

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO WORKSAFE



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 3 OCTOBER 2017**

SESSION TWO

Members

**Hon Adele Farina (Chair)
Hon Jacqui Boydell (Deputy Chair)
Hon Ken Baston
Hon Kyle McGinn
Hon Darren West**

Hearing commenced at 1.29 pm

Mr MARK PATERSON

Chief Commissioner and Chief Executive Officer, Australian Skills Quality Authority, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the hearing. Before we begin, I need to ask you to take either the oath or the affirmation.

[Witness took the affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

Mr PATERSON: I have.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you once it is finalised. To assist the committee and Hansard, would you please quote the full title of any document you refer to during the course of the hearing, and please be aware of the microphones and speak into them. I remind you that your transcript will become a matter of public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

Mr PATERSON: Thanks, Chair. My evidence, I expect, this afternoon, unless I am responding to questions from members of the committee, will be relatively brief. I would note your observations about the evidence being confidential to the committee, but the comments that I will make are general in nature and things that I would repeat in a variety of different forums in relation to the history of ASQA. For the committee’s benefit, the Australian Skills Quality Authority was created in 2011 with the referral of powers by the majority of states and territories to the commonwealth to regulate registered training organisations. Currently, we regulate in excess of 4 100 registered training organisations delivering vocational education and training to students both in Australia and overseas. Two states have not yet referred power to the commonwealth. Western Australia is one of those states and the other is Victoria. We regulate approximately 50 per cent of the RTOs that operate in Western Australia, with the Western Australian Training Accreditation Council regulating the other almost 50 per cent of the RTOs. We regulate the RTOs that operate across state borders or who are delivering to international students. When we talk of international students, we are generally referring to those who are studying in Australia subject to a student visa. Where an RTO is delivering to students studying in Australia on a student visa, they are regulated by us. RTOs delivering to state-exclusive audiences in Western Australia are regulated by WA TAC. I just wanted to be clear so that people were aware of our interest in the matter before the committee. Our letter to —

The CHAIR: Sorry; if you have further comments to make, please proceed.

Mr PATERSON: Our interest in the matter before the committee is really in relation to information sharing. We are, under our legislation and under the Western Australian Training Accreditation Council legislation, able to share information between us where we think that is in the interests of proper regulation of registered training organisations. We are in a position to share information with WorkSafe WA where we think that information will benefit the exercise of WorkSafe WA's powers. Unfortunately, if information comes to WorkSafe WA in relation to registered training organisations and the delivery by those registered training organisations, particularly in high-risk areas, they are unable to share that information with us, which means if information comes to WorkSafe Western Australia about the behaviour or performance of a registered training organisation that we regulate, they are unable to share that information with us, which means that we may not become aware of shortcomings in relation to the performance of a particular RTO or trainers working for that RTO, which can undermine our capacity to implement appropriate regulatory action. Our recommendation is that a power similar to that which is provided for in our legislation be incorporated by the Western Australian Parliament in the legislation that governs WorkSafe WA, which would enable the sharing of information when a proper assessment is made that it would benefit the community that that information is able to be shared with us.

We work on a risk-based regulatory model which ensures that we apply our regulatory scrutiny on those RTOs that present a risk to the community or to the delivery of appropriate vocational education and training. The areas of greatest risk that we see in our regulatory activity are those areas where inadequate training by volume or content or inadequate assessment of the individuals undertaking the training that is being delivered are the areas of greatest weakness, because it presents a risk in the system that somebody has a qualification that would purport that they hold particular competencies in an area and that they may not, and that undermines the confidence of the community in relation to the qualifications that are issued by registered training organisations. For us, it is critically important that we are made aware of concerns about the delivery of training and the undertaking of assessment of students, and we think we would all benefit from WorkSafe WA being able to share information that comes to its attention with us if we are the responsible authority regulating the registered training organisation.

We regulate both public and private registered training organisations. We regulate one of the TAFEs in Western Australia, which is the TAFE that focuses on the delivery to international students. The other parts of the TAFE system in Western Australia are regulated by WA TAC. But, as I said, we regulate about half of the registered training organisations that deliver in Western Australia, with WA TAC regulating the other half. We regularly, where it is appropriate, share information with WA TAC in relation to registered training organisations and they with us, and that is a well-established pattern of behaviour around the country. Where there are state regulatory authorities, we are in a position to share information with them and the majority have a capacity to share information with us. Sometimes to meet the particular legislative requirements, we need to issue a direction to an agency to supply information to us and sometimes they might be required under their legislation to issue a direction to us to share information with them. But we do think there is a benefit in sharing information to ensure that the community will have confidence in the competence of people who have their training undertaken by registered training organisations. I am happy to respond to any questions that the committee might have, chair.

