



Australian Senate Enquiry – Effect of Red Tape on Private Education

Submission by Open Colleges
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EXECUTIVE SUMMARY

- Open Colleges has been delivering life changing education to Australians for over 100 years by breaking down the barriers to access to learning.
- There is a significant regulatory burden within Nationally Recognised Training which is leading to increased time to market for new skills development, increased cost of compliance for RTOs and driving a lack of innovation in the sector
- This means that the costs to students and tax payers has increased and the education and skills outcomes poorer for students undertaking training within the Nationally Recognised Training Framework and is failing to meet the needs of industry who are choosing to turn to un-accredited training to upskill workers
- We believe that a more pro-active and collaborative approach by the regulators in the sector can reduce the regulatory burden and deliver more innovation in the sector which in turn will lead to better student outcomes and lower cost to deliver

Introduction

Open Colleges Australia (OCA) has a rich and proud history of delivering quality distance learning to a diverse student population across Australia. For more than 100 years, OCA has helped more than 800,000 students achieve their dreams and aspirations through education and training.

Established in 1910, Open Colleges is one of Australia's oldest and most respected education institutions. Today, Open Colleges is a leading provider of online learning in Australia, specialising in delivering vocational education and training to adult learners.

Open Colleges delivers more than 125 courses to over 30,000 students across Australia and graduates annually. Its diverse portfolio of courses spans all major industries, including business, management, tourism, health, community services, design, wellness and technology. It is approved to deliver accredited Nationally Recognised Training in accordance with the Australian Qualifications Framework.

Throughout its long history, three values have remained constant.

- Open Colleges focus on providing highly **flexible** learning models designed specifically for the needs of adult learners.
- Open Colleges delivery of practical, skills-based and **professional** courses.
- Open Colleges **accessibility** – providing education opportunities to Australians from all walks of life.

Open Colleges students do not have access to Government funding at a state or federal level and are investing in their education either out of their earnings or savings.

Running multiple Registered Training Organisations (RTOs), Open Colleges Australia faces regulation in many aspects of its operations and is pleased for the opportunity to contribute to this enquiry.

Acknowledging that there are regulatory burdens across multiple aspects of its business, this submission focuses on specific regulations and red tape associated with maintaining status as a RTO and the impact on Open Colleges' students.

The submission includes Open Colleges views on aspects which are important in any discussion on red tape in private education. In addition, there are comments which relate to several of the committees terms of reference.

General Comments

Open Colleges supports the need to review and recommend amendments to the red tape burden associated with the provision of private tertiary education, particularly as it relates to the capacity for innovation in vocational education.

Currently, the adult vocational education sector is broadly serviced through two streams, Nationally Recognised Training and non-accredited training programs. The system of Nationally Recognised Training is subject to more regulation and red tape and offers less flexibility and opportunity for innovation than the non-accredited training market.

Nationally Recognised Training is defined as any program of training leading to vocational qualifications and credentials that are recognised across Australia and have been accredited by the VET regulator in consultation with industry. Non-accredited training programs are defined as training programs delivered to individuals by training providers or industry that meet a specific training need and is more informal in nature.

Recent years have seen a move away from the Nationally Recognised Training system while the sector has seen an upsurge in regulatory compliance i.e. red tape.

Open Colleges recognises a major reason for the upsurge was the Government's regulatory response to the VET FEE loan scandal and charlatans in the industry who abused the scheme and who, in the process, took advantage of many vulnerable members of the community to line their own pockets.

We fully supported the need to rid the industry of these providers. They damaged the standing of the industry as whole casting a shadow over the rest of the industry.

Unfortunately regulatory over-reach ensued as a consequence and the remaining players in the industry are left to deal with the consequences, which includes increased cost, lower levels of innovation and inconsistency of engagement from the regulators.

Shift to Informal and Non-Accredited Training

Research data collated by the National Centre for Vocational Education Research (NCVER)¹ confirms that employers continue to turn to informal and non-accredited training to meet their needs. Over the period 2007-2017 employers have:

- Increased their use of informal training (72% to 81%)
- Remained consistent with their use of unaccredited training (around 50%)
- Decreased their use of NRT for apprentices and trainees (30% - 23%)
- Slightly decreased their use of NRT for non-apprenticeship and traineeship programs (23% - 22%)

Total VET Activity data also indicates a shift away from NRT by Registered Training Organisations. 2016 data² shows:

- AQF program enrolments declined 4.3% 2015-2016
- Non-AQF program enrolments increased by 51.6% 2015-2016

¹ NCVER Employers' use and views of the VET system 2017

² NCVER Total VET students and courses 2016

At the same time, red tape has increased substantially . For example, in 2007 the regulatory framework for Registered Training Organisations (RTOs) was articulated in the *Australian Quality Training Framework (AQTF)* via the *Essential Standards for Registration*. This suite of standards encompassed three Standards, 14 Elements and supported by nine Conditions of Registration, all packaged in a 12-page document (including covers, definitions, introduction and an appendix). The nuts and bolts of the regulatory obligations for registration were explained in plain English over five pages.

