



12 February 2015

Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted via www.aph.gov.au

Dear Committee Members,

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the operation, regulation and funding of private vocational education and training (**VET**) providers in Australia.

Consumer Action receives a significant number of complaints relating to private VET providers and education brokers. The areas in which we receive most complaints relate to standards of teaching, unfair treatment (particularly with regard to contracts, payments and refunds) and misleading marketing conduct.

In our view, the current regulatory and funding system fails to adequately protect Australians from unscrupulous private VET providers and education brokers. The VET student population is disproportionately made up of students from disadvantaged backgrounds, and we are particularly concerned about the impact these failings are having on Australia's most vulnerable students.¹

It has been widely acknowledged that there has been misuse of the Commonwealth government's FEE-HELP loan scheme, misleading advertising, soliciting students for unsuitable courses, and inappropriate use of brokers to recruit students.² It is clear that the current system is not working, and significant reforms are needed to protect Australian students and ensure taxpayer funds are being invested appropriately.

This submission responds to a number of the terms of reference of this inquiry, in particular:

- The access private VET providers have to Commonwealth and state public funding
- The cost of education at private VET providers

¹ Noonan, Burke, Wade and Pilcher, 'Expenditure on education and training in Australia - Analysis and background paper', Mitchell Institute, 2014, available at: <https://www.vu.edu.au/sites/default/files/mitchell-institute/pdfs/Mitchell-Paper-Expenditure-on-Education-and-Training-Oct-2014.pdf>

² Dodd, 'Private colleges will hold talks over ratings downturn', Australian Financial Review, 30 October 2014, Sydney; Yu and Oliver, 'The capture of public wealth by the for-profit VET sector', Workplace Research Centre, University of Sydney, January 2015, p.18, available at: <http://www.aeufederal.org.au/Publications/2015/WRC-AEU2015.pdf>; Senator Simon Birmingham, 'The Skills for the Job: Ensuring vocational education and training delivers for employees and employers', speech delivered to the Australian Chamber of Commerce and Industry, 5 February 2015, available at: <http://www.senatorbirmingham.com.au/Media-Centre/Speeches/ID/2606/The-Skills-for-the-Job-Ensuring-vocational-education-and-training-delivers-for-employees-and-employers>

- The regulatory regime private VET providers operate within
- The operation of VET-FEE-HELP
- The quality of education provided by private VET providers, volume of learning requirements and graduate outcomes
- Marketing and promotional techniques employed by private VET providers and education brokers, both domestic and international

We provide additional comments about dispute resolution between students and VET providers.

Summary of recommendations

Our recommendations to the Committee are summarised below:

Recommendation 1

We recommend that Commonwealth and state and territory governments:

- a. only provide government subsidies to VET providers that demonstrate full compliance with regulatory requirements (including the Statement of Expectations), and deliver quality learning and graduate outcomes;
- b. develop a framework to claw back government subsidies from VET providers where compliance with regulatory requirements are not met; and
- c. ensure compliance and enforcement action is increased - see Recommendation 5 for further details.

Recommendation 2

We recommend consideration of introducing regulations that ensure course fees reflect the genuine costs of delivering training courses.

Recommendation 3

We recommend that private VET providers be required to improve their costs disclosure. This should include providing information in marketing material (including websites) and during telephone and face-to-face sales about the following:

- a. course fees;
- b. additional fees and charges;
- c. payment terms and conditions;
- d. cooling-off and cancellation rights; and
- e. refunds.

Recommendation 4

We recommend that the Commonwealth and state and territory governments:

- a. establish a single national regulator for the VET sector; and
- b. introduce policies and procedures that encourage and enable regulators and government departments to work together more closely to improve compliance and enforcement outcomes. This should include appropriate information sharing arrangements.

Recommendation 5

We recommend that ASQA:

- a. be given enhanced enforcement powers, including appropriate administrative powers to impose penalties for non-compliance with relevant standards;
- b. increase the frequency of compliance audits of private VET providers and education brokers; and
- c. increase enforcement action against VET providers and education brokers that contravene the relevant standards. Action should be based on a clear strategic compliance and enforcement policy.

Recommendation 6

We recommend that ASQA's jurisdiction be extended:

- a. to ensure that appropriate policies exist in relation to selling techniques, unfair prices and quality. These factors should be taken into account when accrediting a provider, and determining whether accreditation should continue;
- b. to regulate education brokers and unregistered subcontracted providers; and
- c. to consider consumer protection issues, including unfair contract terms in private VET provider contracts within the meaning of section 23 of the *Australian Consumer Law*. Consideration of standard terms and conditions should be an aspect of accreditation.

Recommendation 7

We recommend that the regulatory framework and ASQA's capacity to enforce compliance with regulatory requirements be regularly reviewed.

Recommendation 8

We recommend:

- a. that approval to provide VET FEE-HELP loans should only occur if the Minister has no reason to believe that the provider is likely to breach the obligations that will apply;
- b. introduction of penalties for exploiting the VET FEE-HELP scheme; and
- c. more robust application of the power to revoke approval to offer VET FEE-HELP loans by the Minister.

Recommendation 9

We recommend:

- a. VET providers and education brokers be subject to requirements that ensure barriers are not placed to withdrawal from courses prior to census dates;
- b. the Commonwealth Department of Education & Training VET FEE-HELP marketing guidelines be amended to discourage inappropriate reliance on the availability of VET FEE-HELP loans in marketing material;
- c. further steps be taken to ensure that potential students understand the nature and significance of the debt they will be incurring; and
- d. restrictions be imposed on the use of slogans such as 'study now pay later'.

Recommendation 10

We recommend:

- a. enhancing the AQTF standards, including introducing a requirement for a minimum number of hours of delivery;
- b. VET providers and/or education brokers be required to conduct a suitability assessment for each student prior to enrolment; and
- c. development of quality standards that recognise that fundamental improvements to quality are required, and that disclosure alone will not provide sufficient protection for students.