The CHAIR: Thank you very much. We do have a few questions. At page 2 of the ASQA submission, it states that WorkSafe does not provide information to ASQA about specific RTOs and assessors. Have WorkSafe informed ASQA that they cannot share information with ASQA?

Mr PATERSON: They have. The top paragraph on that submission indicates that we are advised that the legislative framework within which WorkSafe currently operates prevents it from disclosing

information. So, we have been advised that they cannot share that information with us because of their current legislative framework. I cannot say that I have personally examined their legislative framework, but I am advised that they cannot share that information with us.

[1.40 pm]

The CHAIR: Has WorkSafe provided ASQA with written advice to that effect—that they are unable to share any information about specific RTOs and assessors?

Mr PATERSON: I cannot answer that, Chair. I do not know whether they gave us written advice or whether it was legal advice. I have a Western Australian office of ASQA and I am advised, both by that office and more generally, that we have been informed that they cannot share the information. If they can share the information with us in their current legislative remit, then there is not much substance to our submission, but it does mean that we will need to have better communication between us, because if they are able to share the information, we have been told they cannot.

The CHAIR: Are you aware whether WorkSafe shares information with TAC?

Mr PATERSON: No, not with first-hand authority, I could not say. I would presume that the prohibition that applies in relation to sharing information with us would apply in relation to WA TAC.

The CHAIR: Why does ASQA believe that WorkSafe would have information that would assist ASQA in its role as regulating RTOs?

Mr PATERSON: Because we find in many areas of regulated activity that a regulator with a specific responsibility sees areas of concern in relation to questions about the competence of individual holders of qualifications, and that raises questions about the competence of the RTO. Sometimes you will see pockets of behaviour. If I can use something outside of Western Australia by way of example, in the family day care area, concerns have been raised about the qualifications held by some individuals operating in family day care centres. When you look at a pattern of behaviour, you will often find that the concerns that have been raised in relation to individuals tie back to a particular registered training organisation, and you are able to identify a pattern of behaviour that means that, from a risk-based point of view, we should be looking at that particular registered training organisation. It might have come to our attention by some other means. In this situation, particularly where there are high-risk occupations—many of those operate in Western Australia—it is important that if a regulator sees practices of a registered training organisation or of trainers working with that registered training organisation, that we should be made aware of it.

The CHAIR: As I understand it, WorkSafe regulates the assessors and ASQA and TAC regulate the RTOs. Given that WorkSafe only regulates assessors, how would that assist ASQA in your task of regulating RTOs?

Mr PATERSON: Because the registered training organisation is responsible for the delivery of training and the assessment of training, and it issues the qualifications. So even if WorkSafe had assessors that were participating in part of that process, if there is a flaw or a deficiency in the delivery of training, or in the nature of the assessment that is being undertaken, that is a failing of the RTO. Even if third parties are involved in that process, the RTO is still responsible for the delivery of the training and for the undertaking the assessment, because they are the ones that issue the qualification. They are able to issue nationally recognised qualifications because they are registered training organisations, and those national qualifications should then be accepted by all other registered training organisations. So if there are questions about the capacity of the RTO to deliver the training or to undertake proper assessment, it undermines the system of nationally recognised qualifications.

The CHAIR: In relation to ASQA's submission and recommendation that the occupational health and safety regulations be amended so as to expressly provide for WorkSafe to share information with certain bodies, are you able to advise the committee whether bodies similar to WorkSafe in other state jurisdictions all have that capacity to share information?

Mr PATERSON: I cannot say that they all have that capacity to share information, but generally speaking there is a capacity between regulatory agencies for people to share information, and we work with them where that occurs. There are so many different regulatory structures that operate in relation to regulatory agencies around the country that I cannot with confidence say that all are able to share. But you are not looking at all of them—you are looking at WorkSafe WA. We are saying we have that capacity to share information with WA TAC and they with us, and we are able, under our legislation, to share information with WorkSafe WA, but they are not able to share information that they may come across that is relevant to our regulatory activity and that would benefit the community.

The CHAIR: Does ASQA have a view regarding the adequacy of training provided by RTOs for high-risk work licences in Western Australia?

