



# **LEGISLATIVE COUNCIL**

## **STATUTORY AUTHORITIES REVIEW COMMITTEE**

### **INQUIRY INTO TAFE SA**

Constitution Room, Old Parliament House, Adelaide

Monday, 12 December 2016 at 2:10pm

BY AUTHORITY OF THE LEGISLATIVE COUNCIL  
**[PROOF COPY]**



## **WITNESS**

PATERSON, MARK, Commissioner, Regulatory Operations, Australian Skills Quality Authority..149



## MEMBERS:

Hon. J.M. Gazzola (Presiding Member)

Hon. T.A. Franks MLC

Hon. G.A. Kandelaars MLC

Hon. R.I. Lucas MLC

Hon. S.G. Wade MLC

## WITNESS:

PATERSON, MARK, Commissioner, Regulatory Operations, Australian Skills Quality Authority

*[Via Skype videoconferencing]*

751 The PRESIDING MEMBER: Thank you for appearing before the Statutory Authorities Review Committee today. A transcript of your evidence today will be forwarded to you for your examination for any clerical corrections. Should you wish at any time to present confidential evidence to the committee, please indicate and the committee will consider your request.

Parliamentary privilege is accorded to all evidence presented to the committee and therefore protects the witness from any legal action arising in regard to that evidence. However, witnesses should be aware that privilege does not extend to statements made or documents circulated outside of this meeting. The committee will consider any documents presented to it and will determine whether the documents be received and form part of the evidence.

All persons, including members of the media, are reminded that the same rules apply as in the reporting of parliament. Please note that the audio of today's hearing is being broadcast within the parliamentary precinct. The committee comprises the Hon. Mr Wade sitting to my right, I am the Hon. John Gazzola, Emma Moulds is our research officer, and the Hon. Mr Lucas. Mr Paterson, do you have an opening statement or are you happy for us to proceed with questions we may have?

Mr PATERSON: I am happy for you to proceed straight to questions.

752 The Hon. S.G. WADE: Perhaps we could start with the nature of your agency. When ASQA was first set up, Western Australia and Victoria stood out. Have they since joined?

Mr PATERSON: No, they haven't. ASQA was established in 2011 on the referral of powers to the commonwealth progressively by all states with the exception of Western Australia and Victoria but, in Western Australia and Victoria, we regulate all training providers who operate beyond their state borders and all providers to international students. So, any provider providing services to international students is regulated by us even if they are exclusively in Western Australia or exclusively in Victoria. By way of percentages, we have in excess of 70 per cent of the RTOs in Victoria and a bit over 50 per cent of the RTOs in Western Australia being regulated by us, and we have all other jurisdictions.

753 The PRESIDING MEMBER: How many are here in South Australia, Mr Paterson?

Mr PATERSON: There are currently 230 RTOs from South Australia regulated by us. That has declined since 2012. In fact, the sharpest decline in registered training organisations of any jurisdiction has occurred in South Australia where it has dropped by nearly 25 per cent since 2012.

754 The PRESIDING MEMBER: How many of those have you audited?

Mr PATERSON: I had focused particular attention on TAFE. I could have a look to see how many of the private providers we have audited. The nature of our activity means that we tend to collect the stats on a national basis. We have received nationally nearly 34,000 applications

since ASQA was created. They would be initial applications, applications for a change of scope and applications for renewal of registration.

Of those nearly 34,000 applications, we have completed 6,225 audits overall. We don't audit every application, and we are progressively moving away from application-driven activity into a risk-based focus, so we look at the providers of greatest concern and undertake audit activity that reflects the nature of the risks that they present to the system.

755 The PRESIDING MEMBER: Mr Paterson, I should mention you can take questions on notice if you don't have the information or the answers on you.

Mr PATERSON: Thanks; I am happy to try to respond to whatever I can with you today.

756 The PRESIDING MEMBER: Have you audited TAFE SA?

Mr PATERSON: TAFE SA has largely been regarded as presumed compliant. We have seen 75 applications from TAFE SA with 2,287 from TAFE institutes around Australia over the period of their registration. Of those 75 from South Australia, 74 were approved and one was withdrawn. The majority of applications that we receive are for change of scope; that is, to change coverage in the nature of the programs that are being delivered.

