



2 April 2019

## What to do if ASQA cancels your RTO registration

Your Registered Training Organisation's (RTO) has received notice from the Australia Skill Quality Authority (ASQA) that your RTO registration will be cancelled in 28 days.

What do you do? Read this article.

### First things first, seek legal advice

When the future of your business hangs in the balance, there is no time to delay. You should seek legal advice ASAP to ensure you do all you can to protect your RTO. A legal professional can assess your case and help you take the necessary steps to keep your RTO operating.

One of the options your lawyer may suggest is to apply to the Administrative Appeals Tribunal (also known as the AAT) for a review of ASQA's decision. The General Division of the tribunal will look at the ASQA's decision to cancel your registration again and make a new decision. Luckily, the tribunal can consider new information and further steps your RTO has taken to be compliant with RTO laws and the regulations.

Applying to have the registration cancellation decision reviewed is important, but it might take months for you to get a hearing date with the tribunal; and that 28 day cut off is looming!

In this case, your lawyer may also suggest that you apply to the tribunal for a stay order of the ASQA decision. The effect of a stay order is that the registration cancellation decision is stayed, meaning it will only come into force if the tribunal affirms the decision.

### How to apply for a stay order

Applying for a stay requires you to fill in some paperwork. To make a strong application, you need to fully understand the ASQA decision and your basis for asking for the stay order.

You can apply for a stay order with the tribunal. Usually you will apply for a stay order and a review of the cancellation decision at the same time. The tribunal will make its decision on the stay order first, because it is a preliminary matter with a tight timeframe.

You should apply for the stay order and the decision review within 28 days of receiving ASQA's registration cancellation decision. If you are later than this time, you can apply for an extension of time, but it is generally preferable to apply for your stay order ASAP.

In your stay application, you must describe the decision, the order you are seeking and your grounds for the request. You should also send a copy of the ASQA decision. You can upload your application and supporting documents via the tribunal's website, or you can email, fax or post it.

Remember, a stay application is not a review of ASQA's decision. It is a preliminary matter that, if approved by the tribunal, will allow you to keep operating your RTO until the tribunal determines whether it agrees or disagrees with ASQA's decision to cancel your registration.

Legal assistance with applying for your stay order is strongly recommended.

## What does the tribunal consider in deciding whether to grant a stay order?

After the tribunal receives an application for a stay order, they will contact ASQA to ask them if they oppose the stay. If ASQA is not opposed to the stay, then the tribunal will usually grant the stay order without a hearing. If however, ASQA opposes the stay, then the matter will proceed to a hearing.

The tribunal considers a number of factors in deciding whether to approve your application for a stay order. These factors may include the following.

**The prospects of success:** whether the tribunal considers you will be successful in your appeal of the ASQA's decision to cancel your registration. Here the tribunal will consider the ASQA's decision to cancel your registration and whether you have taken any steps to fix your non-compliance issues.

**The consequence for the applicant:** whether you will suffer any harmful consequences if the ASQA decision comes into effect before the tribunal has the opportunity to make a new decision about your registration. Here the tribunal will consider your financial situation and other relevant factors.

**The public interest:** whether it is in the public interest for the stay to be granted. Here the tribunal might consider any consequences for your current and future students as well as other factors.

**The consequences for the respondent:** whether ASQA will be able to carry out its functions if the stay order is granted.

**Whether the application for review would be rendered nugatory if a stay were not granted:** whether your RTO would suffer irreparable damage if the stay order is not granted. Here the tribunal will again consider the consequences for you.

**Other matters that are relevant:** may include the length of time that the decision has already been in place or the gap between the hearing for the stay and the hearing of the cancellation decision.

The tribunal will weigh up all relevant factors and make its decision. Although all factors are considered, the first one, "prospects of success", is very important. To assess this factor the tribunal will consider whether the ASQA decision to cancel your registration is correct. If you can demonstrate that you have fixed (or are taking steps to fix) your non-compliance issues, the tribunal might consider your "prospects of success" to be high, therefore is more likely to approve the stay order.

## How to prepare for the stay order hearing

To prepare for your stay order hearing you should gather relevant documents and information in support of your case.

For example, if you believe your RTO would go bankrupt between the time of the registration cancellation date and your appeal case, you should provide financial predictions from your accountant and bank statements to support this claim. Similarly, if the decision to cancel your registration was because you were non-compliant with the *Standards for RTOs (2015)* but you have now fixed the problem, you should show the tribunal evidence that you have rectified this issue.

You should also consult a legal professional for assistance with this.

## What is the effect of stay?

If the tribunal approves your stay order application, this means that the ASQA decision is stayed (not in effect) until the tribunal makes a new decision about your registration. This is good news!

Usually, the tribunal will approve a stay but set conditions for your RTO. This is called a conditional stay. These conditions will depend on your RTO's own circumstances. For example, a condition of the stay order may be that you cannot enrol new students or that you must do regular reports to the ASQA.

Although an unconditional stay is possible, generally speaking the tribunal will approve a conditional stay and impose conditions on your RTO whilst you wait for the appeal of the cancellation decision.