Mr PATERSON: Not a general view, no. If we have concerns in relation to the performance of a particular RTO, then we generally undertake a regulatory activity. We would undertake a compliance audit, and if we find substantial deficiency by the RTO, we would take a regulatory action, but if we are not made aware of it, then sometimes we may not see it. One of the challenges in the delivery of training is that the interests of the trainee are often directly associated with the trainee's desire to have the qualification, particularly where that qualification is required for employment—if I can use an industrial term, a ticket to start. If they have to have the ticket to start, then they are interested in getting the ticket. It might not always be an interest in undertaking the learning; their interest is in getting the ticket. Sometimes if there are students who want the path of least resistance to getting the ticket to start, and an RTO is interested in taking their money and delivering the training with the easiest path to an outcome, they can deliver poor quality training for a price and the student gets the ticket to start, but it means we are not getting properly delivered training that should be delivered by that RTO, and the community cannot have confidence in the qualification they might get.

The CHAIR: What role does ASQA play in determining the national standards for training accreditation for high-risk work licences?

Mr PATERSON: We do not play any role. Those standards are developed either by the regulatory agencies themselves or by the developers of training packages. We regulate against the training packages that have been endorsed by the national Industry and Skills Council but we do not set the standards for high-risk occupations. We regulate the training organisations with the training that they have on their scope of registration.

The CHAIR: In each of the last five years, how many RTOs providing training for high-risk work licences in Western Australia have been audited by ASQA?

Mr PATERSON: I could not answer that question, chair.

The CHAIR: We will take that as question on notice 1. Would you be able to provide that information to the committee?

Mr PATERSON: Happy to. I can endeavour to get the answer to that.

The CHAIR: In addition, how many of those were found to be noncompliant, and how many had levels of noncompliance that were significant or critical? In addition, for each of those, what action was taken in relation to that noncompliance by that RTO, and are those RTOs still registered as RTOs

providing high-risk work licences in Western Australia? That can all be taken as question on notice 1. If you can endeavour to get that information to the committee, we would be most grateful.

The committee has heard evidence from an RTO that longer courses and more practical experience are required for high-risk work licences and advanced scaffolding qualifications. Does ASQA agree with this?

Mr PATERSON: Without being specific in relation to a particular field of endeavour, we undertook a strategic review recently which examined literally thousands of course advertisements and marketing claims in relation to training programs, where we identified a risk to the system of unduly short duration training, where training was being delivered over too short a time frame to enable people to adequately deliver the training that was required by the training package and to properly assess the competence of the individuals. It is a matter that is before the combined senior officers' grouping between all governments and the commonwealth, and is likely to go to ministers at their next meeting, which I expect will be in November or December sometime.

[1.50 pm]

We think that those who are responsible for developing the training packages should, in high-risk areas, identify and specify the mandatory expected duration that a new learner, new to the industry, would be expected to undertake to gain the competencies that are required. It does not mean that everybody should have to undertake training at that level, because the very nature of our system, being competency based, means that you do not specify minimum durations for every student, but we think that there is a case to be made for specified minimums where there is a risk to the community, or a risk in the particular industry sector in which they are operating, where unduly short duration is undermining the confidence in the community. We have seen it in a number of areas, but we do not say that it is for ASQA to identify the duration, or for us to specify which qualifications or which training packages it should apply to. It should be up to the industry that is developing the training package in the first instance to specify those mandatory requirements. It would not apply to all, but it may well apply to the high-risk areas that you are referring to.

The CHAIR: Does ASQA agree that it is reasonable for an employer to expect the holder of an advanced scaffolding high-risk work licence to be competent at complex scaffolding tasks?

Mr PATERSON: That is an area of detail that I do not think I am personally competent to respond to. We certainly believe that the holder of a qualification issued by an RTO that meets the standards identified by a training package, if that training package indicates that a person should be competent to undertake complex scaffolding requirements, then the answer to the question is yes, because that is what RTOs are supposed to do; they are supposed to deliver the training in the way that they determine is appropriate for the cohort that they are training, but the assessment methodologies that they apply ensure that they are able to assess the capacity of the student to meet the standards that are specified by the training package.

The CHAIR: Which body is responsible for setting the training requirements for high-risk work licences?

Mr PATERSON: It depends on the industry sector. There are a number of national industry skills councils that set the training packages and I think that there are nine or 10 of those nationally that are responsible for developing national training packages, and they are the ones who establish the standards. They engage directly with industry in the establishment of those standards.

The CHAIR: The committee has heard evidence that, for example, in the area of scaffolding, in the UK there is a two-and-a-half-year apprenticeship required to be an advanced scaffolder, yet in Western Australia that licence can be obtained with a less than two-week course. It seems to me

that there is a great disparity in terms of the level of competency that you would have between a course that consisted of less than two weeks, and an apprenticeship of over two and a half years. I am just trying to understand why there is this difference between the model that the UK adopts and the model that we have adopted here in Australia, where a two-week course is sufficient.