Recommendation 11

We recommend:

- a. marketing standards be strengthened and clarified, including the introduction of a general prohibition against misleading or deceptive conduct which reflects the ACL requirements;
- b. requiring private VET providers and brokers to obtain clear and express consent from potential students to contact them about training courses;
- c. banning the offering of 'inducements' such as free iPads for enrolment;
- d. private VET providers and education brokers be prohibited from enrolling students over the phone or whilst door-knocking;
- e. ASQA makes the scrutinising of private VET providers and education brokers' marketing and advertising a high regulatory priority;
- f. ASQA be given jurisdiction to investigate misleading and deceptive conduct by private VET providers and brokers, without the need to first refer these matters to the ACCC;
- g. providers be explicitly prohibited from guaranteeing:
 - i. an assessment outcome in their marketing such as '100% pass rates guarantee';
 - ii. the completion of a qualification or unit in unrealistically short time frames;
 - iii. employment or immigration outcomes from training; and
 - iv. minimum salaries

Recommendation 12

We recommend establishing a dedicated external dispute resolution scheme to resolve disputes between students and private VET providers.

Our comments are detailed more fully below.

1. About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

2. The access private VET providers have to Commonwealth and state public funding

Historically, the states and territories have provided VET through the TAFE system. However, there has been a proliferation of enrolments at private VET providers since demand-driven government funding was introduced. Between 2008 and 2013, the number of for-profit providers has more than doubled.³

Under the Council of Australian Governments (**COAG**) National Partnership Agreement on Skills Reform in 2012, all states and territories in Australia agreed to implement a new market-driven funding model for vocational education. Victoria was the first state to implement demand-driven VET funding. Under the Victorian Training Guarantee, which was phased in from July 2009, subsidised student places were opened up to private providers.⁴ Similar reforms have now been introduced in other states.⁵

Since the beginning of implementation of these reforms, state and federal government expenditures on payments to non-TAFE providers to deliver VET programs has skyrocketed, increasing by \$839 million between 2009 and 2013 (160.2%).⁶ This was driven mostly by Victorian government funding, which grew at an annual pace of 42% between 2008 and 2013, with funding rising from \$137.6 million to \$799.2 million.⁷

Prior to July 2009, public funding for VET in Victoria was allocated directly to (mostly public) VET providers, based partly on historical enrolments and skills needs. Now, the funding for subsidised places in Victoria "follows the student", with no overall cap per provider meaning that providers must compete to attract students and funding. Funding is provided as an hourly rate, the amount of which depends on the level of qualification and a weighting reflecting an assessment of the course's public value.⁸ These reforms were aimed at boosting participation in VET, making the sector more responsive to changing skill demands, and enhancing competition among providers to promote quality improvements. The theory appeared to be that choice and competition would drive efficiency in service delivery and improve standards. However, as noted by the National Centre for Vocational Education Research (**NCVER**), "it is far from certain that the reforms will have these desired effects."⁹

Between 2008 and 2010, the Victorian Training Guarantee was associated with a 60% growth in enrolments with private providers, and 300% growth between 2008 and 2011. The Victorian Training Guarantee has been associated with 7% lower growth in TAFE enrolments than otherwise would have been expected between 2008 and 2011. Based on these figures, NCVER suggests that "private providers have done better than TAFE in responding in the short run to increased demand for publicly subsidised places under the training guarantee".¹⁰

³ Yu and Oliver (2015) p.20.

⁴ Leung, McVicar, Polidano and Zhang, 'Early impacts of the Victorian Training Guarantee on VET enrolments and graduate outcomes', National Centre for Vocational Education Research (NCVER), 19 May 2014, available at: <http://www.ncver.edu.au/wps/wcm/connect/c10b759f-e467-4cdb-b310-087f6aca827b/Early-impacts-of-the-VTG-2724.pdf?MOD=AJPERES&CACHEID=c10b759f-e467-4cdb-b310-087f6aca827b>

⁵ Yu and Oliver (2015) p. 3.

⁶ National Centre for Vocational Education Research (NCVER), 'Financial information 2013', 17 October 2014, p. 6, available at: <http://www.ncver.edu.au/wps/wcm/connect/22f9d79d-990b-42c1-9c07-bcfa2ace256/Financial-information-2013.pdf?MOD=AJPERES&CACHEID=22f9d79d-990b-42c1-9c07-bcfa2ace256>

⁷ Yu and Oliver (2015), p. 3.

⁸ Ibid, p. 11.

⁹ NCVER (2014), 'Early Impacts of the Victorian Training Guarantee on VET enrolments and graduate outcomes'.

¹⁰ Ibid.

VET providers that obtain funding in Victoria must comply with the Victorian Department of Education and Early Childhood Development's (**Victorian Department of Education**) Statement of Expectations, which include a number of consumer protections. Compliance with the Statement of Expectations is in addition to the requirements of registration with Australian Skills Quality Authority (**ASQA**) and approval to provide VET FEE-HELP loans by the Commonwealth Department of Education & Training (**Commonwealth Department of Education**).

Under the Statement of Expectations, training providers are required to (among other things):

- commit to excellence in service delivery and maximising outcomes for students;
- act in the best interests of students and with sensitivity to their diverse social, cultural and special learning needs;
- commit to the highest ethical standards;
- commit to honest, fair and respectful engagement with students, business, industry and the community; and
- avoid conflicts between private interests and professional responsibilities.¹¹

While we welcome the requirements of the Statement of Expectations, which exceed other national regulatory standards such as the Australian Quality Training Framework (**AQTF**), it appears that private VET providers that do not appear to meet these requirements continue to receive government funding. We would encourage increased compliance and enforcement action that would see providers denied funding in the event of non-compliance.

Recommendation 1:

We recommend that Commonwealth and state and territory governments:

- d. only provide government subsidies to VET providers that demonstrate full compliance with regulatory requirements (including the Statement of Expectations), and deliver quality learning and graduate outcomes;
- e. develop a framework to claw back government subsidies from VET providers where compliance with regulatory requirements are not met; and
- f. ensure compliance and enforcement action is increased - see Recommendation 5 for further details.

