

Senate Select Committee on Red Tape

Effect of red tape on private education

ACPET Submission

August 2018

Introduction

Established in 1992, ACPET is the national industry association for independent providers of tertiary education and training. ACPET members deliver a range of vocational education and training (VET), higher education and English language programs across all States and Territories, as well as internationally.

ACPET seeks to enhance quality, choice and innovation in Australian tertiary education. Its members include commercial and not-for-profit entities, community groups, industry providers and enterprise-based organisations. ACPET works with governments, industries and other stakeholders to ensure tertiary education and training services are well targeted, accessible and delivered to a high standard.

For ACPET, its members and the tertiary education sector more broadly, it is presently the most challenging regulatory environment over the last quarter century. The raft of recent federal and state and territory government regulatory measures (and funding cuts) are significantly adding to the burden on quality independent providers, their students and industry.

Government has been ineffective at reducing red tape to date, and we have ended up with a system that is punitive, inconsistently applied and complex to navigate. Competitive neutrality is a term that is thrown around, but it is obvious that this doesn't exist when it comes to education with the government funding their own initiatives directly and openly whilst private providers are constantly restricted. ACPET member

With the challenges of major restructuring of the economy and workforce arising from digital disruption and the '4th Industrial Revolution', more than ever there is a need for a high quality, innovative and diverse tertiary education sector. The regulatory framework must be able to support the current and future workforce needs. Unfortunately, regulatory overreach by governments risks undermining the capacity of the sector.

A new approach is required to restore the capacity of the tertiary education sector whilst ensuring the interests of students, industry and Australian economy are supported.

Key points

Independent tertiary education providers play an important role in ensuring the diverse needs of students, industry and Australian economy can be met. They enjoy high levels of student satisfaction on par with publicly funded institutions.

Recent failures in the sector have largely been due to flawed government-funded program design and implementation and the failure to administer existing regulations, together with a lack of ethics in a small number of providers.

Federal and state and territory governments have 'doubled down' on regulation in response to their program administration failures and these have had a significant adverse impact on the sector and its students.

There need to be measures to ensure that significant government programs are independently assessed before implementation to ensure they are 'fit for purpose'.

Regulatory impact arrangements need to be overhauled to ensure proper engagement with regulated entities.

Independent providers are simply regulated objects at present. There need to be new regulatory partnerships between providers, stakeholders and the tertiary sector regulators.

The current governance, regulatory and funding framework for the VET sector is unworkable. There needs to be a high level review of the tertiary education sector.

A snapshot of the independent tertiary education sector

There is great diversity in the size, structure, and delivery arrangements of independent tertiary education providers in Australia. They range from single person operations through to business arms of multi-national enterprises. It includes community and industry sponsored providers, as well as private providers.

In the VET sector, the National Centre for Vocational Education Research (NCVER) reported 3,111 independent (private) providers delivered training to 2.47 million students in 2016 - 58.7% of the total of 4.21 million enrolments. By comparison, TAFEs enrolled some 0.74 million students¹.

Less than half of the independent VET providers (1,530) accessed government funding to support their students, with only 475,000 of the 1.19 million government-funded students in 2017². TAFE continues to be the major provider of government-funded training with 577,200 students in 2017.

Independent VET providers enjoy very strong levels of student satisfaction with 87.0% of graduates satisfied with the overall quality of their training. This compares to 87.3% for all providers³.

Independent providers play a smaller, but no less important role in the higher education sector. There are 125 independent higher education providers compared to the 43 universities registered with the Tertiary Education Quality and Standards Agency (TEQSA)⁴.

Higher Education Support Act 2003 approved independent providers accounted for 79,404 of the 1.067 million domestic students and 53,299 of the 391,136 international students in 2016. Many provide specialist or niche programs that respond to the particular needs of business and industry.

¹ NCVER, https://www.ncver.edu.au/_data/assets/pdf_file/0026/796211/Total-VET-students-and-courses-2016.pdf

² NCVER, <https://www.ncver.edu.au/publications/publications/all-publications/government-funded-students-and-courses-2017>

³ NCVER, <https://www.ncver.edu.au/publications/publications/all-publications/vet-student-outcomes-2017>

⁴ TEQSA, <https://www.teqsa.gov.au/national-register>

With very few exceptions, these higher education providers receive no government funding and their students no government financial support. Indeed, students enrolled with these providers are punished for doing so, with a 25% fee for accessing FEE-HELP to fund their studies (a fee not paid by public university students).

Notwithstanding this lack of government support, independent higher education providers are growing at 10% per year and their students report very strong levels of satisfaction. The Quality Indicators for Learning and Teaching (QILT) 2017 Student Experience Survey indicates 79% of all undergraduate students are satisfied with quality of their entire educational experience. It is 79% for independent providers and 78% for universities⁵.