757 The PRESIDING MEMBER: Mr Paterson, the South Australian Department of State Development has previously advised that South Australia has not seen the same level of bad provider behaviour that has occurred in other jurisdictions. How is South Australia performing compared to other jurisdictions?

Mr PATERSON: It depends on the nature of the measure you want to look at. Nearly 24 per cent of all initial applications for registration that have come from South Australia have been rejected at the initial stage, which is higher than the national average because 15.3 per cent of initial applications nationwide are rejected compared to nearly 24 per cent in South Australia.

The number of initial applications that are granted is higher in South Australia than nationally but then there is post-rectification; that is, when we assess something, we will often find noncompliance against the standards, and providers are given an opportunity to rectify that noncompliance. The number of initial applications approved is higher than the national average, and the number approved after rectification is lower than the national average, so it is a mix. You wouldn't be able to say that there is a uniform picture. As I said, there has been almost a straight-line decline in the number of RTOs from South Australia. It has gone from 300 to 230 in the period since 2012.

758 The Hon. S.G. WADE: Does the authority have a theory as to why that might have happened?

Mr PATERSON: I think it's just a reflection of, possibly, the nature of the market. It's a relatively small number overall. South Australia represents about 5.6 per cent of the total RTOs that are regulated by ASQA, which says that, on a percentage basis, it doesn't reflect the population base you would expect South Australia to have as a percentage of the total numbers, but that could be a reflection of the significance of TAFE SA in the marketplace. We haven't tried to unpack the nature of why we are seeing that change in behaviour.

If you look at the overall performance in relation to compliance history of active TAFEs versus all providers, generally speaking, TAFEs perform relatively well compared to overall providers. With regard to all providers, the percentage of those who demonstrate consistent compliance is a bit above 14 per cent, but for TAFEs it's only 4.7 per cent. For presumed compliance, it's about 42.3 per cent—that is, there are no indications of any issues that would lead a regulator to think that people are not compliant—compared with 18.6 per cent for active TAFEs. Generally, for all providers, compliance is 34 per cent but for TAFEs it's 72 per cent.

So, by and large, they are compliant, but any large organisation will have pockets in it that are compliant and highly compliant, and there will be pockets in it that need to do some work. That is the nature of large organisations. We generally find that there is a strong commitment inside TAFEs to make sure that where a problem is identified, it's fixed.

759 The Hon. R.I. LUCAS: You gave an initial figure of 23 or 25 per cent of initial applications from South Australia that didn't come up to standard or were noncompliant. Is that right?

Mr PATERSON: Yes, 23.9 per cent of initial applications are rejected—

760 The Hon. R.I. LUCAS: Are rejected, okay.

Mr PATERSON: —and the national figure is 15.3 per cent. That may be people who want to get into the game but don't have a full appreciation of the nature of the training market and the standards that they are required to meet. However, as I said, we haven't tried to unpack that.

761 The Hon. R.I. LUCAS: Can you clarify for me, of those 23.9 per cent that are rejected, are we talking about registered training providers that have been rejected or, for example, with TAFE, which might have 20 campuses or 20 separate sites, does each site have to lodge an application for you or does TAFE overall lodge one application?

Mr PATERSON: It is a matter for the institution itself. We don't dictate to the TAFEs how they structure themselves. If they want to be a single RTO, then we register as a single RTO. If they want, as some TAFEs do, to have institutes then we register the institute. We could register at a campus level if that were the aspiration of TAFE.

762 The Hon. R.I. LUCAS: Do you know what the experience is in South Australia for TAFE?

Mr PATERSON: We register a number of trading operations for TAFE in South Australia, and I can provide a list of those if that is helpful—

763 The Hon. R.I. LUCAS: Yes.

Mr PATERSON: —but we have TAFE SA as the registered training organisation.

764 The Hon. R.I. LUCAS: When you said 23.9 per cent of additional applications were rejected, is that of registered training organisations or of training organisations and maybe it might include separate campuses and sites for some of them?

