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EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION COMMITTEE

Reference: National Vocational Education and Training Regulator Bill 2010 [2011]

MONDAY, 7 MARCH 2011

MELBOURNE

BY AUTHORITY OF THE SENATE

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**SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION COMMITTEE**

Monday, 7 March 2011

Members: Senator Marshall (Chair), Senator Back (Deputy Chair) and Senators Bilyk, Cash, Hanson-Young and Wortley

Participating members: Senators Abetz, Adams, Barnett, Bernardi, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Fisher, Forshaw, Furner, Heffernan, Humphries, Hurlley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Ian Macdonald, McEwen, McGauran, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Xenophon

Senators in attendance: Senators Back, Marshall and Wortley

Terms of reference for the inquiry:

To inquire into and report on:

National Vocational Education and Training Regulator Bill 2010 [2011]

Committee met at 9.32 am

CHAIR (Senator Marshall)—I open this public inquiry into the National Vocational Education and Training Regulator Bill 2010 [2011], the National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010 [2011] and the National Vocational Education and Training Regulator (Consequential Amendments) Bill 2011. Collectively the bills provide for the establishment of a national regulator for the VET sector and a regulatory framework which the National Vocational Education and Training Regulator will operate. The Senate has referred these bills to this committee for inquiry. I welcome all those who have made submissions and are appearing before us today. I remind all witnesses that they are protected by parliamentary privilege and that these committee proceedings have an equivalency to Senate proceedings themselves.

[9.33 am]

PATON, Mr Robert (Bob), Chief Executive Officer, Manufacturing Skills Australia

CHAIR—Welcome. We have received your submission, so thank you for that. We invite you to make some opening remarks, which will be followed by some questions and some general discussion with the committee.

Mr Paton—Thanks very much and thanks to the committee for taking our submission and the chance to speak to it today. The comments that we made in our submission really centre around the area of quality and determining how adequacy of training and assessment is determined—what is the measure of quality and how that could be addressed within the bills. That is the main issue that we have of concern, so we have structured a few comments around that, which I am sure that the committee have seen.

The focus of that is that it would be appropriate to change the bill to bring in something which is a known measure within the vocational education and training sector as to how structures and things are put in place and about how quality and adequacy are determined; that is, the citing of the Australian quality training framework as the device that would determine standards of quality, adequacy and so on. That is the essence of where we were going. The other aspect that relates to that is the role of the new body in the accreditation of courses. As an industry skills council, we would see some tightening of the arrangements for course developers or course accreditation agencies in consulting with industry skills councils. I believe the committee would be aware of the role of industry skills councils in developing, monitoring and continually improving training packages as to the national qualifications that are used in the VET sector. The development of accredited courses has gradually phased out as training package qualifications have overtaken and populated that area. But we still see instances where a training organisation might wish to accredit a course which is almost a duplicate of a national qualification. We see that as probably not a positive thing and maybe counterproductive in terms of the value and benefit of that qualification for learners, the perception by employers as to what that qualification might mean and the undermining of the system.

The National Training Framework recognised last year that the qualification structures are made up of training packages and accredited courses, and we accept that. Each training package qualification has the ability to draw accredited course subjects into it. But what we see is that the national system is based on predominantly training packages, in our view, determined by industry and if there is a shortfall in a training package that requires an accredited course we would really like to know about it so we can actually plug that gap if necessary through whatever the mechanism is. At the moment the reference point is through a fairly obscure reference, in the Australian quality training framework documents, that talks about industry skills councils being a stakeholder who might be consulted by a developer but there is no compulsion. That is not an issue directly as to this bill, I suspect, at this stage but it is certainly something of concern for us. We have raised the same sort of issue through people like the national quality council. Given the new role of the VET regulator as a single national course accrediting body, we would like to see some tightening up in that area.

CHAIR—I have a couple of questions and Senator Back should jump in whenever he likes. First of all, Mr Paton, I will take you to ‘Sanctions and penalties’ in your submission. You say that you endorse ‘the use of sanctions and penalties as set out in the proposed legislation, to support the assurance of quality and consistency in the application of national standards’. From my first reading of some of the sanctions and penalties and of the compliance regime, they seem a little bit over the top. I am wondering if you think that is necessary in this sort of an industry and if you think a lighter touch might be appropriate.

Mr Paton—I do not have any comments on the strength of the sanctions and penalties and whether or not they are being over the top. To us the use of sanctions and penalties seemed to be a reasonable approach. The current arrangements for dealing with registered training organisations have some principles that underpin that, but often actions by the registering body are either not sufficiently responsive or not strong enough to deal with bad practice by a registered organisation. Some tightening up around that, we believe, would be of value in terms of a range of factors but particularly as to the quality of outcomes and the authenticity of the training and assessment that occur.

CHAIR—I think it is accepted across the board that there have been some rogues in the industry. I am just wondering whether you want to offer an opinion on the extent of that and the impact that the regulator will have in being able to clean that up.

Mr Paton—Yes, there certainly have been some rogues in the industry over time and I guess there are some still practising. Our concern essentially comes back again to that quality issue related to the outcome from the perspective of both the learner and the end point industry consumer as potential employers of VET graduates.

It certainly brings questions to our mind as to whether, as an example, an RTO can deliver the equivalent of an apprenticeship through a fully institutionalised pathway where there is no work involved. Our qualifications have been tightened in the last couple of years to actually put a little more stringency into them to ensure that the RTOs are using qualifications for the appropriate person. The apprenticeship ones in particular were of concern. They are referred to as traditional apprenticeships. People put a lot of value in those. Within industry, among employers, employees, industry associations and unions, there is a common understanding as to what constitutes the outcome of an apprenticeship program. Yes, there are variabilities across trades and industry sectors, but there is a fair understanding about the value of that person's word and their capability. Where the qualification is delivered in an institutional setting, the chances of that learner gaining the same degree of competence and the ability to perform a skill again in different situations is very doubtful. At the moment, there are few mechanisms of recourse for industry to come back to RTOs that are delivering what I think is a fairly abusive situation of using a qualification designed for an apprenticeship that is not delivered within an apprenticeship at all, where there is no work experience or work practise involved.

CHAIR—Do you think that expectations are deliberately raised for those individuals who engage in those courses?

Mr Paton—Absolutely.

CHAIR—They cannot then practice because they have not actually done the apprenticeship?

Mr Paton—Most trade occupational areas are unregulated by licensing. There are some that are licensed but many are not. So there is no legal requirement for them to have a qualification. They see that by achieving this certificate III in whatever it might be that they can then go and get a job and present to an employer on that basis. The employer may or may not consider the qualification, but as soon as the person starts work their value at work becomes quite obvious. So the employer has been duped in that process but so has that learner because they have probably spent a lot of money, time, energy and resources in gaining the skill and knowledge that they have, but it is certainly not to the level that would be expected of somebody graduating from an institution with that same qualification where they had completed an apprenticeship as well.

CHAIR—If we take boilermaking as an example, could someone actually do the theoretical component of boilermaking through an RTO and never have done a full apprenticeship and claim to be a boilermaker?

Mr Paton—They could do the theoretical component. The qualification for a boilermaker is a Certificate III in Engineering Fabrication Trade with a selection of units of competency. We do not believe that an RTO could mount a simulated environment to a point that could deliver the same competency that you would expect from somebody who had completed that whilst they were in work, as is typical as an apprentice, where there is structured on-the-job training and learning that goes on and repetition of practice that occurs. Therefore, the reason we strengthened some of the units of competency in our trade qualifications in the last two years was to try to eliminate the occurrence of that situation, because RTOs were deeming people to be competent—that means that they have the skill, knowledge, application and so on—when in fact it would be hard to believe that they were in fact competent. Where people were gaining the qualifications—

CHAIR—They may be competent in a classroom setting—

Mr Paton—Yes, but the competency is based on the unit of competency—the knowledge, the skill and its application in a job type environment. They might have been able to understand and satisfy a lot of the knowledge and the theory requirements of it, but in terms of doing a job they were not capable or competent. So they had gained the qualification fraudulently, in our view. The RTO could not have deemed them to be competent in that situation, yet they were still presented with a qualification at the end.

CHAIR—I just noticed in your submission that you have not made specific recommendations for us to take on board to improve the bill. My question is in two parts. You have indicated that there are areas that are not clearly defined and areas that need more work. This might be something that Skills Australia is doing collectively, but are you in a position to actually make formal recommendations about what needs to change in the legislation? I know sometimes that is quite a big ask for people. I am just wondering whether you are considering that.

Mr Paton—I had not considered it, but we could do that. Manufacturing Skills Australia is fairly small, not big. Our resource capability is limited and stretched, but we would be prepared to make some recommendations for suggested change.

CHAIR—It may be something you want to talk to Skills Australia about.

Senator BACK—Mr Paton, I enjoyed reading your submission. Can you just remind me about something. The ISCs develop the training packages, oversee them and obviously maintain and modify them and also oversee the production of training materials that are subsequently used to deliver that package. Is that correct? Do you guys oversee that?

Mr Paton—In a very limited way. Some ISCs do it more than others. From our point of view, we have an annual investment of about \$100,000 in something like that.

Senator BACK—So it is the RTO that actually works up the training programs and delivers them?

Mr Paton—Yes. It is the tools of their trade.

Senator BACK—And then they deliver them.

Mr Paton—Yes.

Senator BACK—At the moment, who does the auditing of those RTOs?

Mr Paton—It is the registering bodies in each state and territory.

Senator BACK—These training accreditation councils?

Mr Paton—There are two aspects. One is about the delivery, and that is undertaken through their compliance against the Australian Quality Training Framework, done by the registering bodies. The curriculum materials that they develop are unregulated. There is no check or balance put on those. It is entirely up to the RTO to determine which material it uses. The auditor for the AQTF does look at those things, to determine whether they seem to be sufficient and proper and so on.

Senator BACK—I am just trying to get my head around why we are moving towards this national process. My understanding is that the RTOs fall into four different categories. There are the state based instrumentalities—TAFEs; there are the RTOs that exist within certain enterprises—Qantas, the Australian Tax Office and others; then there are the private fee-for-service RTOs; and then, I understand, there are also some in the community services sector. Is it a fair question to ask you, from your ISC's perspective, where the apparent failure has been identified? Is it across all RTOs? Is it within certain sectors or certain ones of those four sectors? Where is the problem that we are trying to solve?

Mr Paton—Those instances of what we believe is bad RTO practice have occurred in large public TAFE instrumentalities and they have occurred in small entirely for-profit RTOs. The enterprise based RTOs in general, from what we have found, are very good indeed and deliver good outcomes. Those are the two areas. Some of the small for-profit RTOs actually demonstrate the best practice we could ever possibly find and also the worst. We find that too in the large ones. I cannot have too many bests, but even some of the large ones have exemplary practice and some pockets of not very good practice.

Senator BACK—Your industry would not relate to the community services sector, I would not have thought.

Mr Paton—No, it does not.

Senator BACK—That has been very helpful. I ask the question because it seems from the reading, listening and submissions that we have had of the ISCs recently that a sort of one-size-fits-all approach probably is not going to work, given the diversity of those four groups and their size. In a sense, who owns them? The TAFEs, as I understand it, are state owned and state controlled and funded. Reading through it, at least two states—my home state of Western Australia and this state, Victoria—at the moment do not seem to be all that willing to pass their powers over, which would appear to me to be the worst of all possible scenarios that we end up having a hotchpotch again. I am asking the question—I suppose, somewhat tongue-in-cheek as a federalist—why would it be that if there are failings in the system now where those administering or auditing are close to the service delivery, what is the rationale from your industry's point of view that removing it to a remote federal or Canberra based system is going to make that better? Is that where the solution lies?

Mr Paton—I think it would help. One of the areas of concern has been where the state recognition body has failed to take either action at all or in a timely manner, which meant that the RTO that was providing bad practice was allowed to continue to trade and work but people were still being enrolled in courses and programs on the understanding that everything was okay. I cannot say all states but I am aware of five different states at least where those things have occurred. I am not too sure of the reason for it, but one of them is that often there has been an issue raised anecdotally at least about the right to practice or trade, that if an

RTO is stood down from business pending some inquiry or whatever it might be they have a legitimate cause for complaint to the government.

From what I understand, some of the registering bodies have been unwilling to take action that would stop trading and to investigate the matter straightaway. It sounds a bit clichéd but if it goes to a Canberra based federal approach, it is bit more Big Brother in a way that may be a threat to individuals but may not be felt by the regulator and they will be fairly fearless in what they do in regulating.

Senator BACK—But timeliness would be an important issue, wouldn't it, if an RTO is failing then from all sorts of points of view, identifying that early and quickly and then being aware of it and acting on it. Again, from my experience of watching how bureaucracies work—I ask the question and I would appreciate your response—it seems to me that very often the closer the process is to where the action or the poor quality action is taking place, is it not more likely that it will be identified? Taking your point on board, you referred to a reluctance on the part of local regulators to actually act. If in fact that matter could be addressed, would it not be more likely that the closer to the activity or the poor quality activity taking place, the more likely it is to be identified more quickly?

Mr Paton—I think the identification of whatever it is and some action to address that are probably different matters.

Senator BACK—That was the point I was getting at rather badly.

Mr Paton—Reporting poor practice and poor performance and so on can be monitored on a regular basis by somebody that is closer to the patch whatever it might be. I think it is a natural human trait that we tend to back off a little bit. I do not know if you have lived in a country town: you become friends with the local copper and, if you are driving a little bit over the speed limit, maybe they do not always want to book you because it becomes an uncomfortable situation. It could be the same if the national regulator were making the decisions about pursuing actions that would bring up bad practice. Then the field people, if you like, would have a scapegoat; they could say: 'Sorry, it's not my decision. I've been told to do this. We need to shut you down or back you off.'

Senator BACK—Is it your position at the moment then that there is not a consistency across the board.

Mr Paton—There is not.

Senator BACK—From my reading, that would also appear to have come through. You mentioned, as you answered with Senator Marshall, that you contend:

... that the primary definition of quality should be 'fitness for purpose'. ... we believe that fitness for purpose can be determined through measurement of whether vocational standards are met. That is, whether the learner has achieved the level of performance as described ... The current audit arrangements do little towards ensuring this outcome ...

Certainly that would be consistent with what I have heard.

I think you made the point earlier that the auditing process at the moment seems to audit in a sense what goes in, in terms of the packages that are being delivered et cetera. Perhaps this is a generalisation, but auditing seems to go on who is doing the assessing and whether they are up to standard or not. Is your statement here saying that it is the outcomes of the training that are not being assessed, either by the person who has gone through the program—and you mentioned earlier in relation to, say, boiler making, there is the practical and the theoretical component. So there are two people in the outcome stage who are not being really satisfied in this: one is the person who has gone through the training, and the other is the employer who is actually employing them. Is that a fair appraisal of how you see things?

Mr Paton—It is. In the case of somebody who is engaged as an apprentice or a trainee, where the employer is sponsoring them for the training, the employer has a very immediate interest in what is going on in terms of the outcome of the training. Most VET enrolees are actually not learning against their current job; they are learning against their first or their next job. But the employer certainly wants to know the sorts of outcomes they are getting and to be satisfied that they are getting what they expected they would get—and from the learner's perspective too, quite clearly. The audit process is focused more on inputs, as you said, and there is no actual measure involved in the current audit processes of achievement of the outcomes. There are satisfaction surveys that are carried out, and most of those turn out showing fairly positive figures—but depending on the question as to how the satisfaction could be ranked.

There is an RTO not very far from where we are, which offers full-time apprenticeship training for motor mechanics, entirely in an institution that is a bit like this. There is no work experience and the graduates there

are deemed to be certificate III motor mechanics. In terms of satisfaction for the employers, those people do not have a job. They go to get a job. The dissatisfaction of potential employers is not fed back; it is not a mechanism where there is a feedback loop that goes back into—

Senator BACK—So, three to six months later, when that young person is in a workplace. If that young person is asked, ‘How competent do you think you are at doing the task?’ the answer would be, ‘I’m probably not very competent.’ And if you ask the employer, ‘How competent do you think that person is?’, they are going to say, ‘They haven’t been much use to me yet.’

Mr Paton—That is right.

Senator BACK—So, in other words, based on the capacity of that person to do the job, get some satisfaction out of it and satisfy their employer with a view to actually getting full-time long-term employment—they do not have much capacity.

Mr Paton—That is right. So vocational training in that instance has just become a commodity of business practice and some reward along the way for the RTO, but certainly not for the learner. The other issue with it is the disappointment from an individual’s point of view. They may be new to Australia—they may not be—but they have spent money, and they have put resources, energy and effort into it, ‘I’ve spent two years doing this and I’ve got nothing.’

Senator BACK—To what extent do you feel as an industries skills council that you have been able to have input? I know your industry skills council has employer groups as well as union groups and others, but are you aware whether employers in your sector also feel that they have had the opportunity to be adequately consulted in terms of achieving some useful outcomes?

Mr Paton—Some are very active, where the employer pushes themselves into the process and they take a very strong interest in it. Most businesses do not do that because they are in the business of whatever they are in and the training is secondary. Again, anecdotally, many employers will often say, ‘The TAFE training is really good, but I need them to do this and this.’ That is an issue about what is offered by the RTO. We have a qualification for a boilermaker that might have half or less than a third of the program that is fixed stuff that they must do and then there is a very broad choice beyond that. But, out of the electives, quite often there is only a very narrow group that is offered. An employer might want somebody that could finish off stainless steel drinking ware or something like that and so might want polishing skills and things added to the course but the RTO might not offer that even when, in fact, it is available in the qualification.

One of my goals and our skills council’s goals is to have employers as informed consumers of VET so they can go along and exercise these options that are available but are not offered. Where the employer becomes actively involved in the training and shows a strong interest and so on, they get much better service. But where they do not do that and rely on the RTO to deliver what they would hope should be right, they often do not get the outcome they are after.

Senator BACK—It is that national consistency and more emphasis on auditing the outcomes rather than the inputs and outputs?

Mr Paton—Yes. There needs to be an audit of the outcomes and some measurement applied to it so that there can be some worthwhile judgment about the performance of the RTO on that basis.

CHAIR—It is an interesting discussion. It may be a little bit outside the terms of this bill, but should training packages that are designed to support people in apprenticeships be offered outside a formal apprenticeship arrangement? Is that part of the problem? I know this does not go to the broad picture of the bills, but, in the expectations that are raised for instance, it does appear to me that the main form of training in an apprenticeship is the actual on-the-job formal learning from other tradespeople. That is supplemented by classroom and theoretical training, not the other way around.