The above data highlights that independent tertiary providers, despite receiving little or no government funding, are delivering high quality tertiary education and training on par with their publicly funded counterparts.

The data highlights that the recent regulatory interventions by governments, that target independent providers, have been unnecessary and misdirected.

Regulatory Overreach

The tertiary education sector regulatory ‘environment’ has been dominated over the last three years by the failures of the federal government’s VET FEE-HELP (VFH) program. A very small number of unscrupulous vocational education and training (VET) providers were able to exploit fundamental program design and implementation flaws.

Basic program management principles and practices were absent or discarded. With little or no controls on course priorities, pricing or enrolments, the program was ripe for the exploitation that caused so much damage to many students.

These failings were widely documented at the time. The Australian National Audit Office summarised the position simply... “The VFH scheme was not effectively designed or administered”⁶.

While these design flaws enabled the subsequent exploitation, it was also clear there were regulatory shortcomings. The national VET regulator, the Australian Skills Quality Authority (ASQA), focus on ‘processing paperwork’ rather than proactively identifying and responding to poor provider activity meant the exploitation was able to continue unchecked for far too long.

These regulatory shortcomings have more recently been recognised by ASQA with the introduction of a more risk-based regulatory approach.

⁵ QILT, [https://www.qilt.edu.au/docs/default-source/ues-national-report/2017-student-experience-survey-national-report/2017-ses-national-reportb27e8791b1e86477b58fff00006709da.pdf?sfvrsn=1e96e33c_2%20%20https://www.qilt.edu.au/about-this-site/student-experience%20\(QILT%20announcement\)](https://www.qilt.edu.au/docs/default-source/ues-national-report/2017-student-experience-survey-national-report/2017-ses-national-reportb27e8791b1e86477b58fff00006709da.pdf?sfvrsn=1e96e33c_2%20%20https://www.qilt.edu.au/about-this-site/student-experience%20(QILT%20announcement))

⁶ Australian National Audit Office, <https://www.anao.gov.au/work/performance-audit/administration-vet-fee-help-scheme>

The federal government responded to the VFH failures by replacing it with the VET Student Loans (VSL) program in 2017. In its submission on the enabling legislation, ACPET strongly supported the need for many of the regulatory measures proposed. But it also highlighted concerns with a number of measures that it considered would not contribute to quality training choices and outcomes for students⁷. Severe limitations on courses, the employment arrangements for staff and contractors and financial benchmarks inappropriate to contemporary business models were several of the unnecessary restrictions.

The VSL legislation is overly prescriptive, with a significant adverse impact on high-quality providers. Rather than mature program management and purchasing approaches that seek to identify and contract high-quality providers with a successful track record, a regulatory approach of eliminating any and all risks has been adopted, with little flexibility to cater for the diversity of successful business models of many providers, nor the needs of their students and industry.

The ‘duplication’ of provisions of the National Vocational Education and Training Regulator (NVETR) Act 2011 also highlighted a lack of confidence in the existing regulatory framework. Rather than seeking to streamline the regulatory environment successive governments have simply added to the regulatory burden.

The VSL measures have been mirrored in the higher education and international education sectors through the Education Legislation Amendment (Provider Integrity and Other Measures) Act 2017. It is worth noting that these measures are highly discriminatory - applying only to independent providers where issues identified with VFH do not exist. Indeed it could be argued that many of the concerns in the higher education sector, such as admissions ‘gaming’, have been identified with the public universities.

As demonstrated above, independent providers across the tertiary education sector are overwhelmingly delivering high quality education and training that is strongly supported by their students. Rather than supporting quality outcomes and providers, governments ‘doubling down’ on regulation risks undermining them (and regulators, including contract administrators) as they devote ever-increasing resources to ensuring compliance with bureaucratic requirements.

A failed approach to contestability and competition

Australia’s tertiary education sector enjoys strong support from students as demonstrated by the above data. This support is on par with the public providers despite receiving little or no government funding. There have not been the systemic quality concerns that have warranted the discriminatory regulatory approach that targets independent tertiary education providers.

⁷ Parliament of Australia,
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/VETStudentLoans/Submissions

The recent concerns in the VET sector have largely been due to the flawed approach from governments to contestability and competition. The failure to establish even basic benchmarks for price, enrolments and providers left the VFH program open to the exploitation that was witnessed.

Similar failures were evident in student entitlement programs in Victoria and South Australia, particularly, with a similar response of using regulation to rein-in the costs associated with failed student programs.