3. The cost of education at private VET providers

Course fees

Corporate private VET providers are obliged to act in the interests of the company, which means generating returns for shareholders is a priority. While not mutually exclusive to teaching and learning, scholarship and quality education, this clearly creates a tension between acting in the best interests of students (which often involves capital expenditure on support services) and maximising profits. Private VET providers' focus on profits also

¹¹ Victoria Department of Education and Early Childhood Development, 'Statement of Expectations: Principles and obligations for government contracted training providers in Victoria', April 2013, available at: <http://www.education.vic.gov.au/Documents/training/providers/rto/statementsexpectations.docx>

arguably provides an incentive to offer courses that attract the highest subsidy at the lowest cost.¹²

The incentive to generate profits is one explanation for the proliferation of low cost, high demand courses such as management and business courses. 'Management and Commerce' was the most common field of education undertaken by students accessing VET FEE-HELP loans in 2013, representing 44 per cent of total course enrolments.¹³ One example of a provider specialising in these kinds of low cost courses is the Australian College of Training and Employment (trading as Evocca College), the largest single recipient of VET FEE-HELP loans. The Workplace Research Centre reported that Evocca's website indicates it solely caters for diploma and advanced diploma studies in business, information technology and media, community services, and tourism.¹⁴

The profit maximisation principles of private VET providers mean low cost delivery modes are increasing, particularly the provision of online training. Online training minimises the cost of teaching staff, capital expenditure on physical premises, and investment in equipment and learning materials.¹⁵ We have received reports of students enrolled in online courses being provided with no physical materials, faulty learning software and little ongoing support, while still incurring significant VET FEE-HELP debts.

Luke's story

Luke enrolled in an online course with a private VET provider, via an education broker. He was confused by the online format of the course, and says there were no help buttons. Luke called the education broker about his problems. The sales representative told Luke that he would follow up with the provider, but Luke never heard back from the provider. Luke could not complete the course as there was minimal support or information to assist him. He eventually withdrew from the course.

Given that private VET providers with access to VET FEE-HELP and government funding have near-guaranteed income, we consider that many private VET courses (particularly online courses) are excessively expensive. For example, the Double Diploma of Business & Management from Careers Australia costs \$23,250 in most Australian states.¹⁶ The Double Diploma of Business & Management course at TAFE Queensland South West costs just \$6,800.¹⁷

We recommend the consideration be given to introducing regulations that ensure course costs reflect the genuine costs of running courses. Options could include capping course costs, or providing 'recommended retail price' information to students prior to enrolment.

¹² Yu and Oliver (2015), p. 25.

¹³ Department of Education, '2013 VET FEE-HELP Statistical Report - Summary', 2014, available at: http://docs.education.gov.au/system/files/doc/other/2013_vet_fee-help_statistical_report_-_summary_0.pdf

¹⁴ Yu and Oliver (2015), p. 17.

¹⁵ Ibid, p. 25.

¹⁶ Careers Australia, 'Double Diploma of Business and Management', accessed 6 February 2015, available at: <http://www.careersaustralia.edu.au/courses/double-diploma-of-business-and-management-4/>.

¹⁷ TAFE Queensland, 'BSB50207 and BSB51107 Dual Diploma of Business and Diploma of Management', accessed 6 February 2015, available at: <http://tafeqld.edu.au/course/business-management/14034/dual-diploma-business-diploma-management#.VNBfLS4-Fnk>.

Recommendation 2:

We recommend consideration of introducing regulations that ensure course fees reflect the genuine costs of delivering training courses.

Disclosure of course costs

We are concerned that private VET providers and education brokers are not being upfront with students about tuition fees and additional fees and charges that may apply prior to enrolment. Under Standard 5.3 of the *Standards for Registered Training Organisations (RTOs) 2015 (the VET Standards)* private VET providers are only required to "provide or direct" consumers to information about fees payable, payment terms and conditions, cooling-off rights and rights to obtain refunds. In our experience, this information is often not easily accessible on the provider's website, or made clear during cold calls or door-knocking sales visits. In comparison, most (if not all) TAFE colleges clearly list course fees on their websites.

Lack of disclosure is particularly worrying where private VET providers allow consumers to enrol and pay in full for a course online. Of 30 online payment gateways tested by ASQA, 60% did not provide refund information yet allowed full payment for a course to be made. In 50% of cases of pre-payment, the amount accepted was in excess of the limit allowed under the previous financial management standard (SNR 22 of the *Standards for NVR Registered Training Organisations 2012 (the previous VET Standards)*).¹⁸

We recommend that all VET providers and education brokers be required to prominently disclose course fees and information about payment terms and conditions, cooling-off and cancellation rights, and refunds in marketing material (including websites) and during telephone and face-to-face sales.

Recommendation 3:

We recommend that private VET providers be required to improve their costs disclosure. This should include providing information in marketing material (including websites) and during telephone and face-to-face sales about the following:

- a. course fees;
- b. additional fees and charges;
- c. payment terms and conditions;
- d. cooling-off and cancellation rights; and
- e. refunds.

¹⁸ Australian Skills Quality Authority, 'Marketing and advertising practices of Australia's registered training organisations', 20 September 2013, p.14, available at: http://www.asqa.gov.au/verve/_resources/Strategic_Reviews_2013_Marketing_and_Advertising_Report.pdf.

4. The regulatory regime private VET providers operate within

The regulator

Following the agreement by COAG, states and territories transitioned responsibility for accreditation, monitoring and enforcement of standards in higher education, including private VET providers, to the Commonwealth. This included the establishment of ASQA to regulate the VET sector.

ASQA has jurisdiction over most VET providers, but Victoria and Western Australia also have their own regulators for VET providers that only deliver courses in these states. Certain conduct is also handled by the Australian Competition and Consumer Commission (**ACCC**). This complex regulatory regime makes it difficult for students to know where to turn if they have a problem. We welcome the creation of the National Training Complaints Hotline,¹⁹ but remain concerned that students may be referred to a number of regulators, even if the complaint relates to a single private VET provider or education broker.