Mr Paton—Yes.

CHAIR—It seems to be that people can be offered the classroom theory training and then can hang a shingle up saying that I am a qualified tradesperson in this because I have done the theoretical training. It seems to me to miss, completely, the point of apprenticeships.

Mr Paton—It does. The training package policy is that, where possible, a training package qualification should be able to be used for an Australian apprenticeship. An Australian apprenticeship, as you know, embraces traineeships, apprenticeships and everything of that nature. Where there is a willingness or an industrial ability within a state or territory, most of the qualifications are available as an Australian

apprenticeship. One of the problems we have is that there is not any differentiation between an apprenticeship and a traineeship or a traditional apprenticeship for a boilermaker, an electrician, a motor mechanic or whatever.

CHAIR—What we used to know as apprenticeships are now being titled traditional apprenticeships and what used to be jobs that required some vocational education and training have become new apprenticeships, apprenticeships or traineeships.

Mr Paton—The committee is aware, I am sure, that there is work going on at the moment about apprenticeships, looking at the organisation, regulation and adequacy of the apprenticeship system. But, in a training package like the metal and engineering training package, as an example, there are qualifications for production and process workers, for tradespeople, for technicians, for paraprofessionals and so on.

Within that, an RTO may have that training package on their scope, which means that they can then offer and deliver training and assessment services to get outcomes against that. But there is no mechanism that we have available to us that would say that this qualification is for an apprentice and unless that person is an apprentice you cannot deliver it. Even though we say the qualification is for an apprentice, if the RTO chooses to deliver it to a group of learners who put their hands up and pay their money, there is no mechanism at the moment to prevent that occurring.

CHAIR—Thank you for your submission and your presentation to the committee today.

[10.05 am]

FETTER, Mr Joel, Policy and Industrial Director, Australian Council of Trade Unions

SHIPSTONE, Mr Tim, Industrial Officer, Australian Council of Trade Unions

CHAIR—I welcome witnesses from the ACTU. The committee has received your submission and we invite you to make some opening remarks to the committee, to be followed by questions.

Mr Shipstone—Thanks very much, first of all, for the invitation and opportunity for the ACTU to appear in this inquiry into the National VET Regulator bills. We very much welcome the fact that this inquiry has been established to look into this legislation before the parliament. It is important and significant legislation, dealing as it does with the regulation and quality assurance of close to 5,000 training providers who deliver training and skills development to over a million students and workers a year. As the committee would be aware, the ACTU made a written submission last week and we continue to rely on that written submission. In this brief opening statement today we would just like to take the committee to some of the key points that we made. I would also like to indicate that the ACTU supports and endorses the submissions made by our affiliated unions on this matter.

In making this submission, our main interest or focus has been to reaffirm our broad support for the establishment of the National VET Regulator. It is something the ACTU and others have been calling for for some time and we are glad to see now that we are almost there. It is a significant reform and we commend the government for taking it on. In terms of the bills themselves, we are pleased to see the broad powers enabling the National VET Regulator to monitor and enforce compliance with quality standards and also take appropriate action against those providers who do not meet those standards. We make the point in our written submission that it is important that the National VET Regulator be resourced effectively in order to do this.

In terms of particular provisions, I will go to a few areas of the bill that we thought perhaps needed some changes or where we have some question marks. I will start first of all with one thing that stood out for us, which was the absence of any object of the act. I am not familiar with Commonwealth legislation across the board, but in the area that I am most familiar with, the industrial relations and workplace relations area, we are certainly accustomed to seeing the objects of an act set out. I think it would be helpful to have a clear statement of legislative intent as to what the NVR is meant to do and what it is intended to achieve. It may be that this can be gleaned from other sources, in the explanatory materials and so on, but I think it should be upfront in the act as well.

On the registration front, obviously registration is a key issue in terms of who is able to enter the training system and then continue to operate in the system and deliver training and qualifications in the scope of registration. We would like to see the bill be quite explicit in saying that, to be registered, these are the standards that you must meet and you will not be registered unless you meet those standards. It does not seem, as it is drafted at the moment, that the NVR must take these standards into account. In terms of the standards themselves, we would like to have some certainty around what these standards are going to be or at least what the process will be for developing them. We note that a number of other submissions have raised this as an issue. Since making our written submission we have had the benefit of also reading the DEEWR submission, and that has helped to clarify some of these issues, but it would help if this could all be confirmed as part of this inquiry.

As we say in our submission, we have assumed that the VET quality framework—which is the term used in the legislation—will incorporate the current AQTF standards. That is still not entirely clear to us, and it would help to have some clarification on that and to also confirm that industry, both unions and employers, will have an opportunity to have some input into those standards. We support the submissions of the AEU that go to the importance of RTOs or aspiring RTOs having a strong education and training focus, given that is what they are there to deliver. That is perhaps one area where the current AQTF could be strengthened further. We have concerns about some provisions in the bill which seem to have a disproportionate impact on students who find their qualifications or statements of attainment have been cancelled, even where they may not know that this has happened, and we make some suggestions in our written submission around dealing with that.

On the transitional bill, an apparent issue for us is that it seems likely that all existing RTOs will simply transfer over to the NVR with no requirement reregister and demonstrate that they meet the new standards. As we understand it, a requirement to reregister will only arise if the state regulator does not transfer them over. The most likely outcome that we would envisage is that the state regulator will transfer over the whole bunch of RTOs. As we say in our written submission, we understand the motivation behind this is to provide a

smooth transition to the new system, but it does in some respects seem to start things off on the wrong foot and we believe there should be some program or mechanism in place to assess these providers properly within a reasonable time frame or some onus on the state regulators to notify the NVR of a problem or problematic RTOs.

CHAIR—Has there not already been a requirement for re-registration? I seem to recall during some of the problems we had with training providers 12 to 18 months ago that there was a process of re-registration. Was that not applied to the group that we are talking about?

Mr Shipstone—I am not sure. I might have to take that on notice.

CHAIR—That is all right. Sorry to have interrupted you.

Mr Shipstone—There are further issues in our written submission, of course, but I think that is where I will leave my opening remarks. We are happy to answer any questions that the committee may have as best we can.

CHAIR—Thank you. In your submission you talk about the disproportionate penalty that would apply to students if they have their qualification cancelled. You say:

A student who enrolls in good faith to undertake a qualification which is subsequently cancelled through no fault of their own could find themselves with a fine of up to \$11 000 if they fail to return that qualification.

Could you expand a bit on that for me? I must say that, on the surface, does sound rather disproportionate.

Mr Shipstone—Civil penalty offences that apply to RTOs themselves if they, for example, engage in any misleading or deceptive behaviour, may be slightly more but are around the same ballpark.

CHAIR—I can understand a scenario where a student has been formally notified that the qualification they thought they had they no longer have and continue to misrepresent holding that qualification, but are you saying that the act provides that, even if they do not know or have not been told and they continue to purport to hold a qualification which they genuinely believe they have, they are still subject to an \$11,000 fine?

Mr Shipstone—It reads that way to us. As we say in our written submission, there is a provision at section 60 (3) which seems to provide some concession to the fact that a person may not know and they only contravene that requirement if they are aware of the notice having been provided. But, as we go on to say, section 61 ‘imposes a civil penalty if the person purports to hold a cancelled VET qualification’, which does not seem to make any provision that the person may not know that that is the case.

Mr Fetter—It also seems to be the case under clause 57 at the moment that the notice can be given simply by putting a notice in a local newspaper. So there is a significant risk that somebody will not be aware that a qualification has been cancelled. There are real issues of fairness and natural justice there.

CHAIR—One of the things that has stood out to me in this bill is what I might call rather extraordinary investigative powers of the regulator. I am just wondering whether you have got a comment about the appropriateness of those powers in this situation.

Mr Shipstone—We are fairly broadly supportive of the broad powers which have been given to the regulator in this case. We think the evidence is that there have been problems in the quality of regulation across the sector and the powers, as some of the explanatory materials say, have probably been strengthened in advance of what was the existing situation with the state regulatory authorities. In this case, given the importance of quality regulation of our VET system, we are broadly supportive of the powers which have been given to the NVR.

Mr Fetter—There are, of course, aspects of these powers that to us, who usually deal in the workplace relations space, seem extraordinary, including, in clause 70, the permission for use of force in executing a warrant. That is something that we would never condone in terms of workplace inspections, but I suppose this is a different regime copied from different regulatory models whereby there are warrants issued and therefore inspectors will be enforcing the warrant. It is out of our area, so we will not say whether it is appropriate or not. But certainly in the civil jurisdiction the use of force in executing warrants is a bit problematic, it would seem to us.

CHAIR—There may be a very good reason for it. Thank you for your submission, because you have actually segmented it into some nice groups and talked about some of the issues. I am just wondering whether you are in a position to actually make specific recommendations on how the bill should be amended in order to accommodate some of the concerns that you have raised, or whether you have gone down to that sort of detail or not.

Mr Shipstone—In our written submission we have provided some broad recommendations. In a couple of cases there is a specific amendment, I guess, which could be made on the basis of what we have said—for example, with the registration. I think that is an example where there could be an explicit requirement for standards to be met. We have mentioned objects of the act. We do not have a set of proposed objects which could be adopted but we think there is some work that could be done there which could be taken from some of the explanatory materials. I note that one of the other submissions refers to the objects, the regulator in the tertiary sphere and in fact there are objects set out in that legislation which could be adapted. In terms of that issue we just talked about, about the penalties which can face individuals, we have made a reference to an approach further on in the act, at section 131B, which provides a test as to whether a person could reasonably be expected to know that they are holding a cancelled VET qualification or a bogus VET qualification. That approach used later in the act could also be applied to the sections we are talking about there, at sections 60 and 61.

CHAIR—I am wondering, before I hand over to Senator Back, whether you have got a feel for the extent of, for want of a better word, ‘inappropriate practices’ within the industry—how widespread and how deep that goes.

Mr Shipstone—Certainly it is something which we have been concerned about, as a movement, I guess, for a number of years. I have not been involved in that myself, but there have been well documented problems in the international education industry, but I would not suggest that it is limited to that sector. It also affects domestic students as well, but in the international education sector there have been a number of problems, some of which may have been addressed through reforms the government has made in other areas around migration.

CHAIR—Yes, I am sure that was the area where I mentioned earlier there had to be a re-registration process. I was wondering whether that applied across the board—maybe it does not.

Mr Shipstone—Yes, I think you are right—perhaps it was in that sector but I could not say for sure just now. The advice from our affiliates is that there are problems with quality in other sectors; it is not confined to the international education industry, which obviously got most of the publicity around that time. There are issues around confidence and certainty about the equivalence of qualifications—whether a cert III in one state means the same as a cert III in another state. We hear that evidence from our affiliates regularly. There have been issues there for a long time, which is why, in broad terms, we welcome the introduction of a national regulator—it would, hopefully, deal with some of these issues.

Senator BACK—I want to follow on from that point. I also want to put to one side the international students issue because, as you say, I think that has been dealt with. Can you give us examples of where you feel the current regulation process has been failing on a state basis and how those failures might be addressed by a national regulator?

Mr Shipstone—The advice that we have been given is that at the state level there has been inconsistent application and auditing of the AQTF standards. Hopefully a consistent national system of auditing regulation will help to address that.

Senator BACK—Can you give me an example I would understand of where that failing has happened at a state level?

Mr Shipstone—We rely on our affiliates for advice and examples in these matters, but we do have examples. I think I heard the tail end of the previous witness here talking about the institutionally based programs which sprout up. That can happen in response to changed migration settings and so on. We have heard from, for example, our affiliates in the building industry, the CFMEU, about courses sprouting up in some TAFEs around tiling and so on because those occupations are now on the skilled migration list. There have been six-month tiling and other courses suddenly emerging in response to the changed migration settings. It is probably those arrangements which we would have a concern about.

Senator BACK—You mention it is the quality of regulation that has been variable—if I can take the point you were making—across state boundaries. From my reading of the submissions and listening I understand there is widespread agreement of the necessity for national consistency in setting standards for regulation. What there does not seem to be is any degree of unanimous support for the delivery of those nationally consistent standards. I am asking this question particularly in regard to the two states that I am aware of, being Western Australia and Victoria, that are not willing to cede their powers to a national regulator. Is there a process whereby at the national level we can set consistency of standards (a) for regulation and (b) for audit,

and then devolve that to those states who do wish to continue to oversee the regulation and the audit based on there being well-structured reporting back to a national body to ensure that consistency actually flows through? Otherwise, we could find ourselves in a circumstance in which at least two states do not participate and we do not move ahead. Is there a process whereby you feel that we can move in that direction?

Mr Shipstone—Our preference would be for those states to come on board, but whether that happens or not we will see. As I understand it, it will be the new body, the National Standards Council, which will be responsible for setting the standards which are regulated, then applied and enforced. At this stage I am not sure whether there can be some process through the National Standards Council flowing back through those states.

Mr Fetter—I suppose the issue is that so long as Western Australian and Victoria stay out of the national system, intergovernmental arrangements can ensure some consistency of standards and auditing. There is nothing to prevent those governments going in a different direction at some future point in time. With close cooperation between state and federal governments you might have some consistency at some point in time but that can be dispersed over time. The only way to really lock it in is to have a national system or at least have the intergovernmental arrangements reflected in the legal framework. Presumably the states that want to keep some jurisdiction do not want to tie their own hands in that respect.

Senator BACK—Except that there has to be local implementation of anything, doesn't there? You can set standards nationally but they have to be implemented on the ground. Presumably, if they are implemented closer to where the students are learning the local feedback et cetera will be more effective. That is the question I am coming to.

In the few minutes that are left, I need to clarify some points. My understanding is that the RTOs fall into four categories. There are the TAFEs, which are in the main, if not all, state owned and state funded and operated. There are enterprise based RTOs—some of the big government, private sector and community service people are themselves RTOs. There are the private for-profit fee-for-service RTOs, and then there are some in the community sector. Can I come to an understanding of how you view that? Are you comfortable with the mix—or the existence—of the four groupings, in terms of the provision of VET training in the future?

Mr Shipstone—It is certainly the situation which we have. I would like to make the point that we have always been big supporters of TAFE as the public provider and we want to ensure that they continue to be properly resourced to do that work. They service markets in remote and regional areas where the private providers may not go so we are vitally concerned to ensure that TAFE retains its role. As to the other categories you mentioned, they probably all have a role to play. I am not exactly sure what the balance is but that is certainly the situation we have at the moment. I do not know if there is any prospect of that changing. I would say that part of what the national regulator is there to do is to ensure that there are rigorous standards for entry into the training market. There will be arguments about barriers to entry and that this will mean people will leave the market or will not wish to enter in the first place but it is vitally important that we have strong entry standards. In our submission we talk about the quality of skills which workers and students get and which industry relies on. It is important to have those strong entry standards. Whether that means some of those standards may have differential impacts on some of those categories we will see.

Senator BACK—Talking to the previous witnesses and doing the reading that we have been doing, it seems that the audit processes at the moment concentrate more on what goes in and, in a sense, on the performance of those delivering what comes out. There does not seem to be much emphasis yet, either from the person who has received the training or the employer who employs them, on the outcomes for both of those. I would have thought that in designing a system, whether it be nationally conducted or nationally consistent and locally conducted, that is where the emphasis needs to be. That picks up on some of the points that you and others have made about the adequacy of the training of the person to actually perform the task for which (a) they are being paid and (b) they have invested both time and money.

Mr Shipstone—We would endorse everything you have just said, Senator. Our call for years has been around the importance of an industry led national training system. It is important that the qualifications which students and workers are undertaking deliver the skills that industry needs and that actually work in a workplace context and that they give those individuals the chance to get a job, to improve their position at their existing workplace or to move across an industry or an occupation. They are the outcomes we are talking about. We are certainly supportive of anything we can do in regulating and auditing the system and so on which has that focus on outcomes.

Senator BACK—Finally, the chair has picked up on some of the questions associated with penalties. You have, quite correctly, identified penalties for the student, and they appear to be unduly harsh, particularly if the

student was not even aware of them. Even if they were made aware, the question is: if the student has paid for that qualification, whose responsibility is it if it does not turn out? Also, I am well aware—and we will probably put it to the department as much as to you—that in many instances some of the powers that appear to be in the act seem to be cracking a nut with a sledgehammer. I am interested in the comments that you have made about a possible need to review. I think you can always ramp upwards, can't you? But, if you go in with a sledgehammer to start with and you demand all sorts of totally irrelevant information, where do you go from there?

CHAIR—Do you have any final remarks, Mr Fetter?

Mr Fetter—I have one other suggestion in terms of possible solutions for some of the problems we have identified. We have suggested that the wholesale transfer of RTOs into the federal system under the transitional bill was a problem and that in an ideal world you would have a requirement for people to reregister—although that has to be balanced against the onerousness of that requirement on the good providers. Maybe the way to deal with that problem is to at least require the NVR to conduct priority audits of incoming organisations. You could almost have a triage system where the transferring state bodies would identify those that they thought there were the greatest concerns about and where there was a timetable for making sure that people were looked at as they came into the federal system rather than having them sit there until their next regular review came up some years down the track.

Senator BACK—Do you think that would stop the worst element of what is believed to be happening now just coming across to the new national system?

Mr Fetter—It would not. I think only a requirement to reregister could catch the bad ones, but you would also trap the good ones and put them through the bureaucracy, the time and the expense of reregistering when there are no concerns about them. That is why we are suggesting that maybe the correct balance is to have an automatic transfer at first instance but also make sure that an audit happens on a triage basis pretty quickly after they are registered.

CHAIR—On the surface that sounds like a reasonable suggestion because it would not be up to the wit of the regulator to determine whether organisations have strong internal quality control mechanisms. You would expect most TAFE colleges to have quite robust internal quality procedures, and there may not be a need for them to go over every hurdle and through every loop to get reregistered. But maybe some others whose strength and internal auditing process are obviously not as rigorous as TAFE, for instance, should be audited. That is certainly something that we could think about, so thank you for that.

We have run out of time. Thank you for your submission and for your presentation to the committee today.

Proceedings suspended from 10.35 am to 10.47 am

CURRY, Mr Ian, National Projects Officer, Australian Manufacturing Workers Union

CHAIR—Welcome. We have received your submission. We invite you to make some opening remarks about your submission to the committee, to be followed by some questions.

