



---

## Suitability of Applicant for Registration Guideline

*Section 31 (5) of the Vocational Education and Training Act 1994 provides that the Qualifications Authority may refuse to register the applicant if the Qualifications Authority considers that the applicant is not suitable to be a registered training organisation.*

In reaching a decision about an applicant's suitability, the Act specifies that the Authority may consider prior conduct of the applicant or an associate of the applicant and any other matter the Authority considers relevant.

The purpose of this guideline is to describe the factors that may be considered when determining an applicant's suitability to be a registered training organisation.

The Qualifications Authority may refuse registration under section 31(5) if the person or a **close associate** is an **unsuitable person**.

An **unsuitable person** means a person who:

- is not of good repute, having regard to character, honesty and integrity (including but not limited to a person who has been convicted of an offence of dishonesty within the previous five years),

or

- is not of sound and stable financial background (including but not limited to a natural person who is an undischarged bankrupt),

or

- if not a natural person, does not have a satisfactory ownership, trust or corporate structure.

or

- has demonstrated unsatisfactory competence, capability and capacity as a provider of vocational education and training

**close associate** of the provider means a person who:

- holds or will hold any **relevant financial interest**, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the provider, and by virtue of that interest or power is or will be able to exercise a significant influence over or with respect to the management or operation of that business,

or

- holds or will hold any **relevant position**, whether in his or her own right or on behalf of any other person, in the business of the provider.

**relevant financial interest** means:

- any significant share in the capital of the business, or
- any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position** means the position of director, manager, and other executive positions and secretary, however those positions are designated.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- to participate in any directorial, managerial or executive decision, or
- to elect or appoint any person to any relevant position.

Appendix A to these guidelines describes 'close associate' in more detail.

---

In reaching decisions about whether a person is an unsuitable person in any particular case, the Authority will have regard to

1. whether the applicant, or a close associate, who has been, is or is expected to be involved in the business of the provision of courses by the provider:
  - has been **convicted of an indictable offence** under a law of the Commonwealth or of any Australian state or territory; or
  - has ever had his, her or its **registration cancelled or suspended** by this or any other state or territory registering body; or
  - has ever had a **condition imposed** on his, her or its registration by this or any other state or territory registering body; or
  - has ever been **disqualified from managing corporations** under Part 2D.6 of the Corporations Act 2001; or
  - was **involved in the business of the provision of courses by another provider** who is covered by any of the above paragraphs at the time of any of the events **that gave rise to the relevant prosecution or other action**.
2. Whether the applicant has demonstrated compliance with the standards for registration and a capacity to undertake the responsibilities of on-going compliance with these standards.

The Authority will take consider unsuitable any applicant

---



- who has had registration under the VET Act 1994 or corresponding legislation in any other state or territory withdrawn or suspended (unless a satisfactory explanation is provided and the withdrawal or suspension occurred more than five years ago)
- or
- who was responsible, because of his or her acts or omissions, for another person (whether a natural person or not) having that other person's registration withdrawn or suspended (unless a satisfactory explanation is provided and the withdrawal or suspension occurred more than five years ago)

For a renewal of registration the Authority will take into account a person's or close associate's prior performance against the standards, including the risk rating as determined by assessing the person or close associate's performance against the AQTF 2007 National Guideline for Risk Management risk indicators, history of audit compliance, complaints and data from quality indicators (where available).

In situations where the RTO will be delivering training and assessment that leads to certification that regulatory bodies use to issue occupational licenses and other regulatory certification, the Authority may seek and take note of the regulatory bodies' opinion of the applicant's or close associate's past performance.

3. the requirement to consider each case on its individual merits, taking into account only relevant considerations.

For example, the Authority might take into account the fact that a disqualification occurred many years ago, or the offence leading to the disqualification was minor, or the offence was committed by an associate who is no longer involved in the business. The Authority may conclude that these matters should be given less weight and do not prevent a provider being considered "suitable" for the purpose of the Act.

4. the requirement that before it reaches its decision, the applicant is given reasonable opportunity to respond to any adverse matters which the Authority may take into account.

*Approved at 26<sup>th</sup> meeting of the Tasmanian Qualifications Authority (TQA) on 3 October 2007*

## DEFINITION OF AN ASSOCIATE

## APPENDIX A

The Act describes an **associate** as a person that can, or will be able to, have significant influence over, or in relation to the carrying out of, the operations of the applicant once registered.

The second column of the following table illustrates those people that could be regarded as associates of the type of provider shown in the first column.

<b>An associate of</b>	<b>Is</b>
a person	the person's spouse or de facto spouse; child; child of the person's spouse or de facto spouse; parent, or parent of the person's spouse or de facto spouse; or sibling.
a company	an officer of the company; or an officer of a company that is related to the first mentioned company; or a person who holds a substantial ownership interest in the company.
an association or a co-operative	the principal executive officer or a member of the body (however described) that governs, manages, or conducts the affairs of the association or co operative.
a body corporate managed by another body	the principal executive officer or a member of that other body.
any other kind of body corporate	the principal executive officer or a member of the body corporate.
a partnership	the principal executive officer or an individual, or a body corporate, that is a member of the partnership; or an individual who is an officer of a company; or a member of any other body corporate, that is a member of the partnership.

### Related companies

The question of whether companies are **related** to each other is to be determined in the same manner as the question of whether bodies corporate (within the meaning of the Corporations Act 2001) are related to each other as determined under section 50 of the Corporations Act 2001.

### Substantial ownership interest

A person holds a substantial ownership interest in a company if the total of all amounts paid on the shares in the company in which the person holds interests equals or exceeds 15% of the total of all amounts paid on all shares in the company.

### Interests in shares

A person **holds an interest in a share** if the person has any legal or equitable interest in the share; and a person also **holds an interest in a share** if the person, although not the registered holder of the share, is entitled to exercise, or control the exercise of, a right attached to the share, otherwise than because the person has been appointed as a proxy or representative to vote at a meeting of members of a company or of a class of its members.

### Mutual associates

If one person is an associate of a second person, then the second person is an associate of the first person. The relationships shown in Table 1 then become relevant to assessments made about the provider when determining whether the authority is satisfied that the provider is fit and proper to be registered.

### Chains of associates

If one person is an associate of a second person and the second person is an associate of a third person, then the first person is an associate of the third person.