In comparison, the *Standards for Registered Training Organisations (RTOs) 2015* consists of 8 Standards, 59 Clauses, over 100 sub-clauses and six Schedules, packaged in a 33-page legislative instrument. Statistics published by the Australian Skills Quality Authority (ASQA) confirm that many ASQA RTOs struggle to maintain compliance with the current and recent (2011/12) Standards.

Open Colleges considers the premise that the majority of audited RTOs are wittingly non-compliant at audit to be flawed, and questions whether the overly convoluted standards and current regulatory model are contributing to the problem.

Open Colleges also considers that the recent and current versions of the Standards for RTOs have not improved the baseline quality required for RTOs relative to the performance of the AQTF 2007 Standards.

The impact on students is that the enrolment and training process can be complicated and confusing. RTOs are also spending an increasing amount of the student tuition fees on complying with regulation rather than innovation in education.

Red Tape Impact on Higher Education

Open Colleges considers the following matters to be particularly relevant to any discussion relating to the impact of red tape on tertiary education.

- As a business, Open Colleges accepts that regulation is necessary for the protection of students and employers as end users and purchasers of services provided by education institutions, however, there is a significant regulation and red tape imbalance between NRT and non-accredited training offerings.
- As noted above, Registered Training Organisations are required to comply with the lengthy Standards for Registered Training Organisations, plus the additional aspects of the VET Quality Framework:
 - The Australian Qualifications Framework
 - Fit and Proper Person Requirements
 - Financial Viability Risk Assessment Requirements
 - Data Provision Requirements
- Institutions providing informal and non-accredited training are not required to comply with any of the aspects of the VET Quality Framework
- The length of time from inception to development and release of a new (and updated) nationally recognised training product essentially means training packages are out of

date before they are released. Current arrangements take up to four years for a graduate to emerge from a new product offering

- The fastest growing element of the tertiary education sector are non-accredited, international online institutions. Most of these institutions operate outside the regulated education space in Australia. For example, Lynda offers over 21,500 professional skills courses³, all outside the Australian Nationally Recognised Training framework.

Open Colleges is strongly of the view that the current arrangements and trajectory of future policy for tertiary education in Australia is clearly failing to meet the current and future needs of employers and students. The National Training Framework is at risk of being discarded by its core stakeholders in favor of more innovative, responsive and flexible options offered by education providers operating outside the national framework.

Response to Inquiry Terms of Reference

The effects on compliance costs (in hours and money), economic output, employment and government revenue'

Over six years (2012-2018) Open Colleges Australia has invested \$5m-\$7m on direct compliance related matters. In addition, given the current operating model deployed by the VET Regulator, Open Colleges Australia has also been required to invest heavily in legal support to confirm existing compliance status with regulator due to the adverse nature of the current audit response process.

For clarity, in 2016 ASQA removed the opportunity for RTOs to engage in a rectification step during an audit process prior to the process moving to the decision-making phase. While removal of this step may appear to streamline the process on paper, the reality experienced by Open Colleges and many other RTOs is that audit reports are often riddled with errors, missing critical evidence information and highly influenced by individual auditor opinion rather than fact. These issues are leading to incorrect data on which the regulator then makes a decision, in many cases to the detriment of the students impacted by the decision.

This model, characterised by a lack of engagement by the regulator to fact check their work with the RTO, forces over-investment in legal support by RTOs in order to get regulator errors addressed and to defend existing complaint practice.

Open Colleges is also concerned the current operating model deployed by ASQA puts additional pressure on the investment by the Commonwealth because it requires extra funding of increased legal fees as more cases are forced into the Administrative Appeals Tribunal for resolution.

Open Colleges would like to see the Commonwealth's increasing investment in ASQA utilised to resource the regulator to provide a more pro-active education and client relationship model which aims at baseline compliance improvement and resolution of the majority of issues operationally.

³ [Lynda.com/subject/all](https://www.lynda.com/subject/all)

Any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions.