Mr Curry—Thank you. I have a couple of brief opening statements. I would like to correct an error in paragraph 43, which is a simple typographical error. The word 'never' appears in capitals, but it should NVR, for National VET Regulator. It is a proofing error.

I think we should be on the record as saying that we support the submission of the Australian Council of Trade Unions and the submission of Manufacturing Skills Australia. Our submission does go to some aspects of the joint TAFE Directors Australia and the Australian Education Union submissions that we would support also. We share the views expressed this morning by Manufacturing Skills Australia in relation to a bigger role for industry skills councils in accredited courses and their concerns that were raised in relation to the institutional delivery of trade qualifications. We think there is perhaps more work that could be done in that space. Hopefully, that will be done following the work of the Apprenticeships for the 21st Century Expert Panel, which made recommendations that we hope will strengthen the apprenticeship space for those engaged in trade training.

We have some concern about the extent to which some of the submissions that we have read go to building a stronger role for registered training organisations in the design of policy around vocational education and training. We believe there should be a very clear distinction between industry's role in determining vocational standards and the role of training providers that we see as being one of service delivery. They are good at what they do, in the main. I think Australia has an outstanding VET sector. It can be improved. But we would not

want to confuse the issue of setting the standard for the use of vocational skills with what is required to actually deliver those in a vocational education and training context. They are the only opening remarks I have.

CHAIR—Thank you, Mr Curry.

Senator BACK—Thank you for your submission, I enjoyed reading it. In No. 5, in general comments, you made mention of:

... a VET system compromised by inconsistent application of agreed standards designed to underpin it.

Can you give me some examples from your experience of where there has been this inconsistent application?

Mr Curry—I sit on the South Australian Training Regulation Reference Group which is the advisory body to the South Australian Training and Skills Commission. I also sit on the Quality of Assessment Action Group of the National Quality Council and we are hearing complaints endlessly of multi-jurisdictional RTOs for instance—RTOs that operate in more than one state or territory—being audited and re-audited and getting different results where they believe the circumstances are similar. They think they are operating to nationally agreed standards but they complain that the application of those standards across jurisdictions differs and that can have quite a burdensome effect on their ability to manage their affairs.

We see different arrangements in relation to the declaration of an occupation that might be a trade in one state but not be declared to be a trade in another state. It might operate under a training contract arrangement that prohibits the employment of juniors, for instance, because it is a trade occupation in one state but may not have that same protection in another because it is not declared to be a trade. There are national agreements, but the application of those across jurisdictions can be variable and we think that does compromise the quality of the system through that inconsistent application.

Senator BACK—You have heard the questions I have asked of earlier witnesses. Is it the case that the audit process is not yet mature enough to be actually focusing on outcomes for those who participate in VET and outcomes for the employers that employ them? Is it the case that we have to move towards auditing outcomes more aggressively and actively than inputs and outputs?

Mr Curry—Absolutely. We would strongly support a move to a genuine outcomes based auditing process.

Senator BACK—Can I ask you that in the context of the very examples that you have just given me—and I can understand how frustrating that would be for all concerned—I just wonder, if the focus were on outcomes rather than the other two, from your experience to what extent might that have actually removed or reduced that sort of frustration that you have outlined to us?

Mr Curry—I think there are two levels. I think there is a focus on the outcome in terms of the person's ability to apply their skills—and a fair bit of our submission goes to trying to define what an outcome might be—and that is the successful deployment of a person able to exercise their skills in employment in the economy. We think that is the prime focus of our VET sector. There is that level where you might audit that outcome against the requirements of the occupation. The other outcome is about auditing the ability of an RTO to deliver those outcomes. There will always need to be something that goes to their capability as a training provider, but we have to shift the focus to an outcome where the person can actually perform the work.

A live example sadly comes from my home state of South Australia. We have been dealing with a young person who has spent two weeks doing the fully institutionalised trade baking qualification certificate III, which is the qualification for a trade baker. She has no trade baking experience. She has been given two weeks of institutional delivery. She subsequently located for herself two weeks of work experience, was given a certificate III as a trade baker and then came to another organisation asking it to fund further training so that she could learn how to bake. The organisation that delivers that training is audited on a regular basis by a state training authority which applies the standards. Confidence in the outcome of that—this is a person who already has the trade qualification, but has no hope of getting an apprenticeship because the apprenticeship is designed to give her that qualification.

Senator BACK—The breakdown there is not at the auditing process; the breakdown there is at the level of determining the adequacy of a two-week course to turn somebody out who even has the pretence—

Mr Curry—To go back to your earlier question, if we were auditing that person's ability to perform the work of a baker the answer would be very different.

CHAIR—I will just explore that. I thought that just in general terms, certificate III trade qualifications would be around 800 hours of classroom theoretical training.

Mr Curry—Nominally, I think this one is of the order of 600.

CHAIR—Okay, but it is still a substantial amount that you could not do in two weeks. How do they get such a certificate III course recognised? Or is part of the problem that it is simply about outcomes? If you have professed to have delivered on all of those outcomes you can deliver what should be for an average person a 600-hour course in two weeks?

Mr Curry—I think that it is an issue about setting a standard for the outcome, auditing the inputs and having a gap in between. Too often, I think, we audit individual components. So you audit against an assessment of a unit of competence, when the whole qualification is about the person's ability to perform work in that occupation. I think that is a critical component.

CHAIR—That is what I want to explore a little bit. It goes to the question of whether it is auditing or delivery. I can understand someone saying: 'This is a certificate III and these are all the outcomes and competencies that I have to deliver on. I have a clever delivery method, and I have some pretty clever students too, and I reckon I could deliver that certificate III in maybe 500 hours instead of 600 hours.' To me that sounds alright. I do not necessarily see any issue with that and that person could do the right thing and deliver on all those outcomes. But to go to the other extent and say, 'We are going to deliver what is notionally a 600-hour course in a two-week period' that is when it is deceitful and they are professing to deliver something that they have no intention of delivering.

I know there is going to be a grey area around there somewhere, but that is a pretty stark example, isn't it? Is that why we need that national regulator? I will want to bring you back to the point you talked about regarding enforcement. Without knowing the detail, they could not have developed a course that could deliver a trade certificate III qualification in two weeks.

Mr Curry—They have delivered a qualification to that young individual, which is a certificate III—

CHAIR—And then signed off on it?

Mr Curry—They signed off on all of the units of competency with the exception of bake bread. The bake bread unit was blank. That has subsequently been fixed. Industry's issue is not about how the training system does its work; industry's issue, I believe, is that RTOs do their work and they deliver a product that is fit for purpose. If you decide that an apprenticeship as a baker requires a competent person in these units of competency, then that is what the training system should be delivering. If that is what we believe as an economy should be supported by public funding then that is what we are setting out to fund.

CHAIR—The point what they actually deliver and not what they profess to deliver.

Mr Curry—Yes. I think this young woman had spent some time working as a baker's assistant in a franchise baking operation and had spent some time in a franchise cake shop—none of which involved her baking. There were no credits for previous—

Senator BACK—So no credits for prior learning?

Mr Curry—No substantial credits for prior learning that were in anyway associated with baking. She might have got some for communication and some of those sorts of things. We have lost the distinction between setting the standard and delivering against that standard, and we do not audit against that standard. It is not about assessment of individual units. It is about assessment of people's capability at the end—where the whole is greater than the sum of the parts. We are concentrating on ticking boxes for the assessment of individual units, which in isolation might be able to be done, but the holistic capability of that person against the qualification is not there.

CHAIR—Just using this example that you have thrown up to us; what happens now under the existing regime? Obviously they will have thrown someone up and said, 'You are now a baker;' they do not have any skills as a baker and will not get a job as a baker. What is the process right now?

Mr Curry—The process now is that a scholarship fund that I chair is funding remedial training for that young woman.

CHAIR—In terms of the regulations?

Mr Curry—In terms of the regulations, she is out there on her own. She was referred to this organisation by the provider, Job Services Australia. This was not something that she had set out to achieve, but she was

referred. She took an interest in it, she signed up and it has been funded. It has been funded once; it will not be funded twice.

CHAIR—So you think this new set of bills and the establishment of the VET regulator will be able to actually address those issues and ensure that the training provider in the future provides a proper certificate III training program or is actually out of business?

Mr Curry—I think that it has to be one of those. They are the only two acceptable options: that they are able to produce the product that they set out and are funded to produce, or that they get out of the business of delivery. I think that a well resourced, soundly established national VET regulator gives us a greater chance of doing that than perhaps some of the arrangements that we have now where these sorts of things are able to fall through the cracks.

This is a particular example. I guess in the trade union movement we do not always get happy people ringing us; we tend to have the people who are dissatisfied ringing us. So we see perhaps the darker side of what is going on. I do not know how widespread that is but I am concerned that it is too widespread, and we have examples in a range of these areas where it is predominantly institutionally delivered in the absence of structured workplace learning opportunities for young people. Their ability to achieve employment in the occupation that they have trained for is compromised, and industry's ability to capitalise on that public money being used to deliver skilled people is compromised as well.

Senator BACK—You make mention in your submission, at number 26:

... that the Standards should stipulate that:

- NVR registered training organisations have, as a primary or significant purpose, the education and training of students;

And you talk, obviously, about the best interests of students, not shareholders—one would hope that they are not exactly too far apart. Which of the RTO formats deliver, in your mind, the best to meet your objectives? Is it TAFEs?

Mr Curry—I think there are very good not-for-profit community sector providers, I think there are very good public providers and I think there are very good enterprise registered training organisations. I do not think we can generalise. I think there are those which are committed to the vocational education and training of their students; and there are those for whom commercial realities can sometimes interfere.

Senator BACK—Someone like Qantas, which is an RTO in the area in which you operate, certainly would not have as its primary purpose educating its students?

Mr Curry—No, it would not have that as its primary purpose; but it has regulatory arrangements outside the VET sector that demand that it pays sufficient attention.

Senator BACK—Sure.

Mr Curry—I think there will always be exceptions to this primary purpose thing. Our submission is that we support the joint submissions of the AEU and TAFE Directors Australia. But I think that in that one area there is room for some exception where the educational standards and approach can tick some boxes as well.

Senator BACK—As I have come to learn, associations also seem to participate in the RTO world. You would think that there would be a more rapid closing of the loop. If I use Qantas as an example; if they are themselves an RTO and elsewhere within Qantas there is a dissatisfaction with the standard of the student that comes out, you would have thought that loop would be closed far more quickly within an organisation like that than if it were completely outsourced to another training organisation. Is that a reasonable comment?

Mr Curry—I do not know. I am familiar at a distance with Qantas's activities. I would not feel competent to say that that was the case. I would suspect, however, that the commercial realities of having a service provider that you pay as an external provider might be pretty responsive if you were dissatisfied as well.

CHAIR—I think it is an interesting distinction to be made because in the case of Qantas or other organisations that are RTOs themselves they are actually training their own employees, so they are training people that are already employed and need the training specifically in order to conduct the employment they have in that organisation. I guess that is a very different dynamic to an RTO that is simply out there with a shingle across the door saying it will provide qualifications to potentially enable someone to go and get employment elsewhere.

Mr Curry—I think that is true.

CHAIR—That is a very different driver, in that sense, that motivates an RTO.

Mr Curry—But the standard is the same.

CHAIR—It should be the same, yes.

Mr Curry—For Qantas training, the training package that Manufacturing Skills Australia produces, Qantas are heavily consulted, as are other airline operators and other operators in the airline maintenance business. So they have a good product, they train to that product and they are required to meet the same standard as anyone else. I think that has to be the focus: the standard that is met as an outcome should be fit for the purpose of deploying it in a job or occupation to the standard that industry needs. They need people who can perform work in the economy. If we need to apply the VET system to other purposes we should not let those other purposes compromise its primary purpose, which is one of vocational fitness for purpose.

Senator BACK—I agree that is where the focus certainly needs to be. I have endeavoured to try and find the reason why there are states who are not willing to vest their powers in the Commonwealth in this exercise. There are not obviously many reasons, but one of them appears to be that apart from owning and funding the TAFEs, which is a fairly compelling reason to want to maintain a level of control over them, they believe they would have a greater level of flexibility to be able to dictate the areas in which training occurs. In other words, if one state government decides that they want to get into specialised aviation training or aspects to do with it then they can direct their TAFE directors accordingly and, because they own and control and fund them, they have that degree of flexibility to go in the direction that, as a state government, they desire. They would, I imagine, take the view that if all this was passed over to the Commonwealth then they would have to go to a Commonwealth agency and say to them, ‘This is what we want to do,’ and run the risk of the Commonwealth agency saying, ‘That’s fine, but our objectives are elsewhere.’ How do you respond from your perspective to that sort of concern that might be expressed by a state government?

Mr Curry—I do not see the potential for that arising directly out of these bills. This is about the establishment of a national regulator. I think the setting of standards and the regulation against those standards should be separated in the way in which these bills seem to contemplate. The ability to direct traffic in terms of activity at a state level would remain, as I see it. I may be misreading what is on the table in these bills, but I do not see any capacity through this legislation to curtail the activities of a state in directing traffic in that way. There are differing states, of course, with differing economic drivers et cetera where they would want to have an ability to direct resources, and that is fine. But the setting of standards is still done nationally through industry skills councils and their training products, notwithstanding the submissions that we have made in relation to accredited courses.

In the main, we have got a national product; the jobs and occupations tend to be national in character. We want mobility in workforce participation. We want people to be able to move to and from Western Australia, Queensland and Victoria and we want them moving into South Australia—less of them moving out, perhaps, would be my preference. We have got that degree of mobility and we need to maintain it. Having too heavy a focus on the individual needs of a particular state might compromise that.

Senator BACK—If I can summarise, you feel that setting and having a process in place to maintain nationally consistent standards both for regulation and auditing is key to it. Would you say that how you actually deliver on the ground to ensure that you have got that national consistency is the important element?

Mr Curry—I think that is the important element; consistency at the actual point of audit is critically important. I think a national regulator provides the best opportunity to get that consistency through moderation and the cross-pollination that you will get when they are all working for the same organisation against the same standards.

There will be the ability—more so than now; I know the states attempt to moderate their auditors—to try to ensure some consistency. To some extent the motivation of a state is important in determining the outcome of those audits as well. I daresay that no state would want to rigorously audit all of their RTOs and find them all noncompliant. So you have the direct political pressures that might dent your enthusiasm for a really rigorous audit process.

Senator BACK—We would be in a fairly parlous state if that were our circumstance.

Mr Curry—We would.

CHAIR—I have two areas to finish up on. I think we have mainly dealt with one in our previous conversation, and that went to enforcement. I think you emphasised the need to reflect the breadth of the

obligation on providers to ensure that the requirements of the qualifications are met, or merely adequate; that an assessment has taken place and that is reflected, clearly, in the objects of enforcement—

Mr Curry—I think that went to the title of each of the clauses and narrowed it down to assessment, so there was a minor inconsistency. It is more a typographical thing than—

CHAIR—I think that the point you are making is that it is more than just mere semantics.

Mr Curry—Ultimately what needs to be audited is the ability to produce a worker who is skilled.

CHAIR—Yes. The other area I just wanted to cover briefly is that you finish your submission at paragraph 54 by saying:

On 31 January 2011, the Expert Panel of the Apprenticeships for the 21st Century Panel (the Panel) made a number of recommendations² that we submit should be considered when the final form of the Bills are determined. In particular, the Bills should not compromise those recommendations of the Panel ...

And then there are a dozen dot points. Do you say that the bills do not actually encompass those dot points?

Mr Curry—I think there is a provision in the bill—and I am sorry, the clause number escapes me—that saves the states' ability to regulate for apprentices. I am not clear from the bill the extent to which it would perhaps frustrate some of the objectives of the expert panel. So determining the alignment between a declared trade and a particular qualification that may be required to satisfy the needs of that trade may well be made in the state. The question is: should that be the case, or should there be a national declaration of what a trade is?

I am a boilermaker by trade myself and I do not see a distinction between my ability to operate in South Australia, Western Australia or Queensland, depending on where the work is. I am not a mining industry boilermaker, I am not a Defence industry boilermaker and I am not a railway industry boilermaker: I am a boilermaker who, I believe—20 years ago, at least—could have worked in all of those industries. So our industries are national and our occupations are national; why should there be a differentiation between states as to what a boilermaker is?

I would be concerned that we might see some artificial distinctions creeping into our ability to then determine a consistent training package that allowed for the sort of flexibility that Mr Paton referred to earlier on through the training package process. If a state mandates that a particular occupation should or should not be a trade, and a different state takes a different view, then national consistency is problematic.

Senator BACK—Can I just take you back to point 19, if I may. You submitted:

... that the Bill does not adequately deal with the risks associated with conflicts of interest arising in instances where a corporate entity that is an NVR registered training organisation also performs functions associated with Job Services contracts or the functions associated with an Australian Apprenticeship Centre contract ...

Can you expand on that for us?

Mr Curry—I think there is at least a perception that organisations could be conflicted where a job services entity might well be a registered training organisation or an apprenticeship centre or some other body that is in the stream of bodies that deal in this space. Having a very sound and strong position on conflict of interest is something that we as an organisation would support. Setting standards for NVR registered training organisations should, we think, include the management of those perceptions or realities of conflict of interest. I am not sure if this area will be dealt with by the proposed national standards council, or where it might be dealt with. But we wanted to flag this as an issue. You would not want the commercial interests of an Australian apprenticeship centre compromising the ability to provide high-quality training through an RTO that may well be a related corporate entity. It is a placeholder for our concern about—

CHAIR—Or the reverse.

Mr Curry—Yes, or the reverse. You would not want some sort of complementary selling arrangement to compromise quality.

Senator BACK—In the transition from one to another, in the event that it were to take place, how would you cull out the worst of those that you do not want? Otherwise you just end up with the carbon copy of what is there and nobody is happy with the outcome.

Mr Curry—We are not saying that those related entities should not be allowed to operate, but we are saying that there should be an auditable policy arrangement or process arrangement that dictates how they intend to manage those sorts of conflicts, and these conflicts happen in many corporate entities I am sure, and there are arrangements—I think they refer to them as Chinese walls. It is about how you intend to deal with

the perception or the reality of a conflict of interest and that there should be standards set that they should have those sorts of arrangements in place.

CHAIR—Thank you for your submission and your presentation before the committee today.