We recommend a single national regulator for the VET sector and education brokers. This would provide clarity to both students and operators. It is also imperative that regulators and other relevant departments work closely together to improve compliance and enforcement outcomes. This co-operation should include, at a minimum, appropriate information sharing arrangements.

Recommendation 4:

We recommend that the Commonwealth and state and territory governments:

- a. establish a single national regulator for the VET sector; and
- b. introduce policies and procedures that encourage and enable regulators and government departments to work together more closely to improve compliance and enforcement outcomes. This should include appropriate information sharing arrangements.

Regulatory powers

It is not clear that ASQA has sufficient mechanisms to respond to non-compliance by private VET providers and education brokers. As such, in our view ASQA needs enhanced enforcement powers to ensure that ASQA can respond swiftly in the event of non-compliance. ASQA should be provided with enhanced enforcement powers, which include appropriate administrative powers that allow ASQA to impose penalties for non-compliance. Such powers are already used to regulate other licensed industries, such as the suspension, banning and cancellation powers found in Part 7.6 of the *Corporations Act 2001*.

We also recommend that ASQA increase the frequency of audits of, and enforcement action against, private VET providers and education brokers. Currently, audits are occurring on

¹⁹ Department of Industry and Science, 'National Training Complaints Hotline', accessed 11 February 2015, available at: <http://www.industry.gov.au/skills/nationaltrainingcomplaintshotline/Pages/default.aspx>

average once every five years, allowing unscrupulous operators to fly under ASQA's radar.²⁰ ASQA should ensure that it is undertaking enforcement action in a strategic way, and increase actions across the regulatory pyramid. There should be an emphasis on sufficient actions at the apex of the pyramid to have a real deterrent effect on businesses that may otherwise fail to comply.²¹

Ongoing compliance with relevant standards should be monitored and be a prerequisite to future accreditation.

Recommendation 5:

We recommend that ASQA:

- a. be given enhanced enforcement powers, including appropriate administrative powers to impose penalties for non-compliance with relevant standards;
- b. increase the frequency of compliance audits of private VET providers and education brokers; and
- c. increase enforcement action against VET providers and education brokers that contravene the relevant standards. Action should be based on a clear strategic compliance and enforcement policy.

Consumer protection

We would also like to see ASQA's jurisdiction extended so that it is in a position to ensure that appropriate policies exist in relation to fair trading practices, such as refunds. We believe that ASQA's jurisdiction, and the relevant standards, require amendment to ensure that appropriate policies exist in relation to selling techniques, unfair prices and quality. These factors should be taken into account when accrediting a provider, and determining whether their accreditation should continue.

ASQA's jurisdiction should be extended to cover education brokers and unregistered sub-contracted providers. Although the VET Standards now require RTOs to ensure they comply with the VET Standards at all times, including where services are being delivered on its behalf,²² ASQA does not have jurisdiction to regulate the brokers or unregistered sub-contractors themselves.

ASQA should also be able to consider consumer protection issues, including unfair contract terms in private VET provider contracts within the meaning of section 23 of the *Australian Consumer Law (ACL)*. Many of the offending terms that we see are primarily concerned with 'no refund' policies that appear to breach the ACL to the extent that:

- a. they are inconsistent with the consumer's right to terminate the agreement and seek damages under the consumer guarantee provisions of the ACL;

²⁰ Yu and Oliver (2015), p. 5.

²¹ Renouf, Balgi and Consumer Action Law Centre, 'Regulator Watch: The enhancement performance of Australian Consumer Protection Regulators', March 2013, pp.156-157, available at: <http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>

²² *Standards for Registered Training Organisations (RTOs) 2015*, Standard 2.1.

- b. they permit a VET provider to avoid liability for a breach of contract that would otherwise entitle the relevant student to cancel the agreement and seek damages including a refund;
- c. they permit a VET provider to prevent or deter the relevant consumer from pursuing or exercising rights arising from a breach of the guarantee provisions of the ACL;
- d. they have the effect of permitting VET provider to penalise a student, but not a VET provider, for a breach or termination of the agreement and limit the relevant student's right to sue a VET provider; and
- e. where a student is in breach of the terms of the agreement, they enable a VET provider to refuse to make any refund which may be unfair where the VET provider's reasonable costs incurred because of the breach are likely to be significantly less than the payments received under the agreement.

Certain terms also provide VET providers with the right to unilaterally reschedule or cancel courses without providing appropriate redress for consumers, contain unreasonably prescriptive procedures for withdrawal or cancellation, and excessive penalties for non-payment of fees. Some examples of terms that we consider may be considered unreasonable are set out below:

Example 1

"Tuition fees are not refundable or transferable after the commencement date except in the case of extreme illness, which precludes the student from staying in Australia. This must be supported by a doctor's certificate and refund of unused tuition fees will be sent to the student's home country.

*All applications for refund must be in writing and must be received by the Institute no later than 3 months after the commencement of the course. Applications received after three months will not be granted.*²³

Example 2

"A full refund, less a \$370 administration fee, will be given to students who cancel/withdraw their enrolment in writing within five (5) days of enrolment. If you are studying Certificate III/IV in Fitness the Student Kit will not be dispatched until after the five (5) day cooling off period. No refunds will be given after five (5) days of the date of enrolment and the student is liable to pay the balance of any fees owing...

In cases where the student has signed up to an upfront payment plan and does not pay the amount by the nominated date, they will automatically be transferred onto an 8 month payment plan, which will incur higher fees and charges.

If, for any reason, a student has defaulted in payment to The Australian Institute of Personal Trainers then the full sum owed will be deemed due and may be referred to either our solicitors or a debt collection agency for recovery proceedings.