Mr PATERSON: No, that would be non-registered training organisations, because initial applications are businesses who want to become training organisations. So we have a higher portion of aspirants, if I can put it that way, in South Australia being rejected than elsewhere.

765 The Hon. R.I. LUCAS: In the case of these aspirants would they, in essence, be a potential registered training organisation or would they lodge, as a potential registered training organisation, maybe four or five separate applications to you for their four or five sites and your figures would include all the four or five sites as opposed to the one registered training organisation aspirant?

Mr PATERSON: No; given the nature of these new entrants they tend to be smaller. They would be a new business setting out to become a training organisation, and in many cases they make an application for a relatively narrow scope to start with, get registration and then seek to expand their operation by change of scope applications, having achieved initial compliance with the standards. So it tends not to be large new entrants, because they cannot operate as a registered training organisation until registered; they tend to be new businesses.

766 The Hon. R.I. LUCAS: You said that TAFE SA was presumed compliant, is that TAFE SA as an overall registered training organisation for all its sites and campuses?

Mr PATERSON: That's correct.

767 The Hon. R.I. LUCAS: Is anyone else in South Australia presumed compliant other than TAFE?

Mr PATERSON: There would be, I would expect; I have not looked at the detail of it but there would be some registered training organisations that you would presume to be compliant. You would do that because they have demonstrated compliance against the standards on initial application and they have had a history that would suggest they are meeting the standards, there have been no complaints, there have been no issues in relation to the issuing of qualifications and there are no other risk factors that we have built into our risk model that would suggest they are not compliant.

We often look at both risks associated with the performance of an individual and also at risks associated with particular industry sectors, where we have seen some behaviour that needs further examination in some of our strategic reviews. It depends on the mix of information we have available to us. We do not have the resources, nor do we pretend, to audit every application. As I said, we have done 33,870 from 1 July 2011 to 30 June 2016 and of those 33,870 applications we have completed 6,225 audits.

So we do not audit every application. We risk assess the application when we get it; we have a team of people called our initial assessment and review team that deal with both complaints and initial assessment of applications.

768 The Hon. R.I. LUCAS: In relation to TAFE SA, do you have available—either immediately or probably more likely on notice—not the detail but a list of the number of complaints, if any, you have received from South Australians against TAFE SA?

Mr PATERSON: Yes, we have and they were very, very minor in terms of the numbers. It is one of those challenges of using Skype. I have a detailed statistical analysis on all of this sitting on my iPad, which I am currently using to Skype with you.

769 The Hon. R.I. LUCAS: Are you able to forward a copy of that to us?

Mr PATERSON: If you can bear with me for a second, I will just quickly duck out of my office and get them to run it off and then I will answer your question explicitly because I do have the numbers in relation to complaints and how they have been resolved. Can you bear with me for two seconds, Chair.

770 The PRESIDING MEMBER: Sure.

Mr PATERSON: Sorry about that, Chair. I am so used to using the technology that I don't print things to paper. Then you use it for a medium like this and I haven't got access to it. If we can go onto another question, I will come back to that issue in relation to complaints.

771 The Hon. S.G. WADE: On the point you were responding to raised by Mr Lucas, TAFE told us that they had delegated authority to manage their own scope of registration.

Mr PATERSON: Yes.

772 The Hon. S.G. WADE: Is that presumed compliance? Is it the same issue?

Mr PATERSON: We issue delegations to a range of organisations, not exclusively to TAFE, to enable them to manage their own operation. We have to be satisfied that they are generally compliant with the standards before we would do that and, on occasions, we undertake explicit audits in relation to the delegation. Where we have had evidence of a potential problem with a registered training organisation that has delegation, then we would undertake an audit of that delegation.

For an organisation to accept a delegation, they have to maintain standards that would meet any request we made for information. They essentially have to have systems internally in place that would enable them to demonstrate their compliance against the standard. It is not a delegation that is taken lightly by an organisation. In fact, some organisations choose not to accept the delegation because they would prefer us to do the audits of them than for them to run their own internal quality control processes, but TAFE SA does have a delegation from us.