[11.17 am]

HICKS, Ms Mary Helen, Director, Employment, Education and Training, Australian Chamber of Commerce and Industry

CHAIR—Welcome. We have received your submission and we invite you to make some opening remarks.

Ms Hicks—I would like to place the comments that I am about to make in the context of strong support for the concept of the National VET Regulator. The Australian Chamber of Commerce and Industry has a democratic decision-making process, which is our general council, which is held three times a year. It is comprised of the presidents and CEOs of our 38 member organisations. Basically, through a democratic process the council endorses certain positions. That is our highest policy-making body, and the ACCI general council has endorsed support for the National VET Regulator.

The need for the National VET Regulator comes about for a couple of reasons. One is the inconsistency, and I do not want to be critical of the very good operators that operate in this sector. However, there is a lack of national consistency that results in the driving down of standards for industry and poor outcomes for some students, which disadvantages both the student and industry alike.

Also, RTOs operate as businesses, and our second area of interest is really around making sure that the regulatory response is proportionate to the risk and also that the business operates under conditions that are similar to that in which businesses might operate in other arenas, and we make reference to the Fair Work Act in that respect.

The only other thing I should mention in my opening comments is that, while I am here representing the Australian Chamber of Commerce and Industry, I am also the deputy chair of Australia's National Quality Council. One of the action groups of the National Quality Council is the Quality of Assessment Action Group. I am the chair of that group and as such I have a particular interest in the quality of assessment. I think the quality of assessment is the major issue from a business and industry perspective and I think a lot of the proposals here will go a long way towards addressing those issues.

CHAIR—Thank you, Ms Hicks. Can I first go to part 4 of your submission, a fair and equitable market, where you say:

Suggestions have been made in some quarters for the Bills to specify that RTOs have education and training as a primary or significant purpose—something now required of all colleges with international students, under changes made 11 months ago ...

You do not support that proposal and I would just like you to expand on that. I may have misinterpreted what your submission means. Are you saying that while ACCI for instance may be an RTO that would then mean that ACCI itself, because it is an RTO, would have to have that overriding objective in all parts of its organisation as opposed to simply the part that provides training? I would have thought, whether it be Qantas, ACCI or anyone else, that the training area that actually gets the registration as a training organisation is the part that has to have the objective of educational outcomes as opposed to the other elements of the business. Is that just a tinkering aspect or is there a fundamental objection to it?

Ms Hicks—It is a tinkering aspect. It is highly desirable that education and training is a central part of the operations of an RTO and that is something that we have supported in the strengthened AQTF and in the changes that have been made to the ESOS Act. Really it is an inadvertent exclusion of enterprise RTOs that we are concerned about because, from our point of view, a lot of those enterprise RTOs are really the beacon of what we are aiming for in the business community. They are businesses that not only take training very seriously but integrate it into their business processes. It is more of a tinkering aspect than an objection to the education and training being important to the functions of an RTO.

CHAIR—It would not be beyond our wit, I would have thought, to actually have some words that ensure the same adherence to the educational objective within the part of the organisation that is delivering the education as opposed to making that the overall burden for the objects of the company. Even I would concede that there are a multiplicity of objects placed on a business. Thank you for that.

Senator BACK—Ms Hicks, can I take you back to point 3 of your submission on the disproportionate regulatory response. You speak about a hierarchy of legislation starting with civil and then moving through to criminal offences and penalties. Could you expand for the committee on where your concerns and those of your association rest in that area?

Ms Hicks—We have not made a line-by-line comparison with the Fair Work Act, but we think the Fair Work Act covers dealing with similar offences from a business perspective. Certainly, the powers for authorised officers are much stronger in the NVR and that is why we have said that we think the regulatory response is a bit heavy handed. We would say that, if the powers were comparative, we are not against authorised officers having powers, but we think they are disproportionate. We also note that the Senate Standing Committee for the Scrutiny of Bills has raised these issues. So it is a serious matter and it is one that we think should be addressed.

This is really from a theoretical perspective, but ACCI generally does not support this type of legislation, in which a fair trading type of risk attracts criminal offences. From that perspective, it is our policy position generally—regardless of what the legislation is—to not have criminal offences included. That is something that we have advocated. There was consultation in late 2010 organised by DEEWR. We raised those concerns then and said that we basically object to criminal offences being included in the legislation. We support the risk management framework. That is a good aspect of the legislation. But there are lots of loose ends that the Senate Standing Committee for the Scrutiny of Bills raised, and we would like to see those issues resolved as well. So we are supporting that other committee in terms of its request to resolve some of those issues.

Senator BACK—On notice, you could assist the committee by forwarding some recommendations that pick up the points that you are making. Is it asking too much of your organisation to do that?

Ms Hicks—No, we would be happy to cooperate in any way. As I said, we are very strong supporters of the national VET regulator.

CHAIR—Before we move off that, in general terms I agree with you. It is one thing if internal RTO systems break down in terms of signing off for qualifications. There are always some grey areas, and sometimes assessment can be very subjective. But that is very different to something that I understand happens and is the subject of other investigations: where people simply sell qualifications without doing the required assessment or training. I understand that there are examples where people have been in receipt of qualifications and have no idea how they got them or where they got them. They know why they have them, because they need them to operate. That is a very different area. That does cross over into the criminal area. Do you think that there are not enough of those examples around to warrant some sort of criminal emphasis in the legislation?

Ms Hicks—That would depend on the risk management. Hopefully, it would not get to that point. I suppose we would put the emphasis on risk management and the auditing process rather than getting to the stage of criminal sanctions being required. We also think that if you start making it cost—start applying financial penalties—then, once that message gets out, the behaviour of those sorts of firms will certainly change. Generally, we would see that as an action of last resort. We would hope that there would be other responses in the regulatory approach that could avoid the application of that sort of penalty.

Senator BACK—We have had discussions this morning with other witnesses. I would like to you comment on whether you believe that part of the failing of the audit processes to date at level has been that there has been emphasis on auditing inputs and outputs but not auditing outcomes as measured by levels of satisfaction of students who have been through the process and the adequacy of their skills as measured by the employees who are actually taking them on. Is that in your experience a reasonable criticism of the processes to date?

Ms Hicks—It is very patchy. When we moved to what is called the new AQTF in 2007 it was meant to be a light regulatory approach. It was meant to become more outcomes focused. However, some of the staff in some of the state and territory authorities came from using the old input/output type approach and found it very difficult to transfer to the new outcomes focus. The AQTF as it currently stands is meant to be outcomes focus, so a lot of it comes down to auditing practice. Like all areas of endeavour in this arena, some states and territories have very good auditing practices and others do not. In particular, through my work on the quality of assessment action group, we have found that a lot of auditors do not have sufficient expertise in assessment to know what they are looking for in terms of assessment outcomes with RTOs. It is generally true, but it is a bit of a blanket statement and does not explain all of the concerns that we have raised.

For example, a lot of the regulators have said that, because of the aspect of continuous improvement in the AQTF, in the audit process some of the less scrupulous RTOs sit there with their lawyers and challenge the state training authority. The state training authority has on many occasions felt as though they have not had the teeth to be able to respond in a way that would deter the RTO. So it is a bit of both. It is not just exclusively an input/output approach, although that is more of a cultural aspect, I would say rather than what is there under the current legislation. It is those two things in combination that would explain it.

Senator BACK—Given that we understand that two states, this one and my own state of Western Australia, are not willing to vest the responsibility to the national scene—and, obviously, given that we are desirous of there being nationally consistent standards—is it possible to effectively have a process of planning globally but acting locally? In other words, can we develop nationally consistent standards of regulation and audit but enact them at the local level in such a way that they can be shown to meet the nationally consistent, predetermined and pre-agreed standards?

Ms Hicks—It is a challenge for the national VET regulator to have national standards and roll them out locally in the first instance. In terms of Victoria and Western Australia, I know that the Commonwealth has been working very closely with those two jurisdictions in a collaborative way to see through the process of getting mirror legislation. I do not think that that is a question of those two being outside. With the mirror legislation, they are going to all have that same challenge anyway. The real challenge in terms of the regulatory approach is going to be getting the agreement with Western Australia and Victoria to have mirror legislation. I cannot comment on how far down the path that we are with those two jurisdictions. But there is an agreement in principle for the two jurisdictions to have mirror legislation.

Senator BACK—You endorsed in your submission and here the risk management approach. I want to drill a bit further in now to the audit activity when an individual RTO or group of RTOs is being audited. My understanding at the moment is that the process is the same for any RTO regardless of their performance. Generally speaking, when you audit any group it will fall into one of four categories. There will be those who exceed expectations, there will be those who meet them, there will be those on the margins and there will be those who fall short. Adopting the risk management approach, could there be a process put in place in this format that we are now developing whereby those who exceed expectations would then enjoy, if you like, a bit more of the carrot and a bit less of the stick and be the subject of an audit less often? That would let more of the audit time can be devoted to those on the margin to see if they can be improved and those who are falling short can be the subject of far more intensive auditing to ensure that they either come up to meet expectations or decide to move into other areas. Do you see that as being a logical progression as we mature this whole process?

Ms Hicks—Absolutely. I think it already happens under the current arrangements. Certainly some of the larger TAFEs around Australia that enjoy very good reputations and are really huge organisations within themselves have internal quality assurance processes which are very robust and highly commendable. It is highly desirable to have more of the carrot approach rather than repeating everything you have said, basically, to agree with what you have proposed. From a business perspective, you want the resources going to the ones that are non-compliant and driving down the standards for everybody else.

Senator BACK—That takes me to your point 6: equality of assessment. You were speaking about the panel of expert assessors. Could you expand on that for the benefit of the committee.

Ms Hicks—It is an idea that has come up through the Quality of Assessment Action Group, and it is yet to go to the National Quality Council for endorsement. In our submission I provide industry endorsement of this particular idea, which is that if you were to establish a panel of expert assessors this would then become a cost factor for particular RTOs. So if your assessment did not meet certain standards then you would have to pay to get in the expertise from this panel of assessors. The problem is that it is very hard to know what the standard is. Because it is a competency based approach, what is the standard in one very highly-regarded institution compared to one that is bit more of a fly-by-night operation? Even the fly-by-night operation person might think that they are meeting high standards, but you are judging it by your own level. It is very hard to know what the level is, and establishing a panel could actually give some transparency as to what the expectations are.

It would not actually go against a competency based approach, because that would still be endorsed, but it would provide some concrete examples and make transparent what the standards are. Then, where you have some genuine RTOs that are not criminally minded but just require some assistance in coming up to a higher standard, they could buy in that expertise. Once that becomes a cost factor to them, their levels will very quickly go up. Because that is more of a positive approach rather than a negative approach, it is something that we see could really enhance the operations of the NVR and really help to address some of the issues around assessment. It will not resolve all of the issues around the quality of assessment but, from a regulatory perspective, they are the tools available to the government within its remit and we would be strongly supportive of that approach in the future.

Senator BACK—Since time permits, I have two other questions. Firstly, the association may consider that it has had adequate time for consultation, but have you had feedback from your employer members as to whether they have had adequate time to consider the bills and to respond to them, either directly or through you?

Ms Hicks—We do appreciate this opportunity to provide feedback. DEEWR, right from the outset of establishing the NVR, has involved industry stakeholders, first of all, in briefings and, secondly, in the consultation process at the end of last year. However, that consultation process, while appreciated, really did not provide us with a lot of scope for providing feedback. Certainly the government's approach has been to be very consultative in a lot of other forums, and probably there has not been as extensive consultation on this particular piece of legislation as occurs in other arenas. Also, even though we were consulted, basically nothing happened with the feedback that we provided. We are just one of a range of stakeholders; we understand that, but I think there has been some frustration about consultation on this particular bill.

Senator BACK—My final question is in an area that you have not addressed. In the readings associated with this there have been comments made about the university sector self-regulating and the VET sector being the subject of this NVR process. Obviously there is a grey area between the two, where universities are in fact delivering in VET areas. At some levels there has been a hope that there might be a merging. Does the chamber have a view at all, or do you just see that the two are separate and do not need to be considered in the same context?

Ms Hicks—Our view here is that we welcomed the establishment of TEQSA as something which would have an overarching role between the higher education and the VET sector. However, I think our members are strongly of the belief that the VET sector requires separate treatment. Even the Prime Minister made those sorts of comments last year at the BIG Skills Conference and recognised the distinctive nature of the VET sector. So, while we would like to see it aligned with TEQSA, we do not think there need to be mirror clauses to that extent. I think that is something for future consultation with other stakeholders, to say that, once TEQSA is fully established, the two would work in harmony with each other but not in complete complementarity, because of the distinctive nature of the VET sector. Employers are very strong on a number of aspects of the VET sector, particularly workplace learning and assessment in the workplace. They do not support fully institutionalised pathways, which of course you have in the higher education sector. So we would like to see the VET sector, under the NVR, retain that distinctive nature.

Senator BACK—Thank you.

CHAIR—Thank you, Ms Hicks, for your organisation's submission and your presentation to the committee today.

Ms Hicks—Thank you.

[11.44 am]

RIORDAN, Mr Martin, Chief Executive, TAFE Directors Australia

SIMMONS, Ms Virginia, Tertiary Consultant, TAFE Directors Australia

FORWARD, Ms Pat, Federal TAFE Secretary, Australian Education Union

COLLEY Mr David, Federal Industrial Officer, Australian Education Union

CHAIR—Thank you for your joint submission to this inquiry. We have an hour with you to explore these issues in some detail. We invite you to kick off with opening remarks and then we can engage in some dialogue.

Mr Riordan—Thank you for the invitation to provide this evidence. By agreement with my colleagues from the AEU, I will open briefly on behalf of TAFE Directors Australia and then my colleague Virginia Simmons is going to give a slightly more detailed introduction. As a quick background, TAFE Directors Australia is a member organisation across our 58 TAFE institutes, five of which are dual sector university and TAFE. We have the Australia-Pacific Technical College as our 59th member. We are clearly especially interested in this piece of legislation, given the quite disastrous impact on the marketplace of the private college collapses and the concern about regulation, particularly over the past 18 months to two years. Virginia Simmons was very recently one of our Victorian board members and the immediate past representative for TDA on the National Quality Council. Since that period she has been retained to support our approach on tertiary reform that has been happening across TEQSA as well as NVR. I know Virginia has prepared some words for us.

Ms Simmons—Thanks, Martin, and thanks to the committee for the opportunity to speak. I have prepared some words to make sure that in a few short minutes we get a few points across. I want to focus on a very brief background to our position and then highlight some of the big picture items that we are concerned about. By way of background, it is important to highlight the fact that the Bradley review proposed a whole series of initiatives designed to create a broader and integrated tertiary education and training sector covering higher education and vocational education and training. TDA is very strongly committed to the tertiary sector that Bradley envisioned.

For the purposes of today, one of the key recommendations was that there should be a single regulatory body for the whole of tertiary education and training. This and many of the other recommendations were accepted and many of the other recommendations have already been achieved and are in train. On the ground there has been very much happening among the providers in both higher education and VET to bring together a more integrated and diverse sector. However, the creation of a single tertiary regulatory body was a very tall order and the implementation process was to entail two regulatory bodies initially which would subsequently come together: these being the Tertiary Education Quality and Standards Agency, TEQSA, and the National VET Regulator.

That leads us to the first principle that we talked about in our submission, the principle of alignment between the National VET Regulator and TEQSA. We do recognise that there are constitutional reasons why total alignment is not possible in the first instance and that these have led to some key differences in the way the two bodies are being established. In our view, however, the differences have taken over the process and the need for alignment is taking a backseat. Despite the differences that exist constitutionally there is considerable scope for alignment that is not occurring. For example, there should be consistency of purpose as identified in the objects or elsewhere in the bills, but there are no objects at all in the National VET Regulator bill. There should be consistency of definitions; as fundamental an issue as the definition of a VET course is not consistent in the two bills. There should be consistency of many of the regulatory enforcement provisions, investigative powers, civil penalty procedures, injunctions. These and other sections of the two bills, we believe, should have identical wording to make the bringing together of the two bodies much simpler in the long run.

There should be consistency and integration of the consultation process. Compared with TEQSA, consultation on the National VET Regulator has been limited and there is no forum in which to have a holistic dialogue or single line of communication about the parallel and critical set of changes between the two bodies. There is no road map for how and when it will all come together: the relationship between the NVR and TEQSA, the approach to risk management, the future structure for and interrelationships between the National VET Regulator and the standards council, information regarding the timing for the establishment of the standards council and the process for further development of the standards. Consultation about the National

VET Regulator is occurring in relative isolation from these key issues and this compartmentalisation of the component parts of the changes concerns us greatly, although we understand some of the reasons why it is the case.

This leads to the second principle, the principle of standards. Unlike the National VET Regulator legislation, the TEQSA legislation covers both the regulatory function and the standard-setting functions. This means that it has been possible to consider the two functions in conjunction with each other. There has been extensive consultation on provider standards, registration, accreditation and, importantly, provider categories. For the less than 500 higher education providers there are provider categories with clear standards and criteria. These categories can be used for a range of purposes: funding, risk rating, branding and clarify for students, both domestic and international. For the over 5,000 providers in VET there are no categories. All are simply RTOs. For students there is no easy way to differentiate between providers and to distinguish between size, scope, history, capability and, by extension, risk.

Our submission outlines some areas where the elements within the VET quality framework and other references to standards should be broadened and/or strengthened. We maintain that the extension of the provider category standards in higher education to include the VET sector and cover the whole of the tertiary sector would assist in resolving this issue. It would also be possible to resolve the issue of the enterprise RTOs and the particular circumstances in which they operate. The government has made what might be described as tentative steps already towards this and towards categories by allocating funding to the top 100 VET providers. This is an implicit recognition that there are very real variations in the sector.

All of this puts our organisations, TDA and AEU, in somewhat of a quandary. If we endorse the National VET Regulator Bill as it currently stands, we do so in the absence of sufficient knowledge of the context in which it will apply and of what we believe are some of the prerequisites for it to be successful. If we do not support it we are seen to be uncooperative and blocking and we do not want to be in that position because we believe that the establishment of the National VET Regulator is a very important step in the process of establishing a much better tertiary education system for Australia. Our present position therefore is to argue for what we believe are fundamental, sensible and achievable changes and we have tried to outline those in the submission. We welcome the opportunity to elucidate on those matters further. Thank you very much.

CHAIR—Thank you. Ms Forward or Mr Colley, are there any remarks you will like to make at this point?