The federal government's 2015 Competition Policy Review (Harper review) outlined some guiding principles for contestability of human services. These principles include:

- User choice should be placed at the heart of service delivery.
- Governments should retain a stewardship function, separating the interests of policy (including funding), regulation and service delivery.
- Governments commissioning human services should do so carefully, with a clear focus on outcomes.
- A diversity of providers should be encouraged, while taking care not to crowd out community and volunteer services.
- Innovation in service provision should be stimulated, while ensuring minimum standards of quality and access in human services

These guiding principles were largely absent in the design and implementation of the VFH program and several state programs. There was a flawed, simplistic approach to competition and contestability rather than inadequate or insufficient regulation.

While the federal government's replacement of the VFH program recognised these flaws, the actions to 'double down' on regulation across the sector cannot address inadequate program design and implementation.

Rather than more regulation, there needs to be a greater focus on ensuring government-funded programs meet these basic guiding principles before implementation. Independent review of the guidelines for significant programs should be conducted before implementation to ensure they are 'fit for purpose'.

The current regulatory impact processes also need to be overhauled to ensure there is appropriate engagement with regulated entities. No effective engagement with the sector occurred prior to the introduction of the latest raft of legislation and regulation.

Impact on providers and their students

As the Harper review indicates, a diversity of providers should be encouraged and innovation should be stimulated. The current regulatory approach does not support these principles.

The prescriptive nature of much of the recent regulatory 'reforms' means that quality providers are not empowered to look at ways to better respond to the needs of their students, to innovate their programs. Consultations with members indicate the need to adopt a 'small target' approach - to stick with the approved processes and limit any innovation or reform, lest it draw the attention of the regulators. The capacity to respond to the need for creative and digital skills required now and into the future is being compromised.

The level of regulation on providers when operating the VET space is large and costly to administer. With regulation at the federal level (ASQA) and then with funding contracts administered at a state level as well as conformance to other sets of requirements such as AVETMISS, AQF, AQTF, training package requirements, volume of learning a full time compliance manager is needed, even for small businesses. This is a cost of 75-100k a year. The effect of red tape is that there is less time focusing on delivering high quality education and more time on administration and reporting. ACPET member

Advice from members also indicates the increasing burden of compliance across jurisdictions (ASQA, TEQSA, as well as Commonwealth, state and territory regulators and procurement/contract managers) means the capacity to pursue improvements that would support better student outcomes is compromised as provider resources are diverted to administration.

Compliance costs are very real. We employ 3 people full time just to do the oversight of compliance. Very often ASQA enforces standards that are very open to interpretation (where ASQA employees sometimes differ on the interpretation). Other government contracts also add layers of red tape requirements (hundreds of pages worth for each), which ultimately burdens the RTO with high costs. ACPET member

The discriminatory nature of many of the reforms, targeting all independent providers (rather than issues with a relatively few providers) whilst exempting the publicly funded providers, clearly indicates the current regulatory framework (together with the broader policy settings) aims to restrict and 'cut-back' the independent tertiary education sector in Australia.

The biggest concern for most RTOs is that there are many barriers to access funds with state governments finding many ways to favour their own training providers. Some of these methods are obvious e.g. only allowing TAFEs to deliver certain training, other barriers to competition include government departments signing agreements with the government provider to exclusively provide training e.g. the skills exchange in Sydney and Parramatta (where contracts make it necessary for contractors to work with the Skills Exchange). ACPET member

The outcomes for students, industry and economy of this approach are clear - mediocrity for now and a sector less able to respond to future workforce needs.

Regulatory partnerships can support quality and innovation

ACPET and its members support measures that protect the interests of their students and drive poor performers from the sector. They have a keen interest in ensuring only the very best providers enjoy the privilege to train and educate our young people and others to meet their career aspirations and the needs of business and industry.

But the present regulatory environment is one where independent providers largely see they are little more than regulatory 'objects'. There has been little, if any, real consultation with sector in the development of the raft of legislation and regulations that have been introduced in recent years.

There need to be changes that recognise the role providers and their peak bodies can play in better supporting the sector's regulatory regime. They need to become regulatory 'partners' that have a stake in not only ensuring poor performance is identified and addressed, but also that quality provision and improvement is promoted, recognised and rewarded. There is little regulatory support for providers that 'do the right thing'.

The sector can play an important role in identifying priorities for provider assistance and advice, and building the capacity of providers through professional development, moderation and tailored provider support. This partnership should extend to more formal relationships with the regulators to consider, for example, audit data and trends and possible remedial actions.