Mr PATERSON: I do not think that the model that we have adopted here suggests that a two-week course is necessarily sufficient. What a registered training organisation is obligated to do is to deliver training to meet the needs of the particular cohort of students, and to be able to properly assess the capacity of that cohort of students. Our concern in relation to unduly short training would suggest that it is questionable as to whether properly delivered training and properly assessed competencies could be done over such a short period of time. It depends on the nature of the training package. If you look at the course durations by comparison with the Australian Qualifications Framework, for a certificate II, I think the AQF talks about six months. A certificate III or IV is expected to be sometime between six and 18 months. That might be normal delivery. We, in our recommendations in the strategic review, recommended that they might want to set minimum standards in relation to the delivery of the structured component—not the self-paced learning components that may be involved in particular training packages, but the structured delivery component—that the industry sector might say is appropriate for the delivery to new learners new to the industry. Having an 18-month, a two-year or a two-and-a-half-year apprenticeship is as arbitrary as having something at the other end of the scale. The industry sector ought to be capable of identifying what they believe is the minimum duration for delivering and assessing the competencies that are specified within the training package. They will vary industry to industry, and sector to sector, but in the same way as it is arbitrary to say that a traditional apprenticeship might be four years, it is equally arbitrary to say you can deliver it in two weeks. I think that it would be easy for anybody to credibly question whether you can deliver it in two weeks, and I do not think that the two-week delivery is necessarily a feature of the system that is being developed in Australia. It is just that we have taken duration out as an essential component, and we think that that presents some risks.

The CHAIR: Do you think that it should be mandated that high-risk work licence class holders are required to log defined, on-the-job, high-risk working hours under supervision before progression to the next level of certification?

Mr PATERSON: We do not adopt a view that specific in relation to a particular sector. What we are saying is that the people who set the standards for the training packages ought to be the ones who identify the minimum duration. The very nature of our regulatory activity is that we regulate registered training organisations, and they deliver training across an incredibly broad scope of activity. We regulate against the standards that are specified by others, and the proposition that you put is really a question for those who develop the training package, not for us as a regulator.

The CHAIR: Does ASQA know much about WorkSafe's auditing of assessors, and do you have a view about whether that is adequate?

Mr PATERSON: I do not.

The CHAIR: Does ASQA play any role in the auditing of assessors?

Mr PATERSON: No.

The CHAIR: Does ASQA have a view about whether WorkSafe is the appropriate body to audit assessors?

Mr PATERSON: No, we do not have a view on that.

Hon KYLE McGINN: I am just curious if there is any involvement with forums, reviews or industry forums in Western Australia that ASQA attends with WorkSafe in attendance as well.

Mr PATERSON: I would expect that there would be forums that officers from my Western Australian branch office or auditors associated with it may well attend that WorkSafe is in attendance at, but I could not say with confidence one way or another.

Hon KYLE McGINN: I would say I am more interested in, probably specifically, high-risk work licence events that may have been attended. Is it possible to find out if there has been any forums held where ASQA and WorkSafe have been in attendance?

[2.00 pm]

Mr PATERSON: I can ask the question. I cannot guarantee I can give you an answer, but I can endeavour to find out. I can take that on notice.

The CHAIR: We will take that as question on notice 2.

Hon JACQUI BOYDELL: I just have one question and it relates specifically to, really, the heart of your submission to the committee, and you talked about it as well—the disclosure of information that WorkSafe hold in relation to RTOs to yourself to allow a greater sharing of information, which leads to a safer work environment, obviously. Can you just explain to the committee what attempts ASQA have made—what you do currently to try to understand that situation and how you identified that gap with WorkSafe?

Mr PATERSON: We have a risk-based regulatory approach, which means that we respond in looking at the performance of a particular RTO of what is the information that we have about their performance. Particularly in a high-risk work area, if we have no information of complaint from students, no information of complaint from regulatory authorities, no complaints from competitor RTOs, then we are unlikely to be aware of the risk that a particular RTO may provide. For most RTOs, they get seven years of registration, so in the absence of complaints, an RTO can continue to deliver in the marketplace consistent with its scope of registration. We often find that complaints that are raised with us come to us either from students who have been duded by an RTO or they feel that they have paid for something that they have not received. We cannot fix the consumer element of that, but we can look at the performance of the RTO. Sometimes you get complaints from competitor RTOs who say, “I’m being undercut by X because they are delivering inadequate training or inadequate assessment or they are selling qualifications.” That information that comes to us enables us to make an assessment as to whether we should be undertaking some regulatory action and we might undertake an audit. If they were seeking to change their scope to a high-risk area, we may undertake an audit of their practice if there was other information that was available to us that suggested that that RTO presented a risk. We think that information shared, if it is available to a regulatory authority that impacts on the performance of the RTO and the delivery of training in those key areas, if we know about it, we can do something about it. If we do not know about it, it may be beyond scrutiny.