If the conditions the tribunal impose are too strict, you can appeal the conditions of the stay. For this, legal assistance is recommended.

### What if the stay order isn't granted?

Not all stay orders are granted. Unfortunately, even when RTOs have taken steps to fix their non-compliance issues the tribunal sometimes refuses the stay order application. This does not mean that your registration cancellation appeal will be unsuccessful, but it is generally an indication that you need to do some work on your case before the hearing.

If the stay order is not granted, the ASQA decision to cancel your registration will come into effect on the date ASQA or the tribunal decides.

You can appeal the stay decision, for this you should seek legal advice.

Zmarak Zhouand, Principal | [rto.legal](http://rto.legal) | (w) [www.rto.legal](http://www.rto.legal) | (e) [z@rto.legal](mailto:z@rto.legal) | (t) +61 478 393 502

**Disclaimer: This article has been based on Australian law and practices current as at the date of publication. Information contained in this article constitutes legal information and should not be viewed as legal advice. You should consult with a lawyer before you rely on this information.**



## About rto.legal

rto.legal is a legal and compliance firm operating out of Brisbane, Queensland, and focuses exclusively on supporting the legal and compliance needs of Registered Training Organisations (RTOs) and those seeking to become RTOs.

The firm provides commercial law and compliance support to RTOs through the delivery of expert legal and compliance services based on a deep understanding of the RTO business, and a flexible and highly competitive fee structure.

The services that we provide include the following.

- Contesting ASQA decisions – litigated and un-litigated.
- Applying for initial registration, meeting the requirements of ongoing registration, making changes to a registration and renewing or withdrawing registration.
- Continuing compliance with the VET Quality Framework.
- Representation on ASQA audits.
- Intellectual property within RTO course materials.
- Training partnerships, sub-contracting and training delivery.
- Business disposals and acquisitions.

The firm is led by its principal, Zmarak Zhouand.

- Zmarak is a lawyer qualified in Australia and New York with almost 19 years experience.
- He is a vocational education and training (VET) sector legal and compliance specialist.
- Zmarak has worked in-house and in private practice in Australia and abroad – with leading law firms and major businesses.
- He has owned and been the CEO of CRICOS and domestic RTOs.
- Zmarak understands RTOs and the complex legal and compliance environment in which they operate.
- He is technically strong, commercial and provides high-quality, practical and cost-effective services.
- Zmarak’s services are based on a deep understanding of my clients’ requirements in the context of their business objectives.
- He works with his clients to build strong relationships and is generally available 24/7.

Admissions/Memberships	Qualifications (University/HE)	Qualifications (VET)
Legal Practitioner, New South Wales, Australia, 2011	(Post-Grad) Bachelor of Laws, University of New England, 2000	Diploma of Training Design & Development
Member New York Bar Association, 2014	Bachelor of Laws, Southern Cross University, 1998	Diploma of Quality Audit
Member, Queensland Law Society, 2019	Graduate Diploma in Legal Practice, College of Law, 2001	Graduate Diploma in Strategic Leadership
Fellow, Chartered Institute of Arbitrators, 2017	Diploma in International Commercial Arbitration, Chartered Institute of Arbitrators, 2016	Graduate Diploma of Portfolio Management
		Advanced Diploma of Leadership & Management
		Diploma of Leadership & Management

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rto.legal | (a) 71 Grevillea Road Ashgrove Qld 4060 | (t) +61 478 393 502 | (e) [z@rto.legal](mailto:z@rto.legal) | (w) [www.rto.legal](http://www.rto.legal)

## **Fees**

Our fees are very competitive and we are generally flexible regarding fee arrangements.

We understand that clients may have different levels of ability to pay costs.

We provide full costs disclosure on every matter, both initially and on an ongoing disclosure basis.

We are open to both fixed-fee and time-based costing (with or without a fee cap).

In dispute matters involving ASQA, we are also happy to look at contingency fee arrangements – where you only pay if we succeed in your case against ASQA. We will determine contingency fee arrangements on a case by case basis.

Overall, we believe that fees for our services should be fair and reasonable, having regard to all the circumstances of the instructions. The circumstances which may affect the level of fees include the following.

- Time spent on the matter
- Monetary amount involved
- Specialist legal knowledge required
- Number and length of documents
- Place and time of day at which the work was carried out
- Importance and urgency of the matter to you
- Complexity of the matter.

Time spent on a matter will be one, but not the only factor considered in assessing the level of fees to be charged.

We will always be willing to discuss the basis for charging a matter at the outset.

## **Our values**

It is an honour to serve our clients in their moments of need.

We serve our clients with a dedication to excellence, responsiveness, and caring and always with a sense of humble appreciation for the trust placed upon us.

Our lifeblood has always been and always will be the recommendations of clients.

Our success depends the satisfaction of our clients.

The best marketing we can do is good work.

We aim to exceed expectations.

We focus on results, not activities.

We view every client's problem as if it were our own.

We believe that every client should receive not only a high level of legal representation but also a feeling of service and caring.

No result is positive and no victory is absolute if a client has felt that their needs were not understood and addressed or that they did not receive our very best.