

About the Author

██████████ is the owner of Argos Consulting, a private business which provides advice, recommendations and support for organisations and individuals requiring assistance in working with government agencies, NGOs and large corporations.

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██████ has been influential in raising concerns and generating debate among stakeholders in the training sector nationally, about the Australian Skills Quality Authority's (ASQA's) conduct, decisions and actions.

██ company was severely sanctioned and then de-registered by the national training regulator, the Australian Skills Quality Authority (ASQA) in 2012.

For the period August 2001 – February 2012, ████████████████████ successfully trained over 7000 aged care students across five states in Australia and worked effectively with in excess of 400 aged care employers.

██████████ was acknowledged by employers, students and the Administrative Appeals tribunal as a training provider of quality.

██████ is also on the Australian federal government's Lobbyist Register.

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NCOA Submission: RTO Perspective

Point of this submission

ASQA should either be dissolved, and jurisdiction for nationally recognised training returned to the states, or the Minister for Industry should initiate a public inquiry into the conduct of the national training regulator.

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Subsequent to the inquiry, if not dissolved, ASQA should be overhauled to ensure it meets the needs of industry as well the public and private sector training providers.

An additional vital measure is to appoint a panel of experienced people, with a majority from the private training sector, to provide oversight, and address and act in a timely manner, on serious complaints relating to the decisions of an overhauled ASQA.

If the national training regulator is dissolved, state training regulators which regulate nationally recognised qualifications should be subject to the scrutiny of the aforementioned oversight panel.

The dissolution of ASQA would have the effect of saving the federal government \$38 million per year. More importantly, the consequent slowing of productivity which has been the effect of ASQA's conduct on Australian industries reliant on the training sector, would be ended.

'Dodgy' training providers would be squeezed out by quality training providers and market forces.

Economic growth would as a result be significantly enhanced; increasing funds to the federal government through higher company and personal income tax revenues, and a stronger economy generally.

De-regulation would unlock an important component of Australia's private sector and help make Australia 'open for business'.

As a first step in any case, a public inquiry should be put in place in view of the damage and associated cost to the training sector in Australia caused by the national training regulator.

The national Vocational Education and Training (VET) sector must be released from the highly bureaucratic and wasteful interference of ASQA.

Proposed Inquiry

The terms of reference for an inquiry should cover issues relating to ASQA's:

1. Treatment of small and medium sized (SME) private RTOs in particular,
2. [REDACTED] the NVR Act in respect to SME RTOs,
3. [REDACTED] process in respect to SME RTOs,
4. Repeated failures when it's decisions are challenged at the Administrative Appeals Tribunal (AAT):

Ref: http://www.austlii.edu.au/cgi-bin/sinorrch.cgi?method=boolean&query=Australian+Skills+Quality+Authority&meta=%2Fau&mask_path=

Also:

http://www.austlii.edu.au/cgi-bin/sinorrch.cgi?method=phrase;query=Australian%20Skills%20Quality%20Authority;meta=%2Fau;mask_path=au%2Fcases%2Fcth%2FAATA;view=cited-most;offset=0

Particular attention should be paid to this case, AAMS Vs ASQA July 30, 2013 in which the Senior Member stated:

(138) *'In these circumstances I consider that the appropriate course to take is merely to set aside (all) the decisions under review....'*

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2013/530.html?stem=0&synonyms=0&query=Australian%20Skills%20Quality%20Authority>

5. Reputation among Members of the AAT contact: [REDACTED]
or
[REDACTED], <http://www.aat.gov.au/ContactUs/NSW.htm>,
6. Appointed auditors' inconsistency of findings in respect to levels of compliance across all RTOs,
7. Failure to acknowledge mistakes and errors, and unconscionable conduct in relation to SME RTOs,

8. Failure to objectively and properly address applications for compensation resulting from their defective decisions and actions,
9. [REDACTED] advice to successive relevant Ministers,
10. Interpretation of the standards (NVRs) contained in the NVR Act, 2011,
11. Reputation among standards experts for its acceptance of, and handling of the nebulous NVRs,
12. Reluctance to use anything other than the most damaging of sanctions against SME RTOs,
13. Impact of its decisions and actions on reputable SME RTOs, their owners and employees,
14. Impact of its conduct on the VET sector in Australia,
15. Failure to properly acknowledge and act on the reputation for quality training delivery of the SME RTOs it sanctions,
16. Failure to provide adequate and proper time-frames to SME RTOs for rectification of perceived non-compliances.