773 The Hon. S.G. WADE: On a fresh line of questioning, I was just trying to understand how the standards of professional registration bodies like AHPRA feed into your expectations of the content of programs that would qualify people for professional registration.

Mr PATERSON: That's a very complex question because there is a whole range of different professional organisations. The bulk of our national training system on the vocational education and training side is underpinned by national training packages. Industry develop training packages that identify the standards that are required to be met for the holders of the particular qualifications and then we assess applications for the capacity of individual RTOs to deliver the training packages that they seek to have on scope.

They are entitled to have whole training packages or units of competence on scope. There are some registered training organisations that only have units of competence, so they have



a very narrow remit to be able to train, assess and issue statements of attainment within that narrow field, but it depends on the nature of the professional body.

Many of them require undergraduate qualifications, so the providers tend to be TEQSA-regulated providers, but for us the standards of registration are expected to be reflected in training packages and then we assess against the training packages. There are also areas of nationally recognised courses which fall outside of training packages, where we get applications from individual course owners for national recognition of courses that fall outside of training packages or are unique packaging of training package components, and we do both. Many of the other funding programs that exist require something to be nationally recognised training for the purposes of their funding mechanisms. Also, for student visas, it has to be training under a national training package or a nationally recognised qualification.

774 The Hon. S.G. WADE: Does your agency ever make decisions about an acceptable balance in terms of mode of delivery? For example, we've heard that in healthcare qualifications there might be a desire for real-time delivery rather than online. Is that specified in the package or is that something ASQA sets?

Mr PATERSON: It's generally specified within the package. The training package specifies the circumstances in which they want it assessed. The industry will specify the nature of delivery. If there is a restriction on delivery or if a registration organisation expects something to be delivered in a particular format, then that's part of the training package requirements. It's not something that is specified by us. We don't say that it has to be delivered in the classroom or that has to be undertaken on the job or that it can't be delivered 100 per cent online. That depends on the nature of the training package that we are regulating.

What a training organisation has to be able to do is demonstrate that they can deliver the training to the standard that is specified and undertake the assessment to the standard that is specified. We test the RTO against their capacity to deliver and to assess, and if they can deliver and assess online, and that is an acceptable means in terms of the training package, then that is okay with us. We are not dictating to industry the standards that it establishes for itself for the training required for that industry.

775 The Hon. R.I. LUCAS: Have you got any answers to those complaints yet, Mr Paterson, against TAFE?

Mr PATERSON: Yes, just bear with me. We have had, on the list that I have available to me, 10 complaints, nine of which are closed, and one is currently in progress. That is against competency enrolments of 494,726, on our numbers, and qualification enrolments of 88,316, so a complaint level of next to nothing relative to the nature of the enrolments that we have before us.

776 The Hon. R.I. LUCAS: A complainant can be any individual who has undertaken a course and is disgruntled, or does a complainant have to have a greater status than an individual?

Mr PATERSON: No, a complainant can be from anywhere. It could be a competitor RTO, it could be a regulatory authority, it could be a parent or it could be an individual student. It could be an employer who says, 'I'm complaining about X RTO because my bloke is going along there each week and he is not getting anything out of it because they just get him to sit in the corner and they don't do any training'—any of those sorts of complaints. Some warrant us taking action in a compliance sense against an RTO and some of them will be intelligence for us that helps us build a pattern over time. So, it would help inform our risk assessment over time, but we don't take a particular regulatory decision in response to every complaint.

777 The Hon. R.I. LUCAS: Can you clarify what period those figures that you just gave the committee were for? Were they for the financial year 2015-16, or is it for a longer period that we are talking about?

Mr PATERSON: I will need to clarify that. It doesn't specify the time frame.

778 The Hon. R.I. LUCAS: Can you take that on notice?

Mr PATERSON: I will take that on notice because it is a regulatory summary that I have of the provider profile for TAFE SA. We have things like the Adelaide College of the Arts, the

Adelaide English Language Centre, the Adelaide English Language Services, Australian Arts and Design, all as trading names of TAFE SA, which I mentioned earlier, but confirming again that the RTO is TAFE SA 41026.