Ms Forward—Thank you very much for the opportunity. I support very strongly the opening comments of our colleagues in TDA. I also want to emphasise as strongly as we can two points. The first is that we are very strongly supportive of the establishment of a national process for regulation of the VET sector. We think it is crucial that this occurs. That leads into my second point which is that we believe very strongly that this is a crucial moment in the process and the reason we, as organisations, have taken the position that we have is because we believe that we will only get one opportunity to get this right. That is why it is crucial that we look in very close detail at both the processes and the legislation to make sure that it establishes the VET sector—but also the tertiary sector—well for the future. I am happy to take questions.

CHAIR—We will first of all discuss for a moment or two the process of consultation. In your joint submission you wanted it noted that the 11-day time period allowed for the committee to undertake and complete an inquiry is wholly inadequate for the purposes of ensuring appropriate consultation on what is after all such a significant change in the VET sector regulatory environment. Can I just say that these are decisions of the Senate and not of the committee. We are just working to a timetable that is foisted upon us too. Having said that, I am interested to know what was the consultation that involved you guys as stakeholders in the lead-up to these bills being tabled in the parliament. Have you had an opportunity to voice the concerns that you raise in your submission with the department prior to now? If so, what was the response?

Ms Forward—From the perspective of the Australian Education Union I want preface what I say by saying that both Kaye Schofield and John Smyth have been very active in their interim roles.

CHAIR—Are these departmental officers?

Ms Simmons—Interim chair and interim CEO—

Ms Forward—They are the interim chair and interim CEO of the national regulator. They have made themselves available at a number of different forums organised by the union to inform the union of the processes that are afoot in the establishment of the national regulator.

However, in terms of any processes of consultation around the legislation—which is so critical as an underpinning for the national VET regulator—there have been no consultations with the union at all. As far as

I am aware, I believe there was a restricted forum organised in late October where an invitation was extended to the ACTU to attend a closed session where participants would have access to a draft of the legislation for a limited period of time. During that session they would be able to provide feedback, then the draft legislation was to be left there. Unfortunately, because the notice for that session was so short the AEU was unable to attend that limited briefing and, as far as I am aware, that was the only point at which there was any consultation—certainly potentially with the AEU. The next time we saw the legislation was when it went before parliament. So that is the only consultation that I am aware of. Effectively we have had none whatsoever.

Mr Riordan—I think there were a couple of components to it. The first one was a short meeting in Melbourne between department officers and our chair and several of our senior people in terms of an outline of what might be legislation but to say that this was also being discussed with states and territories. Then subsequently, as Pat Forward mentioned—I believe some months later; I can confirm through the secretariat the dates—there was a closed session, again, not an open session like there was with TEQSA where providers and the states and territories were in the same room. We were in different rooms and not able to explore the issues openly. I think, Virginia, then your involvement was in terms of only seeing the legislation after it was finally released at the start of the year.

Ms Simmons—But I was not terribly involved in that. I would comment on the comparison with the TEQSA consultation where there were two full days of consultation with the stakeholders—it was very well attended—as well as a half-day additional consultation on provider standards. It has been a much more open and participatory process, calling for submissions after each one. There have been three iterations of the legislation. We have been able to have input into each iteration and I think we have seen some of our comments reflected in the changes. This is TEQSA. I am making a comparison with TEQSA, compared to the National VET Regulator.

CHAIR—Without necessarily dwelling on it, you have indicated to us that you are very supportive of having a National VET Regulator. In fact, you have described it as a very important step. To me, there does not seem to be anything in your submission that jumps out as something that ought not to have been considered and responded to. Given what you have said, has there been an opportunity to provide this to the department and, if so, have they responded to the issues that you have raised? I just want to know where we are in terms of consultation.

Ms Simmons—We had a provider roundtable meeting last Friday at which TDA, ACPET and the Enterprise RTO Association was represented. Those three bodies spoke with the interim chair, the CEO and other representatives from DEEWR and the secretariat. That was last Friday.

Ms Forward—The AEU had a meeting last Wednesday with John Smyth, the Interim CEO of the NVR, and Jennifer Taylor from DEEWR. That was the first and only meeting that we have had. At that meeting it was made clear to us that there was no possibility at all of amending or changing the legislation because that would put at risk the whole process of the establishment of the NVR. As well as that, as Virginia has said, there was no exposure draft process with the legislation. We have not had adequate consultation.

CHAIR—One of the constant themes so far among all the submitters has been the lack of objectives included in the act. I think everyone has raised that. You have actually gone to the trouble of identifying a set of objectives. Given the rather broad representation that you have, I am wondering what their response to that is. I suppose I can ask them. Again, I am just interested as to whether there has been some dialogue and what the arguments are for and against, so it can help us with our questions to you. I must say, on the surface, I read your submission, and say, 'I agree with that.'

Ms Simmons—Those are the objectives that are in the TEQSA bill. We put those in there as an example of what the objectives may look like. Because we are very interested in alignment between the two bills to facilitate the integration of the two bodies in the long term they seemed like a reasonable example of what objectives may look like. At the provider roundtable meeting we were told that there were no objectives in the bill, because some objectives are outlined in the intergovernmental agreement between the Commonwealth and the states.

But we have not been party to any of that information, so that was news to us in terms of how that might be being seen. I suppose it makes no difference to the fact that consistent objects in both pieces of legislation would assist the integration of the two bodies in the long term. We were very keen on a number of the objectives that are in their that go to aspirational issues about the future of the country, the future of education

in the country and what the two bills are actually trying to achieve. Rather than just efficient regulation, this is very much about the quality and the future of Australia's reputation in education.

CHAIR—I have some other issues, but I might go to Senator Back now for a little while.

Senator BACK—Thank you very much for your submission and your appearance. In the TDA's position statement you refer to the characteristics of a national VET regulator. You speak first of it being adequately resourced then you also mention, 'A board comprised of technical experts rather than be representational'. Can you explain where the concern lies in that particular statement?

Ms Simmons—If we have representational membership, those people often regard themselves as beholden to their constituencies rather than—

Senator BACK—Could you give us an example, if it were representational, of who would be represented?

Ms Simmons—Unions, bodies like our own, the employer groups—we are proposing that they should be technical experts in regulation rather than representative of bodies. They would be consulting with the key stakeholders but would be technical experts in the field. That might not be a position that AEU shares, but it was certainly TDA's position.

Mr Riordan—Really eminently qualified personnel, who would be chosen on their merit of being able to determine the issues at large.

Senator BACK—How would they be identified? Would it be a process of advertisement, where people could nominate themselves or their peers? Is that how the process would work?

Mr Riordan—It could be an open process. It would probably be preferred that way. There could also be various bodies able to nominate as well, but it certainly would not preclude that potentiality. It is trying to open it up rather than seeing it as a same-as, same-as organisation.

Senator BACK—You also go to a comment of 'moving away from a one-size-fits-all regulatory approach by implementing more timely and appropriate risk-oriented processes and procedures'. By 'one-size-fits-all' are you referring to the overall regulation of different sectors within the RTO world?

Ms Simmons—That relates to the point I made about provider categories, that providers are categorised into groupings that would be indicative of the risk associated with them—their history, their size, their scope, their capability, their financial strength—and that some would potentially have a different sort of regulation from many of the others that are fairly new in the market, do not have a long history, may be very narrow in what they offer and so on.

Senator BACK—It seems that, in our discussions this morning, providers find themselves in about five different categories. Is it a healthy position for the VET sector to have those different categorisations, with yourselves being numerically at the top in terms of the number—I think you have said 59, and you represent 85 per cent of the output; then of the other 4,900, or whatever the number is, represent the other 15 per cent. Is that a healthy position into the future?

Ms Simmons—I do not think we would be saying two categories, like the TAFE institutes and the rest. It would be about the size and scope and history. There are very reputable private providers in the field that would also perhaps be subject to less regulation than many of the newcomers. It is really also looking at the total tertiary sector and building on the standards that exist in higher education, to cover the whole tertiary sector.

Mr Riordan—Currently that is a significant difference between the sectors. As we move into a tertiary phase, it is likely that it will continue to create barriers between the sectors. For example, as HEP registrations have evolved in the Commonwealth, we have categories A, B and C. Ultimately, funding categorisation has followed that, for better or for worse or for whatever reason. To the extent of being able to differentiate them, branding has been the same. In the world of RTOs, now that there is, if you like, a movement from the states and territories to a national framework, not to have any similarity between HEPs and VET would, I think, be extraordinary. An example was raised quite separately by the Indian deputy high commissioner at one of our conferences quite recently—that it is extremely difficult for students abroad to understand the difference in the Australian RTO market. Where you have differentiation quite openly within the higher education market, it has not been the same in VET.

The issue also goes to financial risk. The Chinese Ministry of Education has gone on record to express its concern about the difficulty in differentiating abroad those that have a public sector or non-public sector base

for fees and guarantees of fees and so on. These are quite basic issues. It is actually not just us but others who have expressed those concerns.

Senator BACK—Following on from that, can you give us an explanation of how Australia sits vis-a-vis other OECD countries. Indeed, you mentioned Indian students. I know from my own experience in India that the US is a big market to which Indian parents want to send their students, along with the UK and Australia. How does Australia stack up in the VET world in terms of its international reputation?

Mr Riordan—I think it has been well regarded, in broad terms, but I think that there has been particular lack of confidence because of the college closures. It has been very difficult for Indian officials to identify exactly the high-risk areas. It is not surprising that officials have been coming to us to say: why don't we have more clarity and transparency within such a large and broad sector? We are not suggesting a public-private divide but rather a high level of institutions that might offer a broad variety of courses and so on.

One of my other roles is as a deputy chair of the World Federation of Colleges and Polytechnics. We see for the Canadian and American community colleges that there are even different visa processes for those with a destination to a community college. It has been very difficult for DIAC to identify the same capability in student visas in the VET world, whereas in HEP there is a different student rating and risk profiling for universities. I think these are very basic issues and it is quite difficult for countries like India to identify where it is at in Australia.

Ms Simmons—Our reputation was once amongst the best in the world. It has been severely damaged by recent events.

Senator BACK—Moving away from Australia's attractiveness to overseas students and to its own citizens, would you address how Australia is regarded in contrast or comparison to the UK, Canada, the US and other countries. Wearing your international hat, how is Australia's VET sector regarded by those from within our country who participate in it, in contrast to Canada or elsewhere?

Mr Riordan—I am happy to take other comments but, certainly, Australia ranks with Germany and the US in being pre-eminent in terms of a quality vocational education system. The internal frustration has been that there are some messy issues still going on internally that we have not been able to resolve. That is principally why TDA has been keen to give overarching support to the National VET Regulator but has had concerns about how it is being done.

Ms Forward—I think it is worth saying that my understanding—through our union's participation in Education International, which gives us access to a whole range of other countries' experiences with vocational education and training—is that the Australian domestic VET system is very highly regarded. It is seen to be an innovator. It was a system, especially in the late eighties and early nineties, which transformed itself in its capacity to respond to the needs of the economy and society. It established itself quite consciously, choosing from the experiences of, say, Germany and some of the northern European countries, and in that formation is quite highly regarded and, especially in the early days, seen to be quite responsive, as I said, to the needs of the economy as well as the needs of society.

There is no question that this is the real concern for us and it really is one of the reasons why we are so focused on the question of regulation. It is so crucial to the future of the sector and, from the perspectives of both of our organisations, is particularly crucial to the future of the public sector. Australia's reputation as a high-quality domestic provider of vocational education and training has absolutely been carried by, initially, at least, the activities of its public sector. Its reputation abroad has been based on that high-quality delivery by the public sector. That in large part, arguably, is what gave Australia a really good entree into international education. Its highly regarded domestic provision was the basis for it launching into the international market. I think you cannot overstate the impact that the activities of a few delinquent providers in the international and domestic markets have had on the sector—on our providers and, in the long term, on students.

From our perspective, that is what underpins the range of points that we have made around the legislation but, in particular, it underpins the argument around how you can manage risk and the relationship between managing risk in a sector where you have 5,000 providers, hugely different in size and purpose. How you do that, in our view, is best managed through the notion of provider standards and categories. The categories allow you to really make sense of the diversity of the VET sector, and it is hugely diverse. It is only if you can cluster providers in terms of their purpose, size or activity that you get any sense of the diversity of the sector.

Senator BACK—I will just stay with this issue for one moment and then I would like to move to another one. With regard to the closeness of the tertiary and the VET sectors, is that deliberate in the sense that you

want to see a more seamless movement for people who succeed at VET level to then be able to move into diplomas, degrees et cetera? Is that part of the objective? If it is, do you then run the risk of consciously or unconsciously starting to move legitimate VET type programs, which are technical in their orientation, towards being university level when indeed there never was a demand or a desire to actually do so?

Ms Simmons—I guess there are two issues there. TAFE is already getting involved in degrees, so that is already happening. The pathways are out of the VET programs where the TAFE institutes and other providers have a real strength. TDA's position has been very strongly that we would want our provision of degrees to only occur where it is building on the strength of what exists at the lower levels and the industry relationships that exist at the lower levels. There are a number of areas of TAFE degrees being offered where the equivalent is not being offered at university and where building on the TAFE qualification at the VET and advanced diploma level makes a lot of sense and is demanded by the student and asked for by the industry. We are not in any way in the position of wanting to become universities and get involved in research. TDA has said very clearly that a category of provider would be one that absolutely retains its commitment to its technical base, to its apprenticeship programs and to the industry that it serves, but where appropriate builds on those qualifications to create pathways for students. That has very strongly been our position and it is unlikely to change. A number of our members are not even interested in offering degrees because it is not relevant to their region or to the industries they serve. So it is a matter of building on the existing expertise, not going out and offering degrees out of nowhere. That would be nonsensical and it is not part of what TDA has been trying to achieve. It is really about pathways for students and responding to the demands of industry.

Senator BACK—I do want to go, if I may, to the question of the non-referring states. You have made observations on the characteristics of the National VET Regulator and said that it should be supported by all states and territories with continued attempts to resolve any difference that prevents this from occurring. I think you made mention that there should be a redoubling, to use your words, to secure agreement. It is interesting to me because it is my understanding that all of the TAFEs are owned, funded, controlled, managed, trained and ridden by the states, which causes me to wonder whether you are mutinous, particularly in Victoria and Western Australia where clearly, as I understand it, the governments have said that they are not willing to relinquish? So where do the TAFE directors from those states find themselves in this consultation process?

Mr Riordan—I guess we have been described as many things, but mutinous not so much lately. We frequently have taken an independent line because our mission is to look at and make a commitment to national VET reform, not just TAFE reform. Similarly, we have actually addressed both and in the first instance I think we were foremost in promoting the devolution of TAFE governance and many states have now followed with statutory authority arrangements for their TAFE institutes. I think it is quite appropriate that, given that states like Victoria have seen some of the largest numbers of collapses, we have expressed some concerns about the process post National VET Regulator if Victoria, for instance, were to remain outside the system. Indeed, our colleagues at the Victorian TAFE Association, which assists our TAFE directors on IR and similar issues, has similarly expressed that. I think it is proper and appropriate that we see a larger picture.

Ms Simmons—It is also true to say that they came out in favour of a national VET regulator before it was known that there would non-referring states. So it is not mutinous in that respect; it was recommended. The notion was welcomed and then it became clear that some states would not refer their powers.

Senator BACK—Ms Forward made the observation a few minutes ago when I asked you about how Australia stacks up. You made the comment that, as I understand the text of what you said, the sector has been able to respond quickly to needs. As one who comes from the other side of the Nullarbor I would perhaps advance the observation that the more local you are the more likely you are to be able to respond to changing needs. I think it would be fair to TAFE, and the private sector RTOs would lay claim to that. That begs me to ask the question: if you remove the state and territory based entrepreneurship that comes about as a result of being acutely aware of local needs, because you are local, and you put it into a remote national process, to what extent do you run the risk of losing the very entrepreneurial flair that got you there?

Ms Forward—Over time, TAFE colleges have been in recent times regulated by the state, and, in our view, ineffectively regulated by the state—TAFE and VET colleges. There is always an argument, even within states, and in your state, the Northern Territory and Queensland, for example, that the size of the state and the remoteness from the centre is always a huge issue. One of the big strengths of TAFE colleges around the country is that they are situated in local communities. There is a whole network of them that are situated in local communities. They have a capacity, and it is a capacity built up over time, to develop relationships with

local industry and to develop long-term relationships with local communities. They have enough independence and autonomy to respond on a daily basis to the needs of their local community and local industry, and that allows them to develop programs and so on. In my view there is not a huge difference between shifting, in that respect, in terms of the capacity of the TAFE colleges to develop their programs and respond to the needs of local community and industry. In many respects there is not a huge difference in shifting from a statewide regulatory framework to a national regulatory framework.

One of the reasons that you would argue that it is much more effective and efficient to move to a national framework is that you have a whole range of potential around economies of scale, which allows you to effectively look at the real needs of smaller and differently sized and differently focused providers. You develop a level of expertise at the national level. National regulation does not and should not need to restrict the capacity of providers to respond their local communities, and in fact it would fail if it did restrict them.

Senator BACK—A concern that has been expressed to me is that, because the state is the funder and owner of the TAFEs, if a state elects to focus strongly in a specific area it has the flexibility to do that because it controls the purse strings. If it passes over that responsibility elsewhere instead of making a decision that it wants to—for example, in WA a lot of work has gone into aquaculture and fishing related activities down in Fremantle—there is a fear of the extent to which that might be lost if there is a national process that says, ‘That is very nice, but our priority is elsewhere.’

Mr Riordan—I think that Skills Australia’s most recent report indicated that, increasingly, VET has become a shared responsibility. In fact, proportionately the contribution from states has declined significantly. I think the figures from 2002 to 2008 showed an overall decline in the contribution of the VET spend from 56 to 50.5 per cent from the states.

After all, here we are talking about regulation. An accompanying issue here is that those providers are delivering across markets and this is increasingly the case when we are dealing with multinationals and other corporations. So I think they are separate issues. My only concern there—and it was an issue that was brought up by the national VET regulator people at the provider roundtable we had in Canberra on Friday—was the resource and the capability for improvement. The pledge to date has been that we would see a difference, that the national VET regulator would ‘make a difference’. We are trying to see the evidence for that. To date the charts and so on of organisational change show very little change at all, more of a transfer of some personnel from the states, potentially, rather than an increased capability. We are still seeing many private college collapses and those who are threatened by them. There are some hundreds and hundreds of students who have continually been affected.