*The student shall be liable for all costs associated with the recovery of their debt, including but not limited to collection fees, commissions payable and legal costs.*²⁴

²³ Kent Institute of Business and Technology, 'Terms and Conditions', accessed 1 February 2015, available at: <http://kent.edu.au/terms-and-conditions/> -

Example 3

"We reserve the right to cancel or reschedule short courses if the number of attendees is insufficient to run a course, or for other reasons in extenuating circumstances. In the event a short course is cancelled or rescheduled Endeavour College does not accept responsibility for the cancellation of travel arrangements and or accommodation. Student bookings will be transferred to the next available date or given the option to transfer their booking to another short course. Endeavour College Short Courses does not issue refunds."²⁵

We strongly recommend that ASQA's jurisdiction be extended to consider unfair contract terms, and to make consideration of standard terms and conditions an aspect of accreditation.

Recommendation 6:

We recommend that ASQA's jurisdiction be extended:

- a. to ensure that appropriate policies exist in relation to selling techniques, unfair prices and quality. These factors should be taken into account when accrediting a provider, and determining whether accreditation should continue;
- b. to regulate education brokers and unregistered sub-contracted providers; and
- c. to consider consumer protection issues, including unfair contract terms in private VET provider contracts within the meaning of section 23 of the *Australian Consumer Law*. Consideration of standard terms and conditions should be an aspect of accreditation.

Reviewing the regulatory framework

The effectiveness of the regulatory framework, including the regulator itself, needs to be regularly reviewed. In 2013, Consumer Action published a report titled *Regulator Watch*,²⁶ which was conceived in the absence of a public mechanism to determine how much enforcement work was undertaken by various regulators. This report noted some good practice frameworks that apply to regulators, including for the need for strong feedback loops between consumer organisations, consumer dispute resolution services, and regulators. We would encourage regular reviews of ASQA and the regulatory framework to ensure it is in fact ensuring compliance with regulatory obligations.

Recommendation 7:

That regulatory framework and ASQA's capacity to enforce compliance with regulatory requirements be regularly reviewed.

²⁴ Australian Institute of Personal Trainings, 'Terms and Conditions', accessed 1 February 2015, available at: <http://www.aipt.edu.au/terms-and-conditions/>.

²⁵ Endeavour Short Courses, 'Terms and Conditions', accessed 1 February 2015, available at: <http://www.endeavourshortcourses.edu.au/terms-and-conditions>.

²⁶ Renouf (2013).

5. The operation of VET FEE-HELP

Since VET FEE-HELP was first made available to students in 2009, a total of \$1.4 billion in VET FEE-HELP loans has been accessed by VET students. Providers must be approved by the Australian Government to offer VET FEE-HELP loans to eligible students. The number of RTOs approved to offer VET FEE-HELP has increased steadily in 2013, rising from 128 at the end of 2012 to 193 by the end of 2013.²⁷

The VET FEE-HELP system has given many students who otherwise would not have access to further education the chance to gain qualifications. However, given the cost of these loans to the student and taxpayers, it is imperative that regulation of the VET FEE-HELP system is strengthened to ensure that students are entering and completing courses appropriate to their needs and abilities, and taxpayer funds are being invested appropriately.

The completion rates for online VET FEE-HELP courses in particular suggest that students may not be receiving value for their HELP debts, and the Commonwealth may not be receiving value from its investment. Based on Commonwealth Department of Education figures, the 3-year completion rate (2011-2013) for external attendance students relying on VET FEE-HELP loans was only 7%. For internal attendance students, the completion rate was 38.8%.²⁸

There has undoubtedly been an explosion in growth in VET FEE-HELP loans. The number of students accessing VET FEE-HELP loans increased by more than 80% between 2012 and 2013, from just over 55,100 students to more than 100,000. Further, the total value of VET FEE-HELP loans accessed in 2013 (\$699.2 million) was more than double the amount accessed in 2012 (\$324.6 million).²⁹

In order to be approved to offer VET FEE-HELP, a private VET provider must meet certain eligibility requirements set out in the *Higher Education Support Act 2003* (Cth) (**HES Act**) and related legislation such as the *VET Guidelines 2013*. To be eligible to apply, an organisation must be a body corporate with its central management and control in Australia, be listed on the relevant national register and offer at least one eligible accredited course. Private VET providers must also meet requirements in relation to financial viability, course quality, fairness, compliance, and fees set out in HES Act (**the VET quality and accountability requirements**).³⁰

It appears that, in practice, the standard for approval has been set too low. A provider must only 'be willing and able to meet and comply with' the requirements to be approved. We would strongly recommend that the Minister be empowered to refuse approval if the applicant 'is likely to' contravene the obligations that will apply. This is similar to the enhancements to the Australian Securities and Investment's (**ASIC**) licensing powers introduced as part of the Future of Financial Advice reforms, which changed the licensing

²⁷ Department of Education, '2013 VET FEE-HELP Statistical Report - Summary' (2014)

²⁸ Department of Education and Training, 'VET FEE-HELP statistics - Course completion tables 2013', 2014, available at: <http://www.education.gov.au/vet-fee-help-statistics>

²⁹ Department of Education, '2013 VET FEE-HELP Statistical Report - Summary', 2014.

³⁰ Department of Education and Training, 'Applying to become a HELP provider', accessed 11 February 2015, available at: <http://education.gov.au/applying-become-help-provider>; *Higher Education Support Act 2003* (Cth) Sch 1A s13

threshold so that ASIC can refuse or cancel/suspend a financial services licence where a person is likely to contravene (rather than will breach) its obligations.³¹ This provides decision-makers with more discretion to reject applications where there are potential compliance concerns.

It also appears to be difficult to revoke a private VET provider's approval to offer VET FEE-HELP. The Minister may revoke a private VET provider's approval if satisfied that the provider has breached a VET quality and accountability requirement, but in our view these powers do not go far enough. We recommend penalties be introduced for exploiting the VET FEE-HELP scheme. We also recommend more robust application of the power to revoke approval by the Minister.

Recommendation 8:

We recommend:

- a. that approval to provide VET FEE-HELP loans should only occur if the Minister has no reason to believe that the provider is likely to breach the obligations that will apply;
- b. introduction of penalties for exploiting the VET FEE-HELP scheme; and
- c. more robust application of the power to revoke approval to offer VET FEE-HELP loans by the Minister.

