placed with another RTO before the transfer or sale is completed. | | | | | |
| 4.2 | | Once the transfer or contract of sale is settled, the person with legal responsibility for the former RTO must notify the VRQA in writing of the relevant settlement date and the VRQA will formally cease the registration. The Certificate of Registration should be returned to the VRQA. As outlined in Section 6, arrangements must be made to protect former and continuing students and student records. | | | | | |
| 4.3 | | If an RTO chooses to cease operations voluntarily or goes out of business, it must inform the VRQA immediately and must meet all its legal obligations to students. Registration will be ceased by the VRQA and the Certificate of Registration should be returned to the VRQA. As outlined in section 5, arrangements must be made to protect former and continuing students and student records. | | | | | |
| 4.4 | | RTO registration held by a natural person ceases upon their death. The executor or trustee of the estate must ensure that all continuing students are placed with another RTO and that the provisions of Section 5 of this Guide are completed. The Certificate of Registration should be returned to the VRQA.  If the executor, trustee or a beneficiary of an estate wishes to continue the operation of the RTO he/she is required to apply for a new registration as per Section 1.  [See: Section 1 – Changes in RTO status and ‘Legal Entity’](#status) | | | | | |
| **Steps for RTOs –cessation of registration** | | | | | | | |
| 1. | | Advise the VRQA at least 30 days in advance or as soon as possible. | | | | | |
| 2. | | Provide records to students and the VRQA as per [Section 5.](#students)  [See: Section 5 – Changes of legal entity – provisions to protect students](#students) | | | | | |
| 3. | | Arrange for the return of the RTO Certificate of Registration. | | | | | |
| 5. Changes of legal entity – provisions to protect students | | | | | | | | |
| 5.1 **Student Records** | | | | | | | In all of the above circumstances involving changes to the legal entity of an RTO, arrangements must be made for:   * all current students to receive a copy of their student records, if not previously provided, including:   + a parchment for each qualification completed   + a statement of attainment for any units of competence completed in partial   + fulfilment of a qualification   + evidence of training and assessment activities undertaken that at the time of change in the RTO’s legal entity were only in partial fulfilment of a unit of competence. | |
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|  | | |  | | | | * providing the VRQA, in an agreed electronic and/or hard copy form, the following information for each student who has undertaken nationally recognised training with the registered training organisation since initial registration:   + full name of student and date of birth   + name and national code of qualification(s) issued   + names and national codes of the units of competence and/or modules completed   + dates on which the requirements for each qualification were achieved or, for qualifications only partly achieved, the date each unit of competence and/or module was achieved   + the return of the Certificate of Registration to the VRQA where registration ceases. | |
| 5.2 | **Continuing Enrolment of Students** | | | | | | When a change of an RTO’s control, management or operations results in the grant of RTO registration to a new legal entity, the new provider may seek to enrol students of the previous RTO entity.  Students enrolled by the previous legal entity are not bound to accept enrolment with the new legal entity and may opt to transfer to other registered providers.  The sale or transfer of an RTO business cannot ‘transfer’ the enrolment of individual students to the new entity. Individual students must consent to any transfer.  Students enrolled by the previous legal entity, and who have paid for ongoing courses of study with that provider, are entitled to apply for a refund of tuition fees in accordance with the provider’s refund policy and general consumer protection legislation.  **Note**: Specific tuition refund arrangements apply to overseas students holding student visas. | |
| 6. Change in RTO control, management or operations | | | | | | | | |
| Example:   1. Jonesville College changes its trading, legal or incorporated name to Jones College. 2. Jonesville Enterprises purchases a majority ownership of Smithtown College. 3. Jones College enters into bankruptcy or liquidation. 4. The person with legal responsibility at Smithtown College changes to a different person, or the College contact details change. 5. Smithtown College makes substantial changes to its operations, deciding to open new campuses and enrol international students.   **Note**: In these circumstances the legal entity remains the same. | | | | | | | | |
| 6.1 | | | **Change of trading name** | | | | If an RTO changes its trading name/ registered business name, the person with legal responsibility for the RTO must immediately advise the VRQA of the change and provide confirmation of registration of the name with the Australian Securities & Investments Commission (ASIC) under the *Business Names Registration Act 2011*.  **Note:** Business names are not legal entities. A business name, once registered, is merely a device that permits a legal entity (a partnership, corporation or natural person) to trade under a name other than its own. A business name cannot enter contracts, give or receive valid discharges or be granted VRQA registration to provide training. | |