Formal recognition or consideration of the sector's own efforts to lift quality and support high quality providers, like ACPET's Industry Certification program or professional development, should be provided for in the legislation and other instruments. Industry Certification means the provider has been subject to rigorous scrutiny and analysis, including by their peers. This will provide a clear signal to regulators, government and other purchasers and students that these providers deliver quality outcomes. It is worth noting that ASQA's submission to the review supported this role for the sector⁸.

Peak bodies, like ACPET, can also play a role in educating and developing providers and the sector to lift performance and student outcomes. ACPET strongly supports the recommendations of the recently completed review of the NVETR Act 2011 that recommends a stronger engagement with the sector⁹. Recommendations 1, 2, 3 and 14 focus on the need for ASQA to more strongly engage with the sector and providers.

⁸ Australian Government, <https://submissions.education.gov.au/Forms/nvetr/pages/index>

⁹ Australian Government, <https://www.education.gov.au/nvetr-act-review>

Regulatory reform is not enough

As noted earlier, more than ever there is a need for a high quality, innovative and diverse tertiary education sector. Not a week goes by when there isn't a report about the impact of the 4th Industrial Revolution, the Internet of Things and the vulnerability of so many of our existing jobs to restructuring or replacement.

Significant recent reports by CEDA, the Business Council of Australia, Productivity Commission and KPMG, for example, have highlighted these likely impacts. But they have also highlighted the need for a national policy 'debate' and reforms that will ensure Australia can maintain its world-class tertiary education sector that provides the education and skills vital for our students, industry and economy to prosper. The current arrangements, including regulation, do not support this.

Since its 2014 Budget the federal government has attempted various reforms of the higher education sector. The most recent reforms, announced in the context of the 2018 Budget largely focused on measures to essentially rein-in the costs of the demand-driven system for public university places. Fundamental questions about the future sustainability of the demand-driven system remain unresolved, as does the concern of ensuring equitable access for all those who wish to pursue higher education, regardless of their choice of provider.

The need for VET sector reform has long been recognised. The *Reform of the Federation* initiative established under the Abbott Government included governance reform of the VET sector as one of its top priorities. But this opportunity for reform was lost with the shelving of the initiative.

The red tape issues are duplicated at federal and state levels each with different compliance regimes, which require different strategies (costs) to manage. Our organisation for example has seven different compliance regimes which it must comply with to stay in business. ACPET member

Recent government program failures have tarnished a long and proud record of achievement. These failures and the continuing decline in government-funded enrolments mean the need for governance reform of the VET sector is now more urgent. Regulatory reform, while important, will not be sufficient.

The current shared responsibilities between states and territories and the federal government essentially means eight models for the governance, regulation and funding of the sector. This is reflected in the growing differences between jurisdictions in priorities, funding and participation levels.

Being regulated at a federal level and again at a state level doesn't make sense. A truly national system would have one level of regulation and one regulator. The process of regulating VET and HE separately also adds complexity to providers with dual sets of regulations. It also created a disparity in funding between the sectors that has consequences on the student's ability to choose the right career path for them. ACPET member

The financial constraints faced by some states and territories mean government funding has declined in recent years as several states have wound back their VET budgets. More concerning is the longer-term trend of declining real investment. This decline is reflected in the latest NCVER data that shows government-funded student numbers declined 5.9% from 2016 to 2017 - a trend that has continued for several years¹⁰.

Without fundamental structural reform, the sector will continue to decline with increasingly erratic governance, policy and funding decisions driven by budget imperatives and a seemingly, at times, ambivalent commitment to tertiary education. This will increasingly put at risk the ability of the sector to meet the needs of students, industry and its workforce and the longer-term capacity to contribute to the economic growth of the nation.

Ensuring that every Australian can access education is vital to their wellbeing, their livelihood and our economy. Yet finding a way to fund courses and student's outcomes is far from simple. ACPET member

Fundamental issues confront the whole tertiary education sector. Indeed, many of the issues confronting higher education and VET are shared and must be considered together. The 'silo' approach to the sectors won't provide the answers. They are contributing to the problems.

In its 2008 report, the Bradley Review of Australian Higher Education indicated the need for significant structural reform - additional funding would not be enough to position Australia for the future. The review highlighted the need for a national framework for tertiary education. This included the need for harmonised planning, advice about needs and coordination of delivery.¹¹

A high-level independent review of the tertiary education sector is required. This review should take a whole sector perspective. It should build on the tertiary education platform proposals of the Bradley review and the experience since to address some fundamental outstanding issues.

¹⁰ NCVER, <https://www.ncver.edu.au/publications/publications/all-publications/government-funded-students-and-courses-2017>

¹¹ Australian Government, https://docs.education.gov.au/system/files/doc/other/higher_education_in_australia_-_a_review_of_reviews.pdf