We are also concerned that the VET FEE-HELP model encourages private VET providers to provide barriers to withdrawal before the census date, being the date they receive guaranteed payment from the Government. Students have reported difficulties with withdrawing from courses prior to census dates, and being referred to marketing teams that persuade them to continue with, or defer, a course that does not suit their needs or that they will never complete. Once the census date has passed, there are limited incentives for unscrupulous VET providers to provide ongoing support to students.

Clare's story

Clare was cold called by an education broker during her university exams. Clare is quite young and was very stressed at the time. She was eventually convinced to enrol in an online course after being assured that the course would enhance her career prospects and that she would have two 'career advisers'. Shortly after enrolling, Clare decided she couldn't do the course and should concentrate on her university studies. She contacted the VET provider before the census date and asked to withdraw from the course. The provider told Clare that someone would return her call, but instead Clare received a number of calls from the education broker. The education broker convinced Clare that she should defer instead of withdrawing. Subsequently, Clare received a VET FEE-HELP notice for a debt of more than \$20,000.

³¹ *Corporations Amendment (Future of Financial Advice) Bill 2011* Replacement Explanatory Memorandum, para 2.16, available at: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4689_ems_28e3cadf-6bf9-49e4-af60-5773bbf35af7/upload_pdf/366353.pdf;fileType=application%2Fpdf ; *Corporations Act 2001* (Cth) s 913B(1)(b)

The marketing of VET FEE-HELP loans to disadvantaged and vulnerable students is also worrying. We are particularly concerned about 'study now pay later' slogans that fail to highlight the actual cost of study, and marketing VET FEE-HELP loans to students who are unlikely to be able to repay their loans.³² These sort of slogans draw upon behavioural biases such as myopia and over-confidence, and are more likely to result in students enrolling in courses that are inappropriate to their needs.³³

The Commonwealth Department of Education's VET FEE-HELP marketing guidelines offer little comfort, and actually provide 'key messages' for students. These 'key messages' include that students do not have to repay the loan until their income is above the minimum repayment threshold for compulsory repayment, and that there is no age restriction on VET FEE-HELP.

The only restrictions in the Guidelines appear to be that VET providers should not:

- advertise VET FEE-HELP for courses that are not eligible for VET FEE-HELP assistance; or
- make reference to VET FEE-HELP as FEE-HELP.

We recommend the VET FEE-HELP guidelines be amended to discourage inappropriate over-reliance on the availability of VET FEE-HELP loans in marketing material, and restrictions be imposed on the use of slogans such as 'study now pay later'. More broadly, marketing guidelines should be reviewed by someone skilled in behavioural economics so that consumer information is provided that encourages consumers to make decisions in their own best interests, rather than the interests of the marketer. It should be clear to potential students the significance of the debt they will be incurring.

Recommendation 9:

We recommend that:

- a. VET providers and education brokers be subject to requirements that ensure barriers are not placed to withdrawal from courses prior to census dates;
- b. the Commonwealth Department of Education VET FEE-HELP marketing guidelines be amended to discourage inappropriate reliance on the availability of VET FEE-HELP loans in marketing material;
- c. further steps be taken to ensure that potential students understand the nature and significance of the debt they will be incurring; and
- d. restrictions be imposed on the use of slogans such as 'study now pay later'.

³² Yu and Oliver (2015), p.15.

³³ For some background about behavioural economics, see Ian Macauley, 'When does behavioural economics matter?', Centre for Policy Development, 2010, available at: <http://www.home.netspeed.com.au/mcau/academic/confs/bepolicy.pdf>

6. The quality of education provided by private VET providers, volume of learning requirements and graduate outcomes

According to the Productivity Commission, the VET system 'provides Australians with the skills to enter or re-enter the labour force, retrain for a new job or upgrade skills for an existing job.'³⁴ However, we are that the quality of education provided by private VET providers means courses are not delivering these graduate outcomes.

We have received a number of complaints from students where who feel that private VET providers have not provided services that are fit for their purposes or delivered with due care and skill. This is supported by recent statistics released by ASQA, which indicated that of the RTOs audited between 1 July 2012 and 31 December 2013, only 23% were initially compliant with SNR 15 (quality training and assessment) of the previous VET Standards.³⁵ Only 50% complied with SNR 15.3 (required staff, facilities, equipment and materials), and a disturbingly low 27% had complied with SNR 15.5 (assessment done properly).³⁶

This figure was even lower for courses in aged care, with 80% of providers randomly selected for ASQA audits having non-compliant assessment tools and practices at the initial audit.³⁷ Nearly all providers audited did not have effective consultation with industry to ensure their strategies meet industry needs.³⁸ In fact, employers' use of the VET system has fallen to an eight year low, while satisfaction amongst those who do has fallen since 2011.³⁹

More frequent audits and more robust enforcement powers are required to ensure compliance with relevant standards. We also recommend strengthening of the minimum requirements in the AQTF, which should consider introducing a requirement for a minimum number of hours of delivery.

We welcome Standard 5.1 of the VET Standards, which requires VET providers to provide advice to prospective learners about the training product appropriate to meeting the learner's needs 'taking into account the individual's existing skills and competencies'. However, there is still no positive requirement to assess suitability of courses for particular students. We have received reports of students being enrolled in courses that they cannot complete, or do not meet their needs.

We recommend that VET providers and education brokers be required to assess the suitability of courses for each student prior to enrolment. Suitability assessments could take into account a number of factors, including the student's needs and objectives, foreseeable changes to the student's circumstances that may impact their ability to complete a course, the student's academic abilities, computer literacy (for online courses) and attitude towards study. For international students, we consider that one indicia of whether a course is suitable

³⁴ Productivity Commission, 'Report on Government Services 2013, 2013, part 5.1, available at:

<http://www.pc.gov.au/research/recurring/report-on-government-services/2013/2013/07-government-services-2013-chapter5.pdf>

³⁵ Australian Skills Quality Authority, 'Compliance with Standards by existing RTOs', 2014, available at:

http://www.asqa.gov.au/verve/_resources/Existing_RTO_compliance.pdf

³⁶ Australian Skills Quality Authority, 'Compliance with Standard 15 - Quality training & assessment', 2014, available at:

http://www.asqa.gov.au/verve/_resources/Existing_RTO_compliance_stand15.pdf

³⁷ Australian Skills Quality Authority, 'Training for aged and community care in Australia', September 2013, p.52, available at:

http://www.asqa.gov.au/verve/_resources/Strategic_Reviews_2013_Aged_Care_Report.pdf.