The National Vocational Education and Training Regulator Standards (NVRs)

The highly nebulous nature of the NVRs has not been addressed or questioned in any way by the national training regulator despite it being fully aware of the problems they have created for all stakeholders, and the consequent erosion of public faith in nationally recognised training.

RTOs are unable to ascertain how they can comply with the NVRs that is consistent and reliable.

Standards experts such as [REDACTED] do not regard the NVRs as a useful means of determining an organisations capability and capacity for quality training. The NVRs are wide open to interpretation and exploitation.

(Contact: [REDACTED]
[REDACTED] or [REDACTED])

ASQA itself neither offers nor provides on request, specific or proscriptive guidance on how to comply with these standards thereby placing RTOs in untenable positions.

Despite ASQA employing three lawyers funded by the deep pockets of taxpayers, it loses most cases at the AAT when challenged by private RTOs which are still able afford this option.

Stories are rife amongst the training industry pertaining to the inconsistencies in findings by ASQA auditors. They range from the absurd to the ridiculous.

Example 1: An RTO with operations in Victoria and Western Australia engaged an 'ex-ASQA' auditor to work through its policies, procedures, documentation etc. and ensure the organisation was compliant with all the relevant standards.

Soon after this costly process was complete, the RTO was audited by ASQA in both states by different ASQA contracted auditors.

In Victoria, the RTO was found to be compliant with all standards, while in Western Australia the ASQA contracted auditor there found the RTO to be non-compliant across all the standards.

Example 2: An auditor 'found' an RTO to not have sufficient communication between the CEO and the trainers. A flow chart was provided along with evidence of 3 levels of communication used constantly. The RTO was 'found' to be non-compliant. (This 'finding' is used frequently by ASQA auditors).

Example 3: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Example 4: [REDACTED]
[REDACTED]
[REDACTED]

As the National Skills Standards Council (NSSC) is responsible for the development of the current standards, it should be dissolved and replaced with a new body with a different approach to the creation of standards.

Alternatively, the NSSC not be replaced but ISO standards ratified by JASANZ be incorporated into an amended NVR Act to guide RTO operations.

A recent quantitative analysis on the public website for professionals, Linked In, showed there were 274 separate discussion threads on problems with dealing with ASQA and determining how to be compliant.

These came from eight of the relevant groups and contained input from RTOs, consultants and standards experts across a six month time period between 9 April and 8 Oct 2013.

The recurring themes of confusion, anxiety, fear and hostility are apparent throughout.

Ref: <https://au.linkedin.com/> ;

Groups examined: 'Achieve', 'ASQA Issues', 'Vocational Education and Training', 'Aus VET Legislation', 'IVET', 'IPATED', 'ASQA Audits - Questions, Info & 'Mythbusters', [REDACTED]

Effect of ASQA's conduct on private sector RTOs

Beyond the agenda of unjustifiably harsh sanctions repeatedly and wrongfully placed on SME RTOs and the use of nebulous standards, there are other serious concerns relating to ASQA's conduct.

Private RTOs believe that the level of compliance required to be a Registered Training Organisation (RTO) is too high, out of touch with training sector needs and impossibly nebulous.

This level of compliance is beyond what might be reasonably required to meet benchmark standards in training, assessment and delivery.

Private RTOs find that ASQA is directly interfering with all aspects of their operations.