Senator BACK—In such an event, in that tragic situation in which the students’ needs have to be accommodated, is it not the case that they will be picked up far more quickly at a state level rather than from some directive from Canberra? Is it not to the state body that you would turn to actually place those students to minimise the disruption to their training?

Ms Forward—But you could. There is nothing in the shift from state to national regulation that alters the funding relationship between TAFE colleges and the state government. We are talking about national regulation around standards and so on, but the existing arrangements between the state governments who are the prime funders of their TAFE colleges remains the same; that will not alter. At the end of the day, TAFE colleges will continue to negotiate with their state and territory departments around the provision of training and the allocation of funding. That will not alter as a result of this legislation. For example, even in a national environment, where you may unfortunately have a situation where a provider failed, it would still be the case that negotiations could go on with the state department, who may mediate some negotiations between colleges to find places for students. There is nothing in this legislation that would alter the capacity for that process.

Mr Riordan—Indeed, it is a federal responsibility under the ESOS Act. PricewaterhouseCoopers currently has a tender to try to place students or otherwise refunds happen. Tragically, it has not happened very well.

Senator BACK—Is it an acceptable outcome for your two bodies—particularly with these two states, Western Australia and Victoria—that there is a move towards nationally consistent standards of regulation and auditing? If a state chose that it still wanted to implement those regulations, undertake the auditing and report back to the national body, is that an acceptable compromise in your minds, particularly for those two states who have already elected? We are on the run a little bit here, because we have only just received in the last few minutes the Victorian government submission and I have only just taken notes of what I understand to be a letter from the Western Australian minister, and you would not have seen either of those, but is that an acceptable compromise in terms of moving in the direction you want to go?

Ms Simmons—Like you, we are a bit on the run on that issue. My understanding is that those two states believe they have superior arrangements to what would be offered by the national system. If that were the case, if that is in fact the case, then that was part of the comment about redoubling the effort to try and get them in the tent, because, if they have superior arrangements, those arrangements should be adopted by the national VET regulator and then we would have no need for non-referring states.

Senator BACK—So we move to a higher common dominator, rather than a lower one? We could create history.

Ms Simmons—What is the reason otherwise for not referring your powers? The reason we have been told is that they believe they have a better regulatory framework than the National VET Regulator would offer. In answer to your question, it is an acceptable compromise if there is no other way, but it is indeed a compromise.

Senator BACK—The chairman has probably had longer than I have had to read the Victorian submission, but they do talk about the states holding the primary constitutional and funding responsibility for the VET sector. They also talk about the real likelihood that a number of provisions in the ETRA and related legislation will be inconsistent with the NVR bill and thus be invalid. We have not had a chance to read this, and obviously neither have you, but it does come back to the question: what is the ultimate goal here? Is the ultimate goal to have national dominance of the whole exercise or is the ultimate goal to have national consistency?

Ms Simmons—That is the goal: national consistency.

Senator BACK—That would then satisfy those industries and organisations of course. We have heard from previous witnesses in response to questions asked that there is this frustration because they have VET candidates across state borders and what is acceptable in one state is not acceptable in another. Anybody with a modicum of commonsense can see that those anomalies should be worked out.

Ms Simmons—We are not interested in national for its own sake. Increased rigour and greater consistency are the reasons why we support it. It is not that national based is better than state based per se, but we do need consistency and greater rigour.

Senator BACK—Yes, and accountability.

Ms Forward—If we are going to go through this process and go through all of this pain and effort there must be an improvement in the current situation. That has to be the concern. That is the basis of our submission.

CHAIR—There is nothing you have seen in these bills that indicates that the regulator would have any control over an RTO about levels of funding, what courses they want to provide, where they want to provide them or who they want to provide them to? It does not do any of those things, so any position that might be put by the state government that somehow a national regulator might impact upon where or how we want to deliver our vocational education and training to—and I do not see any—

Ms Simmons—Then there would be mutiny.

CHAIR—I want to go to the specific area of compliance. You say:

However, it is not an offence for an NVR RTO to issue VET qualifications without ensuring the student has completed the necessary course of study.

There is that specific example you have used. Do you want to comment about the general enforcement and penalty regime? It would appear to me that some of the enforcement and penalty regime is a little over the top, notwithstanding some of the suggestions you have made to finesse some of the obligations that should be an offence if you do not achieve those obligations, which is a theme that some of the other submitters have talked about, even though yours is a slight variation on that. Could you comment on those two areas?

Ms Forward—In respect of the last issue, we would strongly support the submission of the ACTU. They raise concerns about the penalties for individual students in terms of the issuing and non-return of qualifications. That seems to be an extraordinarily excessive penalty. We would support the concerns raised by the ACTU about that.

In terms of detail, I have seen some of the other submissions. We are certainly supportive of vigorous and strong standards but what underpins our concerns is the application, if you like, of a business model to the whole process rather than an educational model. It is probably unavoidable, given the money that is tied up in educational provision now, but the principle for us is that we support strong regulation. We think it is important, based on well understood and developed standards, because that is essential in terms of the capacity

of the sector to rebuild its reputation, both domestically and internationally. In terms of the first point, which was the reference to—

CHAIR—You make a distinction between ensuring adequate assessment and saying that it is an offence to offer all or part of their course outside the scope of the body's registration. However, it is not an offence for an RTO to issue a VET qualification without ensuring that the student has completed the necessary course of study.

Ms Forward—And that goes to the question, especially in the last couple of years, around the whole international student market debacle, and in domestic areas as well. It is absolutely crucial that we are able to see and have as a standard that the actual delivery of the course is not the assessment. The auditor has to be able to establish that training has been provided, not just that the qualification has been issued. Our concern with this issue is if there has been no training provided—that it focuses narrowly on assessment and the delivery of a qualification with no capacity for them to look in there and actually see whether training has been offered and a course has been delivered. That is the activity that we are looking at: that delivery of training. We think it is a real deficiency in the current legislation.

Mr Riordan—It could be an enormous loophole.

CHAIR—Right. Senator Back.

Senator BACK—I only have one question. Ms Simmons, in your submission when you were speaking earlier, you mentioned extra funding going to the top 100 VET providers. I do not understand that process. Can you tell me what that is all about, how they are measured, what the level of funding is and on what basis that funding is provided.

Ms Simmons—The government announced a federal government quality skills investment fund, which is \$90 million. That was to go to the top 100 VET providers.

Senator BACK—As measured by?

Ms Simmons—We are working with the government to work that through, but there is an implicit recognition that it is not worth scattering government funding across the whole 5,000 providers and that it would be better spent on the top 100. My comment was alluding to the fact that there are tentative steps being taken to acknowledge that there are categories of provider that are more experienced, more capable and more committed to the issues around national productivity than others. So it is not entirely out of the ordinary to say that this might be extended to the notion of categories.

Senator BACK—Very interesting.

CHAIR—Unless you have any final remarks you wish to make to the committee, we are just about out of time. Thank you very much for your submission to the committee's inquiry and for your presentation to the committee today.

Proceedings suspended from 12.44 pm to 1.39 pm

JOHNSTON, Ms Paula, General Manager, Corporate and Member Services, Australian Council for Private Education and Training

KOUMIDES, Mr Mel, Director, Victoria State Committee, Australian Council for Private Education and Training

VIVEKANANDAN, Mr Ben, Manager, Policy and Research, Australian Council for Private Education and Training

CHAIR—I welcome representatives from the Australian Council for Private Education and Training. Thank you for your submission, which the committee has received. We invite you to make some opening remarks to the committee, to be followed by questions.

Ms Johnston—Firstly, thanks to your office for being flexible in the time that you have allowed us to come before you today. I will start off by mentioning that Ben is our manager of national policy and research and has been involved in this topic for some time and that Mel, as a board member, is a person who has a practicing registered training organisation.

ACPET is a peak body. We represent private education and training in Australia. We are a national body and have over 1,100 members across Australia in all states and territories. Most of our members deliver vocational education and training qualifications, but a growing number also deliver higher education courses, English language courses for overseas students and also secondary school courses. More than half of our members deliver to international as well as domestic students. Ms Claire Field is our CEO. She is, unfortunately, travelling overseas today, so she was not able to appear here. That is unfortunate because Claire has a background in VET regulation in that her position previous to becoming ACPET's CEO was general manager of the National Audit and Registration Agency. So ACPET has been very well informed on these issues and well engaged over a period of time, including, in fact, before Claire's arrival as the CEO.

As an organisation, ACPET feels that there is a pressing need in the vocational education and training sector for more appropriate, more streamlined and more effective regulation. We support parliamentary oversight of legislation of course, but we are concerned that this critical initiative, as represented in the legislation, should not be delayed any further. Some time has already been spent on agreeing on the establishment of a national regulator and on the underpinning legislation. A lack of national consistency because of current state based regulatory arrangements does remain a major cause for concern across our membership and across the sector more broadly. ACPET certainly supports a single national tertiary regulator.

The proposed legislation does significantly strengthen the ability of the regulator to take action against seriously noncompliant providers, and it makes it easier for a regulatory system to deal with those providers who are not as committed to quality education and training as we would prefer them to be. Of course, this complements ACPET's own commitment to high quality education and training and our recent tightening of our code of conduct and our financial viability criteria and other things like that for ACPET membership.

ACPET really would prefer to see the NVR legislation implemented as soon as possible. We know and understand that some people might argue that it should be delayed to allow for amendment in order to align it more closely with the legislation that is being established for TEQSA. In a perfect world, that would be fabulous, but it has taken more than five years to progress to this point in the life of a national VET regulator, so we would prefer to see no further delay. To delay further does run the risk of undoing the agreement to establish the national VET regulator and perhaps risks one or more state governments changing their minds.

When TEQSA and the NVR are in operation and the sector, the regulators and all of those involved are able to reflect more on the respective legislation's operation, we are of the view that that will be the time when further amendments can be looked at to bring the two pieces of legislation into closer alignment. But our view is that the focus for now should be on implementation, and ACPET as an organisation certainly trusts the processes that will be in place to allow for that further refinement to happen in the future. For example, the National Vet Regulator task force met with peak body representatives, including ACPET, on Friday in Canberra. Our CEO, Claire Field, attended that meeting, where lots of information was provided on a number of implementation matters, including further details on proposed risk assessment strategies. It was agreed to hold regular meetings, and ACPET looks forward to continuing to participate in that dialogue and to working with the task force on other implementation matters in the coming weeks.

I will summarise by saying that ACPET believes the National VET Regulator legislation should proceed. The risk of bringing the two acts in question into further alignment in the future is minimal, we believe. Certainly the risk is minimal compared with the risk of the NVR being further unwound. The variation in the

two pieces of legislation might not be as substantial given that a lot of the detail is in the standards. We have faith in the appropriate processes being in place to do this over time. Raising the quality bar by dealing with seriously non-compliant providers gives consumers confidence in this important national social and economic activity, and we think that the window of opportunity to bring that greater rigour and quality to vocational education exists now. ACPET would love to see that opportunity seized.

CHAIR—Are the current arrangements for regulation in this industry so poor that we need to proceed with a bill that potentially has deficiencies?

Ms Johnston—I have had the honour of being the general manager of ACPET for a week, so I will probably defer to my colleagues. I am quite new in the role and my colleagues have been involved in this for some time, so I might defer to them for those kinds of matters.

Mr Koumides—I believe the current regulations are not poor. They are quite sufficient. I think their execution is what has been lacking. Looking at it holistically, though, there are a number of providers that are now working across jurisdictional borders, across many states, and are dealing with tremendous uncertainty and contradictory requirements that this National VET Regulator will hopefully eliminate in the longer term. To answer your question, we do not think the current regulation is poor. We think it is quite sufficient. We believe its execution is what has been lacking. This is no criticism of any particular state. I believe that they have had their powers somewhat hamstrung as well. It is important to reiterate what Paula said, and that is: what we see with the National VET Regulator is that it will actually have teeth to deal with the grossly non-compliant providers out there.

CHAIR—I appreciate what you say about it being a five-year development process to get to this point, but the reality is that the Senate has had an opportunity to see this legislation for a handful of days really. It is the second Senate committee that has looked at it, the first one being the Scrutiny of Bills Committee, which did have, and has, ongoing serious concerns with the structure of the legislation. Based on what we have heard so far, it does seem to be interesting. You make the point that you have been involved in lots of consultation. That seems to be in stark contrast to what other witnesses have told us up until now. Did ACPET have a special place in the negotiations of this legislation, at the expense of others? Are you seen as the industry representatives?

Mr Koumides—I do not think we are seen as the industry representatives. We would like to be, but I do not think we are. I am a little bit concerned that what is suggested is that we have had dialogue at the expense of others. I am somewhat surprised and taken aback by that.

CHAIR—I do not think that was suggested, but others have actually complained about the amount of consultation they have had. I do not think anyone has said that you have had more than them and asked why that is.

Mr Koumides—Thank you for that. I think the difference possibly—not knowing who the others are that you are alluding to—

CHAIR—I would say TAFE Directors, for instance.

Mr Koumides—I think we have been quite proactive. I think our members who have been multijurisdictional have raised these concerns for a number of years now, and ACPET, as a peak body representing its members, has been working on this for some time.

CHAIR—Do you not think that the act should actually have some very clear objectives in it?

Mr Koumides—What kinds of objectives?

CHAIR—A set of objectives for the purpose of the regulator.

Mr Koumides—I was of the impression that it does. I know that there are some concerns—and some of these are legitimate concerns which we agree with—which possibly the TAFE Directors association has raised. There are some points, without going through them in detail, that are addressed as a part of the current AQTF. The statement says that the primary purpose of an accredited or registered body must be for education, or education has to have a significant amount within the delivery mode—without looking at the words exactly. We agree with that. But it is important also to explain that a number of our members are enterprise RTOs. An example of that is Caterpillar. They are a significant industry player. We are not too sure what the words ‘significant education’ mean in their case. They want to run their own training because they have a unique requirement, and statements such as ‘they must be purely for educational purposes or have a significant amount of education within their scope’ invalidate this. Really that requires a little more thinking. Other

statements are raised. For example, they say that the AQTF must be spelt out in part of the legislation. I think in the last seven years we have had three iterations of AQTF. The last one was AQTF 2007. We are currently with AQTF 2010. If we are going to name such regulation within legislation every time we have a new iteration, we need to change the legislation as well. So we understand the overall concern, but that one does not make sense to us.

CHAIR—Do any of your members have concerns about division 2 of the bill, which relates to searches of premises and the seizure of materials that can be exercised by authorised officers by monitoring and enforcing warrants and, in particular, subclause 68(6), which enables an authorised officer, in executing an enforcement warrant, to seize evidential material which has not been specified in the warrant where the officer believes, on reasonable grounds, that it is necessary to seize the thing in order to prevent its concealment, loss or destruction?

Mr Koumides—I have not received a specific response from our members.

Mr Vivekanandan—In relation to that part of the bill, I will be happy to take that question on notice and provide some further advice to you.

CHAIR—What about the use of force by officers exercising such warrants?

Mr Koumides—Again, we have not received specific details of concerns from members. We are happy to take that back. I think it is important to state, though, that, being an accredited provider, the current regulations are quite specific for us. We need to hold information—student records, information on agents and so on—and we need to offer a totally transparent support mechanism when the regulator comes in. The majority good providers do not have anything to hide.

CHAIR—No, but it occurs to me—let me just couch it in these terms—that the provision of a number of these powers is more akin to criminal investigations rather than an education regulator. Is the nature of the industry such that it requires people with criminal investigative powers to regulate your industry?

Mr Koumides—The nature of the industry is absolutely not, across the board, at that extent. There are a small subset of rogue providers where there have been difficulties—I can only talk about Victoria because that is the area that I operate in—for state regulators in obtaining the information they require. Some of these difficulties are not specific to the provider that has been examined at the time. I know of examples where student records are held by a third party on a licence fee basis and often, if a provider is having difficulties with financial requirements, that third party will only issue student records that are required by the state regulator once the moneys owing to him are paid. That has also been addressed, where we as providers now have to get concrete agreement by third parties that, in case of a default, they will make that kind of information available to providers. I am digressing. To answer your question: no, the state of the industry is quite healthy, I believe, but a minority has been exacerbated in the media and blown out of all proportion.

CHAIR—One of the other submitters suggested a number of things. It is rewording, but they say it is very important rewording. For instance, clause 107 currently reads that issuing a VET qualification without ensuring adequate assessment—

An NVR registered training organisation commits an offence if:

- (a) the organisation issues, or purports to issue, a VET qualification to a VET student; and
- (b) the organisation did not satisfy itself that the VET student had successfully satisfied the requirements of the qualification.

They suggest things like amending the heading of such an offence to read that it is to ensure that the requirements of the qualification are met not merely adequate assessment taking place. Do you think changes like that actually strengthen the legislation?

Mr Koumides—They do at face value. I believe that these particular statements are already covered by the AQTF in a number of standards. It suggests to me that, not knowing again the concerned party that has put it in there, I do not believe they may be as familiar with the AQTF as possibly they should be. If it is at a cosmetic level and it does not delay the bill in any way then we will support it. I fully appreciate that the Senate has only had the second hearing regarding this; we have been waiting for this for six years. We have 5,000 providers out there—not all part of ACPET of course—who are accredited and a number of the concerns of TAFE directors represent about 100 members, who operate in the dual sector. That is two per cent of that total, so I think that needs to be put into perspective. As a whole, I need to reiterate that some of those concerns are valid, and we are happy to have this addressed if it is done quickly without delaying the bill.

CHAIR—One of the examples given to us today was about a certificate III baking qualification that was delivered in the space of two weeks, and then some two weeks work experience was obtained that would meet the current conditions for a trade qualification in baking, but clearly it does not.

Mr Koumides—I fully agree it does not. My school delivers certificate III in baking. We deliver it in nine months and nothing short of that. We deliver it in three months more than most other providers, including public and private providers. We need to put that into context. These are highly emotive statements. In this kind of situation I would suggest it is up to the regulator again to identify and enact regulations that they have in place to disqualify people who are doing this kind of thing. We certainly do not support it as ACPET.

CHAIR—It is probably more important to ensure that the qualification that is purported to be obtained is in the skill and experience or the learning is such that it enables people to conduct what they are being trained to do rather than simply meeting the test of what may have been produced in two weeks as opposed to nine months.