³⁸ Ibid, p. 61.

³⁹ Yu and Oliver (2015), p.18.

is whether it allows the student to comply with the attendance and course progress requirements of their Student Visas. These requirements are also set out in the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*.

Ahmed's story

Ahmed inquired with a training provider about obtaining a forklift licence. The training provider advised Ahmed that he should enrol in a particular course, and that this course would contain the necessary elective to gain a forklift licence. Ahmed was not told he needed to select this elective nor was he advised about other ways he could obtain a forklift licence.

Ahmed signed forms for the course that were not explained to him nor read to him in his primary language. Once Ahmed had completed the course, he discovered he was still not licensed to drive a forklift. When he followed up with the training provider, Ahmed was told that he needed to complete an additional \$400 course to obtain a forklift licence.

The availability of distance education has increased, with off-campus options such as correspondence, internet study and interactive teleconferencing.⁴⁰ While this increases access to further education for some, in reality very few students enrolled in distance education finish their courses. As noted previously in this submission, recent Commonwealth Department of Education statistics show that only 7% of VET FEE-HELP funded students are completing their courses over a 3 year period.⁴¹ Given many of these courses are less than 12 months in length, this statistic is staggering. We are deeply concerned that private VET providers and education brokers are enrolling disadvantaged and vulnerable students in online courses who do not have the academic ability or computer literacy to complete online courses.

Jillian's story

Jillian enrolled with a private VET provider to study a Diploma in Counselling. When Jillian spoke to the provider's representative she was told that the provider would be in regular contact to keep her on track and to support her. Jillian explained to the representative that she was computer illiterate but was assured it would have no bearing as online study is 'very simple and self explanatory'. Jillian was informed that studying online was pretty much the same as studying at any other TAFE.

After Jillian enrolled she received no or very little support from the provider. They gave her books and access to the website but she was left quite isolated. Jillian struggled to complete tasks and locate research materials. Jillian felt she was misinformed about the course.

⁴⁰ Productivity Commission, 'Report on Government Services 2013', part5.3.

⁴¹ Department of Education and Training, 'VET FEE-HELP Statistics - Course completion tables 2013', 2014, available at: <http://education.gov.au/vet-fee-help-statistics>

Consumers are not in a strong position to compare the strengths and weaknesses of different VET courses, making it difficult for consumers to determine whether they are selecting the course that is appropriate quality or best suits their needs. As noted by the Workplace Research Centre:

"It is impossible for students to have the information required to make the same judgments about the quality of education and training as they would about a physical product or less complex service. This reinforces the need for quality arrangements that directly regulate the education inputs".⁴²

It is difficult for consumers to make informed decisions about whether to enrol as outcomes cannot be discerned until after the course is purchased. Forums such as Whirlpool provide some insight, but there is a lack of independent information about compliance, quality, ongoing support and graduate outcomes for students.

Recommendation 10:

We recommend:

- a. enhancing the AQTF standards, including introducing a requirement for a minimum number of hours of delivery;
- b. VET providers and/or education brokers be required to conduct a suitability assessment for each student prior to enrolment; and
- c. development of quality standards that recognise that fundamental improvements to quality are required, and that disclosure alone will not provide sufficient protection for students.

7. Marketing and promotional techniques employed by private VET providers and education brokers both domestic and international

We have received a number of complaints about the marketing and promotional techniques employed by private VET providers and education brokers. Our concerns about misleading conduct in the industry were confirmed by recent statistics released by ASQA, which indicated that 45.4% of RTO websites surveyed were identified as having one or more areas of possible non-compliance in relation to their marketing, fee collection, advertising and information provision practices.⁴³

We are particularly concerned about VET providers and education brokers that appear to target vulnerable consumers. These consumers include Indigenous people, non-English speakers, unemployed people, and people reliant on Centrelink income. We are deeply concerned about aggressive marketing tactics that target consumers who do not have the aptitude or ability to complete VET courses. When offering courses, we have seen providers

⁴² Yu and Oliver (2015), p. 5.

⁴³ Australian Skills Quality Authority, 'Marketing and advertising practices of Australia's registered training organisations' (2013)p. 28.

and brokers exaggerate the ongoing support available to students and reassure computer illiterate consumers that they will be able to easily complete a course online.

We have received reports of education brokers in particular cold calling or door-knocking potential students and pushing them to enrol in unsuitable courses over the phone or on their doorstep.

We are also aware of private VET providers offering incentives to consumers to study at their institution, for example offering 'free' laptops or iPads. These incentives tend to detract from the fact that consumers will incur significant VET FEE-HELP debts following the course census dates. Private VET providers and brokers sometimes also make unrealistic claims about salaries graduates can expect to earn, and their ability to gain employment after graduation.

Sarah's story

Sarah had been applying online for jobs via a job advertisement board operated by an education broker. Sarah received a telephone call from the education broker offering to enrol her in a Diploma of Management. The broker sent Sarah an email whilst on the telephone, and told her to click on various links to sign her up to a course that was government funded and would help her obtain a job. Sarah was told by the sales representative not to read the email. Sarah says the sales representative did not ask any questions about her ambitions or capabilities. Sarah did not commence the course, but later received notification of a VET FEE-HELP debt of over \$23,000.