Hon JACQUI BOYDELL: Do you have situations that you could let the committee know of where you have tried to deal with WorkSafe with a particular RTO in relation to high-risk assessors that you have not been able to get information, but there has been clearly an issue in the workplace that WorkSafe have been involved in?

Mr PATERSON: Well, I am aware that there have been interactions between ASQA and WorkSafe and questions raised in relation to high-risk occupations. But where we have sought information, we have been advised that it cannot be provided to us. I use examples outside of Western Australia by way of example, where people get energised about the performance of particular RTOs, saying,

“Well, you the regulator have got to do something about it” and we say, “Well, give us the information.” The information is either not available to them and people are making general observations of criticism or others want to see us take a particular course of action where we do not have the information base which enables us to look at a particular RTO’s performance. I cannot give you an example off the top of my head of where those interactions have occurred with respect to WorkSafe in Western Australia. If you want us to examine those interactions, I can have that work done. Being a chief commissioner I do not get to see many of the RTOs that perform well because they do not come before me and my fellow commissioners as part of the regulatory scrutiny. We get to focus on those that perform less well—that is, those that present a risk to the system.

The CHAIR: We will take that as question on notice 3. If you are able to source that information and provide it to the committee, that would be appreciated.

Are you aware of businesses that are not RTOs delivering high-risk work licence training in Western Australia under the licence of an RTO?

Mr PATERSON: No, I am not. But under the current legislative remit, there is an inconsistency in the legislation about third party delivery and in one part of the standards, an organisation that is not an RTO cannot deliver or purport to offer training in an area not on scope. There is a part in the standards which suggests an RTO is responsible for all third parties that deliver on its behalf. There is an inconsistency and that is part of the inheritance that came about with the creation of the legislative framework that we have at the present time. But, at its simplest, an RTO is responsible for the activities of all third parties that act on its behalf. So, if a non-RTO is delivering training on behalf of a registered training organisation, then the registered training organisation is responsible for the delivery of that training and for the outcomes.

The CHAIR: Even if the contract was signed between the student and the non-RTO business?

Mr PATERSON: If the contract is between a student and a non-RTO business, then they are in breach of the law because they cannot offer vocational education and training qualifications if they are not a registered training organisation. So, if the contract is between a non-RTO and a student, then that is a breach of the act. If the non-RTO is an agent of an RTO, then it is the RTO that is responsible, but I cannot envisage a situation where the agent of the RTO is the contracting party and that the student does not have a relationship with the RTO. That is where that sort of gap in the legislation might exist at the present time. A non-RTO cannot hold themselves out as being an RTO, but a third party can act on behalf of an RTO.

The CHAIR: Is there any intention to change that legislation to fix that gap?

Mr PATERSON: The legislation is currently the subject of review by Professor Valerie Braithwaite from the ANU. She is expected to report to the commonwealth government by the end of this year.

The CHAIR: We look forward to that report because I am aware of a situation where a third party arrangement such as we have described existed and continues to exist in Western Australia.

Mr PATERSON: It may be helpful if you were able to share the detail of that arrangement with us and we would then be able to examine. If it is an RTO that is regulated by us, then it would be a breach of the legislation if the non-RTO is the one that is offering the qualification.

The CHAIR: I will do that separate to this inquiry, though, because it does not directly impact on this inquiry.

Commissioner, we do not have any further questions. Are there any further matters that you would like to raise with the committee?

Mr PATERSON: Not at this stage, chair. I will endeavour to respond to the questions on notice when we get the detail of those questions through.

The CHAIR: Thank you very much for your time today and for attending before the committee. A transcript of the hearing will be forwarded to you for correction and if you believe there are any typographical errors or transcription errors, if you could just notify the staff of those so that they can be corrected. The committee requests that you provide answers to your questions taken on notice within two weeks of receiving those questions. If you want to provide additional information to the committee or elaborate on particular points, you are able to provide supplementary information to the committee during the course of its investigation.

Mr PATERSON: Thanks, chair.

The CHAIR: With that, I will thank you and conclude the hearing today. Thank you very much.

Hearing concluded at 2.10 pm