| 6.2 | | | **Change of legal or incorporated name** | | | | If an RTO changes its legal or incorporated name, the person with legal responsibility for the RTO must immediately advise the VRQA of the change and provide a new signed declaration and a copy of the Australian Securities & Investments Commission (ASIC) Certificate of Registration on Change of Name showing both the former name and the new name of the company.  **Note:** The Australian Company Number (ACN) remains the same.  It is important that RTOs can be clearly identified by students and potential students. Where multiple legal entities share a business name there is the potential for the arrangement to be confusing or misleading to students.  For this reason, it is essential for all RTOs to have their legal name, ACN and/or ABN on:  • enrolment forms  • marketing and advertising material  • AQF qualifications and Statements of Attainment. | |
| 6.3 | | | **Change of ownership or control of an RTO** | | | | Where there is any substantial change in the ownership and/or control of an RTO, such as where new individuals, companies or organisations acquire all or part of the ownership or control of an RTO, the person with legal responsibility for the RTO must advise the VRQA of any change as soon as practicable. This is a legal condition of registration under s. 4.3.17 of the Act.  The person with legal responsibility for the RTO should provide the VRQA with full details of:  • the details of the change in control and/or management of the RTO  • any relevant information regarding any impact the changes may have on the RTO’s operations and/or capacity to meet the RTO standards.  RTOs should note whether there are special conditions applied to their RTO registration by the VRQA which may impact on change of ownership or control. New RTOs registered after 1 January 2008 may have a condition of registration that states:  ‘*During the period of registration, the RTO must not undergo any change which results in any person involved in its management, or any person involved in the business of the provision of its courses having:*   * *ever had their registration by the VRQA suspended or cancelled; or* * *ever had conditions imposed on their registration by the VRQA; or* * *ever been convicted of an indictable offence; or* * *ever become bankrupt or taken the benefit of any law for the relief of bankrupt debtors, or compounded with their creditors or made an assignment of their property for their benefit; or* * *been disqualified from managing corporations under Part 2 of the Corporations Act; or* * *been involved in the provision of courses by another person or body who is covered by any of the above circumstances at the time of the events that gave rise to the relevant prosecution or other action.’*   If an RTO subject to this condition of registration changes its ownership, control or management so as to include a person, body or organisation that s.4.3.11(2) applies to, the VRQA may cancel the RTO’s registration. | |
| 6.4 | | | **Bankruptcy or liquidation** | | | | In circumstances where an RTO enters into bankruptcy or liquidation, the person with legal responsibility for the RTO must notify the VRQA as soon as practicable. | |
| 6.5 | | | **Substantial changes to RTO control, management or operations** | | | | In some circumstances, where there is a substantial change to an RTO’s organisational status or structure that do not involve a change in legal entity, the VRQA may:  • determine that an audit of the newly structured RTO is necessary  • determine that a new application for registration is required. | |
|  | | |  | | | | **Substantial change** in an RTO organisational status includes:  • a change that involves the inclusion of a person, body or organisation in the control, management or operations of the RTO that:   * has ever had their registration by the VRQA suspended or cancelled * has ever had conditions imposed on their registration by the VRQA * has ever been convicted of an indictable offence * has ever become bankrupt or taken the benefit of any law for the relief of bankrupt debtors, or compounded with their creditors or made an assignment of their property for their benefit | |
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|  | | |  | | | | * has been disqualified from managing corporations under the *Corporations Act*. * was involved in the provision of courses by another person or body who is covered by the any of the above circumstances at the time of the events that gave rise to the relevant prosecution or other action. | |
|  | | |  | | | | * a change in the control, management or operations of the RTO that will result in the RTO: * substantially changing its mode of training delivery from that initially approved * relocating premises * being owned or managed, in whole or in part, by a person resident or a body registered outside Australia. * a change that substantively affects the basis on which the RTO was granted registration, including a change in the RTO’s ability to meet the AQTF Essential Standards for Registration and the VRQA VET Guidelines and/or to fulfil any specific undertakings given to the VRQA. | |
| Steps for RTOs - Change to RTO control, management or operations | | | | | | | | | | |
| 1 | | | Advise the VRQA of any changes at least 30 days in advance, or as soon as possible. | | | | | | | |
| 2. | | | Provide documents/records to VRQA and students as per this guide. | | | | | | | |
| Change of RTO organisational status – overseas students | | | | | | | | | |
|  | | | | **Example:** Smithtown College Pty Ltd operates a business that includes providing training to students. As a result of changes in the control, management and operations of the College they now want to expand the business to provide training to overseas students. | | | | | | |
| 7.1 | | | | Any training provider that wishes to recruit, enrol or deliver courses to overseas students must be registered on the Australian Government’s Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). | | | | | |
| 7.2 | | | | CRICOS registration is not transferable and is not automatically included in VRQA registration as a registered training organisation.  If a currently registered RTO wishes to change its operations to include provision of training to overseas students, the RTO must advise the VRQA of this change to its operations and apply for transfer of registration to Australian Skills Quality Authority (ASQA).  When an RTO’s legal entity changes, and the new legal entity wishes to provide training to overseas students, the new entity must apply for registration with ASQA. | | | | | |