Mr Koumides—I hear that: again, adequate assessment versus ensuring requirements are made. It is important to understand what adequate assessment means. Any qualification that is offered in Australia has to follow a training package. Training packages are delivered and derived by the National Quality Council and industry bodies. Every training package has a number of performance criteria that have to be met, and every single performance criterion needs to be met. For example, in bakery—and we deliver 30 qualifications; I am not an expert in that particular qualification—you need to understand the production of artisan breads, the production of ensuring that bread is proved in a prover, that it is of a texture, of a consistency and so on.

Every performance criteria needs to be met for a student to be deemed as compliant. That is part of the assessment process. Ensuring that the assessment is correct means that every performance criteria a student has to pass and there may be 40 subjects within a Certificate III of Bakery—I cannot remember exactly what that is—as an example. Within each one of these there may be two or three assessments for each subject and within each assessment there may be 20 performance criteria that have to be demonstrated repeatedly across a number of assessments that they have been met. For organisations that actually have been registered and are delivering a training package as required, the assessment is more than sufficient in demonstrating they have the skills.

CHAIR—That is relying on them self-assessing is it not? You say the condition is if they are actually doing the right thing, and that is the ‘if’. How do you ever know that if they are the ones who are actually providing their assessment of their own performance?

Mr Koumides—It is a very valid point. The exact same thing applies to any higher education institution that churns out an accountant, for example.

CHAIR—There is a slight difference. With people getting churned out from the higher education system there is the reputation of the university or the institution which is highly protected. A small for-profit RTO in the outer eastern suburbs of Melbourne, for instance, that is simply churning through as many as they can, I suggest, could not care less ultimately about a long term reputation. It is about making money now.

Mr Koumides—I hear what you are saying and there is nothing wrong for profit organisations in delivering education. There is a large percentage in America, for example, that do exactly that.

CHAIR—I was not suggesting there was anything wrong with it. I was saying it is a very different comparison to make to a higher education institution.

Mr Koumides—I am not too sure if it is.

CHAIR—I think it is.

Mr Koumides—If I can be given the opportunity, I might add to that. There certainly was not that requirement in the past where there was a linkage with international students in particular. I do not want to be sidetracked with another issue but there was not a requirement for employment outcomes in the past for international students. Now there is. I run a small school; there are a number of ACPET members—and some of them are not for profit—who run training for students from 12 to 10,000. To us, our reputation is all we have. It is the only way we can actually differentiate, especially now where there is a greater level playing field. We have evidence that 70 to 80 per cent of our students actually are employed at the end of graduation in their field of study and we know that often that exceeds the graduation and employability levels of some of the public sector as well. To answer your question: we live and die by our reputation. There is no other reason why

a student would want to come to us and study rather than going to a highly renowned public TAFE, for example.

Senator BACK—You mentioned 1,100 members and also 5000 registered training providers, 59 TAFEs and 250 enterprise based RTOs. Where are the other 3,500? Are they not members of any group?

Mr Vivekanandan—What you will find is that there is a very long tail within the industry. We engaged WHK Horwarth to undertake a study for us last year on the size and contribution of private providers. From WHK Horwarth's findings, around about 85 per cent of VET delivered by private providers was from ACPET membership. The number of 5,000 comes from the NTIS database that has everyone registered. They may be registered but not necessarily delivering. It could be somebody who has registered, and once every two years they deliver to six people in a business or industry somewhere.

Senator BACK—The TAFE directors referred to 59 TAFE institutes, which represent one per cent of providers but account for 85 per cent of accredited training, which was 1.7 million people. Am I right in the supposition that the other 4,950 deliver 15 per cent of the accredited training?

Mr Vivekanandan—No, that is not correct. The figure that TAFE has given you relates to NCVER data—that is the body that counts government funded training. If you are getting something done in Parliament House and a private institution is doing it and it is fee for service, it is not counted in that.

Senator BACK—You are right; they do speak of publicly funded training

Mr Vivekanandan—The majority of training happens outside of that.

Senator BACK—Does ACPET have any membership criteria or standards that have to be met? In the instance the Chair spoke of, with the RTO that produced a baker in two or three weeks, if that organisation was a member of ACPET would you have any influence on them in terms of dismissing them from membership or terminating it or putting it in some sort of category?

Mr Koumides—We will need to evaluate it on its own merits and if there is a gross lack of delivery then we will certainly be taking action. It is important to say that ACPET has terminated memberships. We are introducing a new tuition assurance scheme requirements which incorporate the same financial viability requirements as a one-step that VAK has instigated recently; we are also leveraging Grant Thornton, the same consultancy organisation that VAK has used. That is only one out of 12 or 18 additional steps that were introduced to ensure we raised the bar for quality being delivered.

Senator BACK—I know we do not want to focus all afternoon on the two-week baker versus the nine-month baker, but it might serve as an illustration. Where does the failure occur in a circumstance, however extreme, like that one? Is it a failure of the auditing process, is it a failure of the provider themselves—obviously it is a failure of the provider—but why would such a glaringly obvious anomaly not be picked up currently, and how will it be picked up in the event that we move to this national legislation?

Mr Vivekanandan—My understanding is that we will see greater resourcing of the national VET regulator across the board as compared to the state based regulators we have at the moment with different levels of resourcing and different abilities to meet what is happening in the market, so when there is a failure, when a provider is doing the wrong thing, they are able currently at times to slip through the gaps because the regulator has not been resourced to do the job or they are doing it for other reasons.

Senator BACK—I want to move to national consistency versus one deliverer, I suppose. The Victorian submission, which we have only received today, was speaking about aspects of the NBR bill, and you will not have seen this because it is not available yet. They say:

... Victoria does not accept that a convincing case has been made that it is impossible to establish an effective national system of State-based regulation, with mutual recognition between jurisdictions of each others' regulatory decisions ... in Victoria's view, most of the difficulties that have occurred have arisen from national standards that have been vaguely expressed and lack the degree of certainty and clarity needed for effective regulation and enforcement.

Of course Victoria is one of two states that has already indicated it is not going to vest its powers. It is interesting that the concept of the national regulator is being put up as removing these anomalies in what would appear to be state and territory based activities, and yet here is Victoria saying that they believe that the difficulties have not occurred as a result of Victoria's failures but have arisen from national standards that have been vaguely expressed and lack the degree of certainty and clarity needed for effective regulation and enforcement. Can you comment on that assertion by the Victorian government?

Mr Koumides—It is difficult without knowing the detail and what examples they use. There are a tremendous number of inconsistencies. I think you stated at the beginning that Victoria's position is that they believe that a national system can occur through joint mutual recognition and so on. If that is the case, why hasn't it yet?

Senator BACK—Your point on page 5—it relates to the same area—under 'Duplication and inefficiency' and barriers to effective and efficient regulation. I am on the third paragraph now at about the second last line. You say:

Accordingly, a single national VET Regulator with state offices would allow for consistency of regulation whilst minimising inefficiencies of regulation due to duplication of industry consultation.

I have heard from many providers who work across state boundaries of their frustration at the inconsistency and differences in the audit process and would obviously want to move towards that. If there is going to be one regulator with state offices, why can't we have a scenario in which there is national consistency, with these two states indicating that they will mirror their legislation at state level, and devolve the audit and regulatory process to those states who want to maintain their regulatory control and audit processes based on, as I say, national consistency and a reporting process that ensures at the national level that those audit and regulatory standards are maintained?

Mr Vivekanandan—I think it comes down to organisational culture. When you have different states you have different leaders with different opinions. They are maybe only on small issues but they flow down throughout the organisational culture. There may be a goal to try and have consistency but you simply do not when you have one national body with one culture flowing down throughout the organisation. We have some state offices available for RTOs to go and speak to staff to get some interpretation, to get some understanding and to consult with them. It all comes from the one organisation, the one goal.

Senator BACK—That is the case at the regulatory level. Why isn't it the case at the provider level, because the providers under transition arrangements are going to be absorbed into this one national body? To take the logic of your argument it also is logical that whatever anomalies, deficiencies, aberrations, corruptions—call it whatever you like—exist in the current providers at state and territory level must also find their way into the nationally organised level.

Mr Vivekanandan—No, I do not think so.

Senator BACK—You cannot have both.

Mr Vivekanandan—Maybe the issue will be resolved for a national body. If you are an RTO that is not following the national board and not following the regulatory line you will be found out.

Mr Koumides—I think you mentioned before that the state regulators have a desire in maintaining their own regulatory standards whilst adhering to a national uniformity. I believe that is a contradiction in terms because, if that were the case, then we would have that today. I think each state regulator has had an almost impossible job to regulate existing bodies across all states. Again, I can only talk about Victoria. We have been kept honest with no favours by the state regulator but, in consideration, with so many providers and only having a handful of auditors to go out there, it was just an impossible task.

Senator BACK—That is a question of resourcing, isn't it and where it is actually directed?

Mr Koumides—That is a question of resourcing. At the same time if you have a single owner as opposed to a federated approach you can ensure that everyone is singing off the same hymnbook rather than interpretations thereof.

Senator BACK—I accept that and that is why I say that the national consistency would ensure the same hymnbook.

Mr Koumides—I do not think it would. If that were the case then we would have that today.

Senator BACK—Would we though because, at the moment, there is not the national level, is there? It is set at different state and territory levels.

Mr Koumides—It is but NARO, which was put into place to offer that consistency, was there to address the inconsistencies. I do not believe we are that far off.

Mr Vivekanandan—We have the AQTF, which is currently national. We have training packages which are currently national but then auditing takes place at state level. There is a national protocol across the top, which all RTOs have to comply with, but it is state by state which causes inconsistencies.

Senator BACK—I know Western Australia make the observation that 90 per cent of the activities are state based and 10 per cent are national. Given that they are now undertaking that assessment of 90 per cent, why would you pass it over to a body which is responsible for 10 per cent and expect some vast improvement? I have no involvement at all in the sector. They would also make the point—the Victorians have also done it—that since they own and fund the TAFEs and have legislative responsibility for the TAFEs, they are at a loss to know why they would pass that over.

Mr Koumides—It is important to understand that the sector is larger than the TAFEs. I fully understand Victoria's position in that we are funding them, therefore we need to maintain some control. I believe that overall there is an intent to offer a national approach. We are have difficulties understanding that, as Ben mentioned before, it is the Australian Quality Training Framework so why would you want to divide it up and police it somewhat differently?

Senator BACK—Under a nominal hours curriculum, you said that the application of NHC is an example of how little understanding the regulators have of the market and the range of applications—for example, the notion that the same hours apply to school leavers, international students and existing employees. Could you explain how, under a national scheme, the regulators would suddenly acquire vastly more understanding. If they do not understand it at the state level—hopefully they are closer to these things—how are they going to understand it?

Mr Vivekanandan—That part of the document is seeking improvements on understanding. It is not saying that you will understand it better at a national or state level; it is saying that it needs to be understood.

Senator BACK—And your other comment about quality indicators is the same, is it? Quality indicators are not regarded as indicators of quality by many stakeholders—is that a comment?

Mr Vivekanandan—That is a comment. Quality indicators are a generic document across all RTOs; they are not the be all and end all.

Mr Koumides—It is also important to state that it is very difficult to regulate quality. As you were eluding to earlier on, some universities are governed by their reputation. Students choose to go to university X versus university Y because of employability—looking to get a better job at a higher wage. I believe through the changes that are happening now, breaking artificial linkages of the past, with international students in particular it is all about employability. I believe that will raise quality because in the end, as providers, we are only governed by our output, which is the employability potential of our students.

CHAIR—The committee appreciates frank and robust discussion and you have certainly provided that to us today. We genuinely thank you for that. Thank you for your submission and for your appearance before us today.

Proceedings suspended from 2.19 pm to 2.30 pm

QUAGLIATA, Ms Maryann, Branch Manager, Skills Quality Branch, Department of Education, Employment and Workplace Relations

SMYTH, Mr John, Interim CEO, National VET Regulator, Department of Education, Employment and Workplace Relations

TREGURTHA, Ms Margaret, Branch Manager, Education Legal Branch, Department of Education, Employment and Workplace Relations

CHAIR—As we have had some technical difficulties, the teleconference with the Master Builders Association and the Western Australia government will now not happen. We sincerely apologise for any inconvenience that may have caused. The committee will try to complete its inquiry through a teleconference over the next week or so. As a consequence we now welcome witnesses representing the Department of Education, Employment and Workplace Relations. Do you have any opening remarks you would like to make to the committee before we proceed to questions?

Ms Quagliata—No, I do not. You have our submission and I am here to answer any questions.

CHAIR—Okay. First let me take you to some technical issues. You will be aware of the Senate Standing Committee for the Scrutiny of Bills. The terms of reference for that standing committee are to ensure that bills introduced to the Senate do not:

- i. trespass unduly on personal rights and liberties;
- ii. make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
- iii. make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- iv. inappropriately delegate legislative powers; or
- v. insufficiently subject the exercise of legislative power to parliamentary scrutiny.

I have been a former chair of the committee and a current member. There are some 40-odd pages of comment about this bill which I think go to all these apart, perhaps, from the last one. I suspect you are aware of the Scrutiny of Bills Committee's report?

Ms Quagliata—Yes.

CHAIR—The minister has responded to some of the committee's concerns and the committee has accepted some of the responses. The committee is still quite concerned about many of the aspects of this bill. Rather than me taking you through point by point do you want to respond to those issues in some detail. Depending on how we go with the discussion today, the committee may formally write to you with specific questions in relation to many of these issues. Please, if you can respond to some of the Scrutiny of Bills Committee's concerns, I would appreciate it.

Ms Quagliata—I will not go into the detail that was provided by the minister in his response to the Standing Committee for the Scrutiny of Bills. What I will say, though, is that the approach within the bill is an expansion and strengthening of the provisions that currently apply in each of the states and territories. The capacity to issue warrants and enter into premises exists in a number of states, including Western Australia. The imposition of criminal sanctions already exists in many of the states' and territories' legislation. Indeed, in 2002 there was an attempt to standardise the regulatory provisions in each of the states and territories—the actual legislation—and there were model clauses that were agreed to. They contained offence provisions as well.

The approach of having criminal sanctions available to a regulator has been in the sector for some time. There has been a strengthening because there was a view—not just by the Commonwealth but also by the states and territories—of the need to have an independent, effective and strong regulator. That does not mean that the regulator would immediately use its more imposing powers; the intention of the bill was to provide the regulator with a full suite of regulatory responses. We have been calling it a toolkit. Up until now, part of the difficulty encountered by state and territory regulators has been that they could either wrap them over the knuckles when there were concerns with the performance of an RTO or there was suspension, cancellation or criminal sanction.

One of the objectives of this bill was to open up the regulatory response that a regulator could take so that it would be appropriate to the particular circumstances and create a hierarchy. You will see in the bill there is everything from being able to direct, impose conditions, seek to obtain enforceable undertakings, obtain injunctions, impose civil penalties rather than going straight to criminal penalties, right up to the worst imposition—criminal.

CHAIR—It also includes search and seize?

Ms Quagliata—Absolutely, which as I said already exist in some states.

CHAIR—The application of force?

Ms Quagliata—That is right.

CHAIR—This is extraordinary, isn't it? Justify the use of force in the application of these issues.

Ms Quagliata—We discussed this with the Attorney-General's Department, because this was reviewed by them and our Office of Parliamentary Counsel, and the purpose of that provision is to allow things like the movement of filing cabinets. If you do not have a provision that allows the use of force you cannot actually move a filing cabinet from one end to another. The purpose of these provisions is to allow the regulator—

CHAIR—Before you go on, we assume that there is a warrant to search and seize, and you want to seize a filing cabinet. I guess in the scenario you are suggesting the owner or the occupier refuses to allow you to seize it. Why is that not then a police matter? Why would a VET regulator be authorised to use force? Surely, if someone is not complying with a warrant that is then a police matter.

Ms Quagliata—They would be complying with the warrant and the authorising officer would be able to use their powers. I suppose it comes down to whether it is necessary to escalate it to a police matter when you can provide the regulator with the capacity to take that action.

CHAIR—I must say that it scares me personally that the people whose main job is to regulate education are being authorised to use force in circumstances. I am sure everyone is not going to get training and be provided with the necessary skills to use that force. This is a provision that seriously concerns me.

Ms Quagliata—I should also point out that it is force that is reasonable, so that it is not just *carte blanche* for the use of force.

CHAIR—'Reasonable' to whom? Anyway, we should not argue about it. I do not want to be argumentative about it. I have made my point. I am not sure whether the fact that the force needs to be 'reasonable' actually assists; in fact, in some respects it makes it worse.

Senator BACK—On that exact topic: hopefully it would never occur but is there a process, before the officer would resort to the use of that force, whereby they would refer it up the line to a more senior person for advice and to seek authorisation or, as it is currently structured, would that officer on the ground have the authorisation to actually exercise the force?

Ms Quagliata—The guidelines which may be applied by a regulator to their authorising officer have not yet been developed and I cannot comment on whether there would be some operational procedures around that. However, from the point of view of what the legislation would allow, it would be for the worst-case scenario where immediate action needs to be taken by an authorising officer in the circumstances.

CHAIR—Another issue is your power to amend an accredited course. I am a little bit confused about what role the regulator has in the development and accreditation of courses. Surely others organise what the national qualification is. If a course needs to be amended, isn't it their responsibility not yours?

Ms Quagliata—The way the system works is: there is a person who applies for a course to be registered. It does not need to be an RTO. That person may continue to take an interest in that course—or may stop existing, if it is a company—so that there may be situations where a course is being used in the sector but there is no person taking responsibility for ensuring that it continues to be up to date and meeting the new licensing or regulatory requirements in that particular sector.

CHAIR—So, when it enables the regulator to amend an accredited course, we are not talking about something that has an AQF standing, are we? I do not pretend or necessarily want to be an expert in this field, but my understanding is this. Skills councils, for instance, would develop a course or qualification. It would go through a process and get accredited, for want of a better word, and that is their role. RTOs deliver it against that qualification. Is it those qualifications you are looking at amending?

Ms Quagliata—No. There are two ways in which courses are developed. You can have a training package which goes through a very rigorous process of development by the industry skills councils. But there is also the capacity within the sector for a person to seek to have a course accredited, and that is a separate process.

CHAIR—So the definition of an accredited course has a very specific meaning—

Ms Quagliata—Yes, it does.

CHAIR—which excludes the example that I gave earlier?

Ms Quagliata—That is right. And one of the requirements in order to be able to have a course accredited is that it does not duplicate what is in a training package, and that is set out in the standards for accrediting a course.