The effects of this interference are:

- i. Undue stress on RTO senior employees,
- ii. Undue financial pressure,
- iii. Restriction on the RTOs capacity to respond to their markets (employers, industry and students),
- iv. Dramatic slowing in the capacity to develop and bring innovations to market,
- v. Significant increase in financial risk for investors,
- vi. RTOs are departing the jurisdiction of the national training regulator.

Flow-on effects:

- vii. Reduction in the overall level of quality of graduates in Australia,

- viii. Training sector is becoming less responsive to the needs of employers,
- ix. Employers see ASQA (and national training regulation) as a negative,
- x. Experienced trainers who are 'subject matter experts' are choosing to leave the training sector, especially that part under the jurisdiction of ASQA,
- xi. Medium to long term reduction in national productivity,
- xii. Australian employers are becoming less competitive with foreign companies,
- xiii. Decline in Australia's international reputation for quality training.

According to Australian Bureau of Statistics information

(<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/FBC2FEEDF38C6DD6CA25773700169C92>), ASQA has jurisdiction over around 5000 RTOs, 3700 of which are private training providers.

In 2008, over well over 2 million people in Australia enrolled in VET courses, a significant proportion of whom are subject, via their training providers, to the conduct of the national training regulator.

As a result, ASQA's defective administration has a major impact on the capability of the training sector to meet the needs of employers.

ASQA's Current Stance

The national training regulator appears to be proceeding on a path of decimation of RTOs (destroying one in ten) with little or no regard for the quality of training delivered. Approximately 270 of the 3700 RTOs have been forced out of business [REDACTED] since [REDACTED] July 1, 2011.

The destruction of reputable RTOs, [REDACTED], is evidenced by the number of failures by ASQA to defend its decisions and actions in respect to RTOs at the AAT, and the number of other legal actions for damages pending against the national training regulator.

It is unlikely any poor or 'dodgy' RTOs have been forced out of business by the decisions and actions of the national training regulator.

[REDACTED] has stated publicly that ASQA knows where RTOs are non-compliant (eg. Quality of training in 53% of audits).

However, given that this data is collated from standards that are regarded as nebulous and unworkable by the training sector, and NOT ratified or accepted by standards experts including [REDACTED] and others, the ASQA data cannot be treated as objective or accurate.

[REDACTED]

The ASQA data is effectively self-referencing and not impartial.

Key Points in Relation to this NCOA Terms of Reference

NCOA Ref:

‘SCOPE

Phase 1

Scope of government

- *The Commission is asked to assess the current split of roles and responsibilities between and within the Commonwealth government and State and Territory governments, including areas of duplication.*

Response of the author of this submission (in blue):

In view of the failures of the current national training regulator, both the Victorian and Western Australian State governments have elected to retain their State based regulators of nationally recognised training. This is unnecessary duplication.

It is probable that other States will follow in time.

- *In relation to activities performed by the Commonwealth, the Commission is asked to identify:*
 - *whether there remains a compelling case for the activity to continue to be undertaken; and*

As standards experts and training consultants have formed the view that ASQA has not removed any of the dodgy training providers, there is no compelling case for the continued operation of the national training regulator in its current form.

Additionally, reputable private RTOs with acknowledged high quality results in training delivery have been, and continue to be, severely sanctioned, suspended or de-registered by ASQA. There is a compelling case for the dissolution of the national training regulator.

- *if so, whether there is a strong case for continued direct involvement of government, or whether the activity could be undertaken more efficiently by the private sector, the not-for-profit sector, the States, or local government.*

The State based training regulators have not had the damaging effect on the training sector that ASQA has had and this indicates the industry would be better served by the States.

‘- potential improvements to productivity, service quality, and value for money across the public sector, including better delivery of services to the regions; and...’

ASQA has little or no effective service delivery in the majority of the regions in Australia.

‘...- anything that is reasonably necessary or desirable to improve the efficiency and effectiveness of government generally.’

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The establishment of an independent oversight panel as proposed in this submission would significantly improve efficiency and effectiveness in both the short and long terms.