| Change of RTO Organisational Status – outside Victoria | | | | | | | | | | |
|  | | | | **Example:** Smithtown College is an RTO operating in Victoria and registered with the VRQA. Smithtown College wants to sell the business to Jonesville Enterprises, an RTO registered in Tasmania. Jonesville Enterprises wishes to operate the business and continue to deliver training in Victoria | | | | | | |
| 8.1 | | | | The VRQA registers the RTOs whose principal place of business is, and which conduct all or most of their training business, in Victoria, except where there is also delivery to states and territories other than Western Australia.  Where an RTO registered in Victoria proposes to relocate its principal place of business, or to sell, transfer or assign its operations to an RTO registered in another Australian State or Territory, the new legal entity (or the new owners of the ongoing legal entity) will need to assess which state or territory will constitute the restructured RTO’s principal place of business and seek transfer of registration to the ASQA, unless the principal place of business is Western Australia.  Where the restructured RTO’s principal place of business will be outside Victoria, the VRQA should cease and registration of the RTO will be undertaken by the ASQA, subject to its own requirements. | | | | | | |
| 8.2 | | | | The Act requires the VRQA to give an RTO transferring its principal place of business outside Victoria six months’ notice of its intention to cancel registration. If an RTO makes an application during this period for RTO registration with ASQA, then the VRQA will transfer the registration (assuming ASQA accept the transfer). | | | | | | |
| Key terms | | | | | | | |
| Bequeath | | | | | means to give a gift in a will. The gift takes effect when a natural person dies, and their will is given effect. | | |
| Incorporated association | | | | | means an entity registered and incorporated under *the Associations Incorporation Act 1981*. These have ‘inc.’ included in their name and are not for profit organisations. | | |
| Legal entity | | | | | means an entity the law recognises as having legal capacity. Legal capacity includes such things as capacity to enter contracts and assume liabilities. A business name is not a legal entity. [See Attachment A – Guide to legal entities](#entities) | | |
| Natural person | | | | | means an individual who is the legal entity registered as a Registered Training  Organisation, e g Joan Smith. | | |
| Private company | | | | | means a proprietary company, limited by shares. It is a legal entity that is not a natural person and is separate from its directors and shareholders. It is created and registered pursuant to the *Corporations Act 2001*, but not listed on the Australian Stock Exchange, for example Practical Training Pty Ltd ACN 123 456 789. | | |
| Partnership | | | | | is a relationship that exists between persons carrying on a business with a view of profit. A partnership is not a legal entity. The members of the partnership are the legal entities who will hold registration as a registered training organisation. Every partner is liable jointly and severally with the other partners for all debts and obligations of the partnership, for example Joan Smith and Michael Jones. | | |
| Public company | | | | | means a legal entity created and registered pursuant to the *Corporations Act 2001* and listed on the Australian Stock Exchange. A public company is recognised as a legal entity separate from its shareholders; e g Rural Holdings Limited. | | |
| registration | | | | | means registration under the *Education and Training Reform Act 2006*, by the VRQA to provide, or offer to provide, training and or assessment of skills and knowledge. | | |
| Responsible person” | | | | | means the person nominated by the registered training organisation as having legal responsibility to the VRQA in relation to compliance with the responsibilities of registration as a registered training organisation under *the Education and Training Reform Act 2006.* | | |
| Sale | | | | | means transfer for valuable consideration [money or money’s worth. | | |
| The department | | | | | means the Victorian Department of Education and Training and successor departments or agencies. | | |
| Training organisation | | | | | means an organisation that carries on business of vocational education and training in Victoria. | | |
| Transfer | | | | | means to validly pass all right, title, interest and property. | | |
| Responsibility | | | | | |  | |
| Overall responsibility for this document rests with the CEO (Director) of the VRQA. | | | | | | | |
| Legislative base | | | | | | | |
|  | | | | | | * *Education and Training Reform Act 2006* * *Ministerial Orders made under the Education and Training Reform Act* 2006 * Ministerial Directions * Education and Training Reform Regulations 2017 * Australian Quality Training Framework * VRQA Guidelines for VET Providers. | |

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| Attachment A: Guide to legal entities | | |
| **Examples of legal entities** | | |
| a. | Natural Person | for example, Ms Joan Smith |
| b | Company | for example, Smith Pty Ltd (ACN 123 456 789)   * created pursuant to Corporations Law * usually has Pty Ltd in name * has an Australian Company Number (ACN). |
| c | Statutory Body / Corporation / Authority | for example, the VRQA   * created by legislation |
| d | Incorporated Association | for example, RSPCA   * created pursuant to the Associations Incorporation Act 2001 * usually has a charitable, educational or non-profit purpose. |
| **Non legal entities** | |  |
| a | Business Names | a registered business name in itself is not a legal entity. |
| b. | Partnerships | a legal agreement between partners does not create a new legal entity. |
| c. | Trusts | a trust holding assets for beneficiaries does not of itself create a new legal entity. |