We are particularly concerned about the use of students' personal information for direct marketing purposes. There have been reports in the media of education brokers mining personal information from job advertisements to identify job seekers and potential students.⁴⁴ We have received reports of details being harvested through the broker's own "free" job advertisement website, without the job hunter's knowledge. It appears that clear and express consent to use personal information for direct marketing purposes is not always being obtained before contacting job seekers about courses. Job applicants are cold-called by course sales representatives and subjected to high pressure sales tactics.

⁴⁴ Frank Chung, 'Acquire Learning facing ASQA scrutiny amid allegations of unethical behaviour', 5 November 2014, available at: <http://www.news.com.au/finance/work/acquire-learning-facing-asqa-scrutiny-amid-allegations-of-unethical-behaviour/story-fnkgbb3b-1227112878300>.

Reena's story

Reena was applying for jobs on a job advertisement board. After providing her personal information she received a cold call from an education broker. It appears that the broker and job board operator were related companies, although this was not clear to Reena. Reena was interested in doing librarianship, but the representative convinced her to enrol in a business course. Reena enrolled in the course on the phone while the representative talked her through the enrolment email. Reena raised concerns about lacking the discipline to be able to study online and was told 'not to worry about it'. Reena eventually withdrew from the course.

We have heard reports from students that they did not understand the VET FEE-HELP debt they will incur, census dates, cancellation rights or cooling off rights. We have also received complaints from students who claim that their VET FEE-HELP debt has been incurred without their knowledge, or that barriers were placed on their ability to withdraw prior to the census date. Some claim never to have studied at the institution and cannot remember signing a Commonwealth Assistance Form. Some recall being contacted by a private VET provider or education broker and being encouraged to enrol in a course, or clicking through a number of webpages, but were not aware they were enrolling in the course, the significant debts they would incur, or the cooling off period.

Yasmin's story

Yasmin is young, unemployed and has no assets. Yasmin enrolled in a Diploma of Management with a private VET provider. She was told that there was a 14 day cooling off period. Yasmin was concerned about her lack of skills, as she did not complete high school. She was not confident in doing an online course, but was strongly assured by the provider that she would be able to complete the course.

After enrolling, Yasmin discussed the matter with others and decided the course wasn't for her. She notified the provider of her intention to withdraw within what she thought was the cooling off period. Yasmin assumed that the 14 day cooling off period she was told about referred to 'business days', but the provider said that it includes non-business days so, it says, she is now liable for the course fees.

We understand that complaints about misleading and deceptive marketing practices by private VET providers and education brokers are referred by ASQA to the Australian Competition and Consumer Commission (**ACCC**). This is likely to significantly limit ASQA's ability to respond promptly to complaints, or be proactive in this area.

We are further concerned that there is no general prohibition against misleading and deceptive conduct in the VET Standards, merely a requirement that the RTO "accurately represents the services it provides and the training products on its scope of registration".⁴⁵ We recommend including a general prohibition against misleading or deceptive conduct and representations in the VET Standards and *VET Guidelines 2013*. We understand that private VET providers and brokers are already subject to the ACL, but in our view an explicit prohibition against this conduct would assist the Commonwealth Department of Education and ASQA to take enforcement action in cases of misleading or deceptive conduct.

Recommendation 11:

We recommend that:

- a. marketing standards be strengthened and clarified, including the introduction of a general prohibition against misleading or deceptive conduct which reflects the ACL requirements;
- b. requiring private VET providers and brokers to obtain clear and express consent from potential students to contact them about training courses;
- c. banning the offering of 'inducements' such as free iPads for enrolment;
- d. private VET providers and education brokers be prohibited from enrolling students over the phone or whilst door-knocking;
- e. ASQA makes the scrutinising of private VET providers and education brokers' marketing and advertising a high regulatory priority;
- f. ASQA be given jurisdiction to investigate misleading and deceptive conduct by private VET providers and brokers, without the need to first refer these matters to the ACCC;
- g. providers be explicitly prohibited from guaranteeing:
 - i. an assessment outcome in their marketing such as '100% pass rates guarantee';
 - ii. the completion of a qualification or unit in unrealistically short time frames;
 - iii. employment or immigration outcomes from training; and
 - iv. minimum salaries

8. Other matters - dispute resolution

While ASQA accepts complaints from students about private VET providers, ASQA does not undertake to respond or to resolve individual complaints.

We recommend establishing a dedicated external dispute resolution scheme to resolve disputes between students and private VET providers. This could either be government-run or an industry funded scheme comparable to existing operations like the Financial Ombudsman Service or the Public Transport Ombudsman Victoria. These services provide consumers with access to a free and independent dispute resolution services, and also

⁴⁵ *Standards for Registered Training Organisations (RTOs) 2015*, s 4.1(a)

creates incentives for businesses to settle dispute internally as they incur costs each time a case is brought against them.

At present, disputes between private colleges and international students can be heard by the Commonwealth's Overseas Students Ombudsman (**OSO**), but no such process exists for domestic students. Complaints by domestic students in Victoria must be taken to the Victorian Civil and Administrative Tribunal (**VCAT**). The VCAT process involves a court-like, adversarial hearing, which is much more formal and intimidating for a consumer than an ombudsman process. The process remains informal and avoids some of the pitfalls of face-to-face dispute resolution where a power imbalance exists between the parties. An ombudsman process is more appropriate for the majority of disputes relating to private colleges.

Complaint or dispute resolution (such as through an ombudsman scheme) and compliance, monitoring and enforcement of standards (by a regulator) are related, but separate functions. Regulators with responsibility for compliance monitoring and enforcement do need to be aware of areas of consumer complaint in order to prioritise activities and deal with industry problems. However, effective dispute resolution (such as through ombudsman schemes) has a primary objective of resolving individual complaints efficiently and effectively for both parties—this may not be the primary objective of regulators.

Effective dispute resolution services can contribute to compliance, monitoring and enforcement by providing information about common and systemic issues of complaint. They may also improve complaint handling standards by education providers themselves, by acting as an additional discipline to avoid complaints.

Recommendation 12:

We recommend establishing a dedicated external dispute resolution scheme to resolve disputes between students and private VET providers.

Please contact Katherine Temple
if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE

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