779 The Hon. R.I. LUCAS: Can you take on notice what the time period was, whether it's one year or whether it is all four years of ASQA's working life? The complaints that you have listed, whatever that time frame is, would be against TAFE SA and any operating arm of TAFE SA, one of those colleges or whatever else it is.

Mr PATERSON: That's correct.

780 The Hon. R.I. LUCAS: It would be an aggregate figure.

Mr PATERSON: Because TAFE SA is an RTO, any complaint that was lodged against an operating arm of TAFE SA would be lodged against that RTO in our system. You asked earlier about the number of audits. I only have one post initial audit pending at the present time, so there are no other outstanding audits. The regulatory history reflects largely CRICOS applications, because we can't delegate CRICOS and CRICOS is for the delivery to international students. We can delegate under the National Vocational Education and Training Regulator legislation but we can't delegate CRICOS. So, every CRICOS application, that is, every application to deliver to international students, has to come to us for assessment. The bulk of the provider profile detail therefore that we have had and activity with the registered training organisation is applications for CRICOS.

781 The Hon. S.G. WADE: Does your agency have any responsibility or any role in assessing unmet demand?

Mr PATERSON: No, we don't. That invariably rests with others. We try to ensure the quality of the vocational education and training system through the quality of the providers, and therefore the focus of our regulatory remit is provider focused. In the referral of powers, we got the registration elements of the powers referred but we didn't get the consumer protection elements, so offices of fair trading and the ACCC regulate fair trading style activity; we don't because that wasn't part of the referral.

782 The Hon. S.G. WADE: At the state level, the Department of State Development and TAFE itself assess supply and demand issues. I think one of the industry bodies mentioned that there was a national demand for VET training survey that was two or three years old and was being discontinued.

Mr PATERSON: The NCVER, which is the National Centre for Vocational Education Research, which I think is headquartered in South Australia, isn't it—I think it might be headquartered in Adelaide—undertakes the survey on a national basis, and registered training organisations are required, on an annual basis, to identify the nature of the delivery that they have undertaken over the prior 12-month period so that the NCVER can assess actual delivery in terms of programs, the number of students and any particular training packages, or against particularly nationally recognised courses.

783 The Hon. S.G. WADE: Does that tell us whether we are meeting the demand?

Mr PATERSON: No, it doesn't. Demand in the eyes of who? Demand in the eyes of employers? Demand in the eyes of a group of bureaucrats who think they can project what the market might want? Demand in the eyes of students? I'm reminded that every year we train more lawyers than the total number practising and we do it year after year and have done for at least the last two if not three decades.

784 The Hon. R.I. LUCAS: Some become politicians.

Mr PATERSON: Some do. Some drive taxis. It always worries me when people talk about STEM and we need to invest more in STEM they say, and about 50 per cent of the graduates end up driving taxis.

785 The Hon. R.I. LUCAS: My last question was: your organisation started in 2011. Was there written into your parent legislation a review after a period of time about the operations of ASQA and has there been a review of the operations of ASQA since it started operation?

Mr PATERSON: No, it's not written into the legislation. It was written into the TEQSA legislation, but it's not written into ours. There have been two reviews of activity that have seen some changes in relation to the RTO standards in recent times. It is something that, whilst there is no formal commitment to undertake a review at this time, a timely review of the activities and the nature of the regulation is something that the government might contemplate in the near term, but it's not something that any decision has been taken on at this time.

More often than not there is a ministerial council, chaired by the commonwealth, that oversights the policy area. We are a regulator. If there is to be a review of the policy framework in which we operate, that's something that's invariably led by the government and therefore the lead department.

786 The PRESIDING MEMBER: Mr Paterson, thank you very much for your information and evidence today. As I said earlier, we will send you a copy of your evidence for clerical and grammatical correction. Thank you for that.

Mr PATERSON: I am happy to try to assist the committee and I apologise for not being able to answer the questions straight off the top. I should have been able to, but as I said I am looking at you and not able, therefore, to see on my screen the information that I wanted. I will come back to the committee on the time frame in relation to those complaints.

787 The PRESIDING MEMBER: Thank you very much. Good afternoon.

*[Skype videoconference concluded]*