NCOA ref:

‘Phase 2

Commonwealth infrastructure

- *The Commission is asked to review and report on the extent, condition and adequacy of Commonwealth sector infrastructure and, if found to be deficient, factors that may have contributed to the current situation and possible remedies.*

The seven key factors that have led to the current situation:

1. [REDACTED]
2. ASQA’s continued use of the most severe and damaging sanctions against reputable private RTOs with established reputations for quality training delivery,
3. Lack of an effective mechanism for oversight,
4. Lack of real accountability of the national training regulator,
5. Lack of timely management of serious complaints lodged by RTOs against ASQA,
6. Nebulous, poor quality ‘standards’ (NVRs) for RTO compliance,
7. Authoritarian approach to regulation of private sector RTOs.

‘Public sector performance and accountability

- *The Commission is asked to:*
 - *identify options for continuous assessment of programs, agencies and performance;*
- 8. Direct ASQA (or replacement agency) not to severely sanction, suspend or de-register any RTO with a stakeholder industry reputation for quality training delivery and that this be reported and monitored by an independent oversight panel,
- 9. Stakeholder employers be asked to verify the quality of graduates from RTOs and that this data be matched to ASQA’s decisions and actions and monitored by an independent oversight panel.

‘Public sector performance and accountability

- *The Commission is asked to:*

– *identify options for continuous assessment of programs, agencies and performance;*

10. Appoint an independent oversight panel of the national training regulator comprising people with significant experience in the private sector and in the formal standards sector (including ISO standards for example). Their findings to be reported publicly on a monthly basis,

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11. The national training regulator and the oversight panel separately to actively seek and sample direct input from experienced trainers and private sector senior managers and CEOs on its approach to regulatory matters.

These two groups of stakeholders have been excluded from input to the changes to the regulation of the training sector over the last 3-4 years.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Recommendations

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- a. Dissolve ASQA,
- b. Develop a new national training regulator with direct input from the private training sector, including the quality smaller providers and subject matter expert trainers,
- c. The new training regulator to develop and use ISO standards instead of the current NVR standards,
- d. Appoint a panel of experienced people, to provide oversight, and address and act in a timely manner, on serious complaints relating to the decisions and actions of any new national training regulator,
- e. The aforementioned oversight panel to have a 50% representation from the private sector,
- f. [REDACTED] of [REDACTED] and [REDACTED] of Argos Consulting be appointed to form the oversight panel and hold positions thereon for a minimum of two years,
- g. Add independent surveys of RTOs and employers opinions to the new national training regulator performance metrics, and that these be published,
- h. Publish results of the new national training regulator's oversight panel on a monthly or quarterly basis,
- i. Dissolve the NSSC and instead amend the NVR Act to incorporate JASANZ ratified ISO standards for training,

Alternatively:

- j. Direct ASQA to use the existing laws and standards within the NVR Act [REDACTED],
- k. Immediate moratorium on suspensions and de-regulation decisions by ASQA against RTOs,
- l. Revise NVRs (standards) and Training Packages with the targets of reducing the level of intrusion and compliance load on RTOs by say, 50%, and/or replacing NVRs with ISO standards [This requires amending the NVR Act],
- m. Appoint an oversight panel (*ref: points c - g. above*)

- n. Prioritise employer and student feedback and amend NVR Act so that severe sanctions cannot be placed on any RTO with a reputation for quality training delivery,

Summary

How can it possibly be anything other than damaging to Australia's economy and the federal budget, that reputable Registered Training Organisations delivering high quality training be destroyed [REDACTED] ?

Dissolve, or conduct a complete overhaul of the national training regulator, ASQA.

Dissolve the NSSC.

Establish a new training regulator which utilises ISO standards.

Appoint an oversight panel with extensive powers to investigate and provide guidance to a new training regulator.

The oversight panel to contain a majority of standards experts, and members with significant private sector SME experience.

Major corrective action will restore confidence and investment to the Australian training sector, and promote innovation in training.

Australian employers will then be assured of a reasonable supply of quality trained workers which will help boost the national economy.