Open Colleges considers that Consumer Law is a particularly complex matter involving many different State and Federal institutions, often with differing/contradictory agendas and approaches to the interpretation and application of this legislation.

Stripping back flexibility in elements of the Standards for Registered Training Organisations (for example: removing disadvantage option for teach-out of superseded training products and removing the option to deal with complaints informally in the first instance) add complexity and cost to RTO processes, often at the cost of simplicity and common sense for the student experience.

Relating to the increasing number of Standards for RTOs (described in our general comments section), there has been a progressive over-engineering of requirements for VET trainers and assessors for effectively the same benchmark outcome.

The Standards for RTOs 2015 details the regulatory requirements for trainers and assessors via 13 clauses with 18 sub-clauses plus one Schedule. In comparison, the AQTF 2007 Standards described essentially the same requirements via 1 Element with three sub-elements, supported by a Determination published by the then National Quality Council.

Open Colleges' experience is the current requirements are not only difficult for current trainers and assessor to understand (and therefore impedes the ability to build a sufficient body of evidence for compliance), prospective new entrant trainers and assessors are opting out of the system due to the significant red tape.

High quality trainers are choosing to contribute and pass on their skills through informal and non-accredited options. This matter also goes to the heart of the ability of the Nationally Recognised Training system to meet the current and future workforce development needs of the country.

The effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape

Open Colleges' views in response to this question are not focused on one particular government effort, rather they are a reflection of our experience with the National VET Regulator since its inception in 2011. Open Colleges notes the current policy relating to managing regulatory red tape includes a publication "Regulator Performance Framework". This Commonwealth publication includes the following principles:

- i. Regular ongoing consultation or engagement with stakeholders on policies and procedures*
- ii. Regulators are open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by the regulators*
- iii. Regulators engage stakeholders in the development of options to reduce compliance costs*

Open Colleges own experience, supported by the growing body of evidence from sector stakeholders, suggests that the National VET Regulator isn't operating within the principles of this framework, particularly since the introduction of their current audit model.

A tangible example is reflected in our earlier response where the removal of the rectification step in audit process has resulted in less opportunity for an RTO to engage in a proactive manner with the regulator and results in increased cost to both RTO's and ASQA in the form of legal representation for Administrative Appeals Tribunal matters.

Alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation

Open Colleges considers there is scope for ASQA to better utilise its delegated authority function in order to reduce red tape burden. The expansion of the use of delegated authority functions to private RTOs was positive, however, Open Colleges experience is the implementation has been inconsistent, and benefits are being offset by the associated red tape.

We are also concerned the perceived efficiency and resourcing benefits for ASQA intended by the expanded use of delegated authority are being eroded by the oversight model. For example, Open Colleges has been subject to three significant delegation audits in the past three years, in one instance, ASQA insisted on auditing one of Open Colleges RTOs that had not yet utilised the delegated functions.

Open Colleges is supportive of a robust oversight model, however, we fail to see how the perceived benefits are being realised under the current model. Many organisations structure their business to legitimately operate multiple RTOs. Open Colleges considers that by providing parent companies the delegated authority function, supported by a collaborative client relationship oversight model, it would significantly reduce red tape for private RTOs.

What Does this Mean for Students

Ultimately the red tape burden is borne by students in two key ways.

Firstly, as with any business the cost of red tape and complying with what OC would consider unnecessary and intrusive compliance measures has to be recouped. This cost is passed on in our pricing structure for course fees that OC charges.

OC is a for profit business and we do not shy away from that. Our students choose OC over other education providers such as TAFE and pay to do so for many reasons for many reasons including flexibility

We want to be able to offer students the best courses at the most efficient price possible, but the increasing red tape burden does feed into a higher cost fee structure than would otherwise be the case.

The second outcome is that the increased red tape burden has made no discernible impact on student outcomes, the student experience or the delivery of OC courses to them.

While OC will always comply as required, it is indeed a shame to see that this increased compliance has meant nothing for students when it comes to them gaining an OC qualification.

If anything, it means the dedication of resources to compliance personnel and legal fees rather than further investment in courses and teachers that would indeed be of benefit to students.

Conclusion

As one of Australia's leaders in innovative, online vocational education, Open Colleges is fully supportive of a robust Nationally Accredited Training system, supported by proportional regulation requirements.

The current imbalance between the accredited and non-accredited training environments demonstrates the limitations and inflexibility current regulations place on the accredited training system. This is driving more employers and students to choose non-accredited training to address their needs.

Less red tape and a more constructive engagement from the regulators in the sector will lead to better outcomes for students in the form of lower cost and better education innovation.