CHAIR—All right; I am less concerned about that issue now. There have been some criticisms about not having, at the front of the bill, a set of objectives of the bill. Given that the duplicate process that is going on for the tertiary regulator will have—or, we assume that it will have—why haven't we tried to do that in the VET regulator bill?

Ms Quagliata—The process that has been taking place with TEQSA and the National VET Regulator legislation has some fundamental differences. One is that in the VET sector the legislation has been developed in negotiation with the states and territories because the Commonwealth is relying upon a referral of powers from the referring states and territories. As a result there is an intergovernmental agreement with the states and territories, and in that intergovernmental agreement a set of objectives is set out. My understanding is that it is not necessary for legislation to have objects in it. Speaking to my Office of Parliamentary Counsel colleagues, they inform me that some do and some do not. In the case of this piece of legislation, it was thought unnecessary to do that when the objects would be set out in the intergovernmental agreement. I might just ask my colleague if she would like to have—

Ms Tregurtha—There is not much to add to that other than that in the intergovernmental agreement it does set out what the objectives are, and in putting the bill together there was not a suggestion at the time that objects were wanted. It did not, as far as I am aware, arise during the process of consultation with the states and territories and other stakeholders.

CHAIR—Have you been through all the submissions and identified the suggestions which, I guess, would fall into a number of categories; good suggestions but you just do not want to do them, good suggestions that you might want to do or bad suggestions that you are not going to do, we would assume? It occurs to me that one of the submissions says:

... the heading to Clause 107 should be amended to reflect the breadth of the obligation on providers to ensure that the 'requirements of the qualification are met' not merely that adequate assessment has taken place.

Initially I thought that might just have been semantics, but after we had some discussion about that this morning there is quite a strong argument for rewording some of those things. Given the amount of power we are giving to the regulator we might as well give it some oomph in the wording of the bill itself as well. What do you say to suggestions around those issues?

Ms Quagliata—There are two things: one is whether we have been through all the submissions and categorised some of the comments, and yes, of course, we have. With the second point, though, about assessment; the VET sector is quite different from the schools and higher education sectors and is based on competency, not on the inputs of the actual training delivery. If you have a competency based system then it allows for things like recognition of prior learning. That means that it is assessment that becomes the significant key to quality assurance because it may well be that the student has not had formal, structured, institutional delivery of training, but has in fact been assessed as having the competencies or some of the competencies needed for a statement of attainment or for a qualification. Hence, the focus of the legislation is not on the curriculum or the training delivery but on making sure that that the assessment has been properly done.

CHAIR—What is the assessment? The example that was provided to us today was that a certificate III in baking was delivered in two weeks, presumably against an assessment of competency by the provider. The provider provided it in two weeks. There is nothing wrong with that, is there—except that when they actually go out into the real world it is useless?

Ms Quagliata—There would be nothing wrong with that assessment if it actually did meet the requirements of the qualification, be it in the training package or be it in the accredited course. However, if the student is unable to function and apply their knowledge and skills in the workplace, without knowing the detail of that example, it would suggest to me that there would need to be some inquiry as to whether the assessment was in fact properly done.

CHAIR—What if the assessment was properly done? Isn't the test still whether you actually have the skills rather than whether the assessment was properly done? It may be a bit of a semantic point. Senator Back.

Senator BACK—You heard the Australian Chamber of Commerce and Industry this morning talking about criminal provisions and, had we heard from the Master Builders, I am sure they would have drawn attention to a comment they made on page 2 of their submission:

Master Builders has a further concern with the offences provisions in Part 5 of the National VET Regulator Bill. As a general principle, Master Builders does not believe that criminal penalties are called for in relation to breaches of the Bill (which are essentially matters of a ‘fair trading’ kind) and strongly recommends criminal penalty provisions should be removed.

They also went on to give an example in terms of the issuing of a qualification. Can you tell us the extent to which these matters are being taken on board in the drafting of the final phase of the legislation, those raised by both the chamber and Master Builders, to mention two.

Ms Quagliata—I cannot really add much more than what I said earlier about the fact that criminal sanctions exist now. They were part of the model clauses back in 2002. They exist in WA. I would, as I said, think that the importance is to ensure that the legislation gives the national regulator the capacity to deal with the worst case scenarios, which existed, as we all know, in the international sector back in 2009. So of course the bill allows, as you said, for an escalating suite of sanctions and it would be up to the regulator to use them appropriately.

CHAIR—Before we go on, this may be the time to talk about the consultation generally. Maybe you could take us through that, because it occurs to me that everyone is strongly supportive of having a national regulator. Apart from the Victorian and Western Australian governments, everyone is strongly supportive of that. But there is a lot of criticism about things not being in the bill and things not being the way they are wanted. There has also been some criticism of the consultation process, not by everybody but by most. Could you take us through the process of consultation. It might be good information for the committee.

Ms Quagliata—Yes, Senator. Thank you for the opportunity. It is attached to the back of the Commonwealth submission, but I will take you through the process.

CHAIR—It is always embarrassing for you to point that out to us, but I will forgive you!

Ms Tregurtha—Oh, apologies. I just meant that if you want the detail without having to take notes from what I am saying, it is there. The difference between the approach that has been taken by the VET Regulator and TEQSA—and I raise that because that is the majority of the criticism that I have heard today—is that we consulted prior. I will talk first about the department and the policy area, and then I will hand over to my colleague about the interim regulator and the consultation that they have been having since they were established towards the end of last year. The COAG decision that agreed to establish the National VET Regulator occurred in November 2009 and by February the Commonwealth was in discussions with the states and territories. We commenced with remembering that the mandate that was given by the states and territories by COAG was for the establishment of a national VET regulator to replace the nine state, territory and NARA regulators that existed.

So the starting point was that we did a comparison of all the pieces of legislation that were in each of the states and we discussed those with the states and territories. On 10 March we had a roundtable with the peak industry bodies, including the ACTU, AiG and ACCI. NFF and BCA were invited but could not attend. We then had state meetings and open consultations with an open invitation that was distributed by each of the regulators in each state and each of the peak bodies, an open invitation for an open consultation in each state and territory. They took place in March and April.

We also held a specific industry consultation with ACPET on 19 March and with ERTOA and TDA in separate meetings on 22 March. We had further industry consultations with GTA on 15 April, another industry consultation with ACPET on 19 April, another industry reference group on 23 April, and industry consultations roundtable with ACPET, ERTOA and TBA on 5 May. We then had a further exposure draft process which occurred after the legislation was drafted in September and October.

CHAIR—When was that, last year?

Ms Quagliata—That was last year.

CHAIR—So that is the first time the bill was—

Ms Quagliata—That was the first time the bill was exposed for comment.

CHAIR—That was September-October.

Ms Quagliata—That was the end of October. The bill was drafted in October because there was the election in between. So from when we had our consultation that went up to May and June there was a meeting of all the states and territories. We then got into the election period and drafting occurred in October and we had the first exposure draft process at the end of October.

CHAIR—Everyone agrees on the process of actually getting the regulator. I was more specifically interested in consultation around the bill itself.

Ms Quagliata—The point I wish to draw out is that the consultations which took place happened early, so we used the consultations and the processes to inform the discussions we had with the states and territories and the drafting of the legislation, which took place in September-October.

CHAIR—We have established that I have not read the attachment about the consultation process, but you are now telling me that that actually ended with the draft legislation at the end of October last year.

Ms Quagliata—It ended with the process that the department took, that I as part of—

CHAIR—The criticism is not on the fact that we are having a national regulator or generally what it is supposed to do; it is more to the detail of the legislation. That is what I am interested in. What opportunity have those that are complaining to us had to put their complaints to the department about the form the legislation takes?

Ms Quagliata—As I explained, the legislation had the exposure draft process in October and by November—

CHAIR—Tell me what that process was.

Ms Quagliata—That process was one day in which in the morning the stakeholders were taken through the provisions of the legislation and provided a copy of it.

CHAIR—Can you provide us with a list of who the stakeholders were?

Ms Quagliata—No, I do not have it here. It was almost everybody.

CHAIR—I do not need it now.

Ms Quagliata—I will provide that, yes. Then in the afternoon there was the opportunity to discuss it with not just the Commonwealth officers that have been there in the morning but with the states and territories as well. The legislation was obviously negotiated with the states and territories because it is a text-based referral. I would also like to make the comment that on 29 October there was the exposure draft process, and at the end of November, New South Wales—before the proroguing of its parliament—passed its referral of powers legislation tabling the text of the Commonwealth legislation.

CHAIR—If this bill, as it is now, is amended, where does that leave the New South Wales referral?

Ms Quagliata—Thank you for asking that. In the letter from our minister to the Senate Standing Committee for the Scrutiny of Bills, the minister states, ‘The main bill and the transitional bill rely on a text based referral of powers from New South Wales. If there is amendment of the Commonwealth bill then the New South Wales referral will not support the enactment of that amended bill. This will be the case, even if only a small number of amendments are made. Any amendments to the text of the main bill other than purely editorial changes will therefore delay or prevent the establishment of the national VET regulator.’

CHAIR—So it is really an option for the parliament as a whole, and the Senate in particular, as it is either all or nothing. I suppose if Victoria is out then Western Australia is out and New South Wales is out. There is no point, is there? Sorry, I should not ask you that question. I am just wondering where that leaves us.

Ms Quagliata—I did mean to—

CHAIR—I know you did not refer the bill to the committee, so it is not your fault!

Ms Quagliata—I did mean to hand over to my colleague about the consultations that have happened since in relation to the actual setting up of the regulator and the operational arrangements of the regulator, if you wish to hear about that.

CHAIR—I think that is good, thank you Mr Smyth.

Mr Smyth—Since the task force was set up we have been engaged, along with the interim chair, Kaye Schofield, in a fairly intensive consultation process with all stakeholders. I cannot imagine a group which has a high priority in here that we have not met with one on one, at least, or probably on a number of occasions to sound them out on how we would implement the legislation, what would the nature and character of the VET

regulator be and the regulatory model that we would adopt. We have certainly met with provider groups and TAFE directors like Pat, in particular. We have met with all of the industry skills councils individually and as a collective group, I think, on two or three occasions, and we have met with Skills Australia and various other bodies.

CHAIR—Since when?

Mr Smyth—Since September or October, when we started doing this.

CHAIR—I do not want you to take this the wrong way, but if I said to you, ‘Well, so what?’ What is the point of talking to them if we are in this situation where nothing can be changed because that undermines the referral? There is consultation and there is consultation; my view of consultation is that you seek people’s views that you will then seriously consider. That is genuine consultation. But if we are in this position where everything is set in stone because of the referral process then it is not really consultation, is it? I did not mean that to be disrespectful or criticism in any way at all. I am just making the point.

Ms Quagliata—The legislation provides a framework. It does not set out the operational process that the regulator would take, and so issues around risk and audit are still issues where the regulator is developing its operational processes. Likewise, the Commonwealth has been fully aware of the need to ensure that flexibility in the system is retained. The standards that will be applied by the regulator are not set out in the legislation but are put in legislative instruments that are referred to in the legislation.

Mr Smyth—I think I can reflect honestly that all of the consultations the task force had in establishing the model over the months elicited a really positive response about the direction the national VET regulator was going in. I did not have a sense, until I read the submissions to the committee, that there were any underlying or strong reservations about the legislation. Often groups strayed into concerns about standards, and of course we were not there to set the standards; we were there to regulate the standards and to create a model to do that regulation. Generally, when you could clarify the demarcation between standards and the regulator, the responses that we had throughout the process were really positive and encouraging, and they did not make us feel that we got the legislation wrong.

Our view, the view of the task force setting up the regulator, would be that, when we look at state and territory regulation, there is great diversity in what they have done. We have worked very closely with each state and tried to pull out the best practice from each state and territory. It has been very clear to us that they are all very different. Maybe they are all right, but maybe they are not.

CHAIR—Of course they are!

Mr Smyth—They tell us they are, I would have to say. We have been able to pull together the best practice—in a way that gets very strong encouragement from industry but also from the team of people that we have working with us, regulators from Queensland, Tasmania and Victoria—to develop a positive regulatory model. Over the next while we will collect data about levels of compliance in a national sense. That does not exist now. In each state and territory, what they can tell you about the history and the pattern is variable. They are all on different systems. They collect different things. I believe that we will be well able to inform the development of standards in a year’s time through the work that we do. That is the sense that we have had—that, if it is not perfect, we have time to work nationally to collect the data and information and to gather experience that can inform the standards and processes that we go through. Throughout the process of developing the regulatory model from the legislation, I have not had a strong sense that there is uncertainty or dissatisfaction with the legislation.

Senator BACK—Mr Smyth, I want to go back to the advice you gave us a few moments ago regarding New South Wales. I understood that, if changes to the main text, other than editorial changes, occur we will place it outside the referral of power for New South Wales. Did the department get advice to that effect?

Ms Tregurtha—Yes.

Senator BACK—Can you take on notice whether or not the committee can receive that advice?

Ms Tregurtha—We would have to take that on notice because it does go to some broader constitutional issues.

Senator BACK—It seems to be critically important—it almost begs the question of what we are doing here as well. I am trying to come to an understanding of just what changes would put it outside the terms. Would it be the proroguing of the New South Wales parliament—would that mean it would have to go back for

endorsement by a new parliament in New South Wales? Should there be major changes, or should there be any changes other than correction of a few typos?

Ms Tregurtha—We can take that on notice if you like. I do not know if I am qualified to make the judgment about what changes would push it to that point. Broadly, if it did get to that point, the practical effect would be that the referral from New South Wales would not be effective, and then it would be a question of where we went from there.

Senator BACK—It also begs the question, not so much for the territories, I suppose, but for Tasmania, South Australia and Queensland—I wonder whether those referrals of power have occurred and, in the event that they have not—

Ms Quagliata—No, those referrals have not happened. The states and territories are signing up at the moment to an intergovernmental agreement where the referring states and territories have undertaken to have legislation passed in 12 months from when the Commonwealth legislation commences. But I might just add that in relation to the legal issues around the referral of powers and amendment that, of course, the views of the states and territories and their attorneys-general are just as important in terms of deciding where that line is between amending the amendments going too far.

Senator BACK—That is what gives you the 12 months you were speaking about, Mr Smyth, in terms of sorting out these various elements?

Mr Smyth—That is correct.

Senator BACK—If I can go to Western Australia's position. I have not yet seen it in a hard copy; all I have seen is a letter from the honourable minister, Peter Collier. I do not know whether the secretariat has such a letter, but if I can summarise it: going back to COAG in 2009, according to the WA Minister for Training and Workforce Development, Peter Collier, the then Prime Minister, Mr Rudd, gave an undertaking to the state Premier, Mr Barnett, that referral would not result in regulatory takeover of WA TAFE colleges. Can you explain to me the extent to which this proposed legislation would interfere with that undertaking?

Ms Quagliata—I am not in a position to be able to comment on that undertaking and the extent of that undertaking. I am therefore unable to comment on what this legislation would do in relation to that undertaking. What I can say is that, in COAG 2009, it was noted by WA and Victoria but agreed by all the other states and territories that in the non-referring states there would be mirroring legislation. Also, the national regulator would have the jurisdiction to regulate those providers in the non-referring states who have international students or who operate interstate.

Senator BACK—I do not know whether you have a copy of Peter Collier's letter in front of you. If you do not, I will quote the last paragraph: 'While mechanisms have been included in the Commonwealth bill that may allow for regulation of these providers by the Western Australian regulator, under delegation from the national regulator, this arrangement does not provide adequate certainty that the state will retain regulatory responsibility for TAFE colleges. Western Australia considers that the Commonwealth bill must be amended to expressly exclude its state owned public providers from the Commonwealth legislation or provide that the regulation of these providers must be delegated back to the Western Australian regulator.' Then over the page, it goes on to say, 'Commonwealth officers'—which I imagine is your department—'have advised that the option to exclude Western Australian state owned providers from legislation is not acceptable because the Commonwealth does not wish to differentiate between regulatory arrangements.' Can you explain to me in terms that are clear to me, where that places the relationship between this NVR process and the Western Australian government?

Ms Quagliata—I cannot comment on where that places the Australian government with Western Australia; that is a question for my minister. What I can say is that the legislation, the bill, puts into place the agreement of COAG of 2009, and the National VET Regulator has jurisdiction over providers in Victoria and WA who have international students or operate interstate.

Senator BACK—Taking that assertion to its conclusion still leaves us with the inevitable circumstance that we have duplicity. We have national regulation over those activities involving overseas students and those across state boundaries and we have a different regulation structure for those areas that do not.

Ms Quagliata—Yes. That would be correct—only in those two states.

Senator BACK—In those two states, yes—the aspirations of RTOs and others who were hoping so. The question becomes—you heard it earlier in the day and I will ask it yet again—is there capacity to resolve this

logjam by moving towards a process in which there is national consistency and delegation of those powers through to the states which wish to enact the regulations and the audit processes themselves, having regard for the nationally consistent standards and perhaps even a reporting process to satisfy the national regulator of the standards of audit? Otherwise we are going nowhere in this, are we? I will get to WA and Victoria in a second, but clearly—

Ms Quagliata—The comments that you are making and the options that you are raising were considered by COAG in 2009. The decisions of COAG are as I said earlier. I would like to note factually that there were several attempts in the past to harmonise the state based regulatory systems. As you know, there are national standards against which training providers are regulated and they were introduced in the 1990s. There were model clauses for state legislation which were introduced in 2002. There have been at least two- to three-yearly, I think, moderation workshops of auditors from each of the states and territories that take place through the auspices of the National Quality Council. And yet, despite the aspiration and the acknowledgement that consistency was an important part of the VET sector, there were still variations and inconsistency across the nation on these issues.

Senator BACK—I do not want to go through all 40 points made in the Victorian submission and I do not know if you have in your possession the Victorian submission, but I read point 29 to previous witnesses which I noticed you followed:

This is particularly the case given a Victorian commitment to enact mirror legislation and to create a Memorandum of Understanding between regulators to ensure consistent application of the national standards. Rather, in Victoria's view, most of the difficulties that have occurred have arisen from national standards that have been vaguely expressed and lack the degree of certainty and clarity needed for effective regulation and enforcement.

I do not expect you to comment on or defend that except to say that, if there is truth in that statement, then the move to effectively use constitutional powers may be misplaced and misguided because the fault does not lie with the states. If there is any validity in that comment then it does not lie in state enforcement as much as, in the words of the Victorians, vague expression and lacking a degree of certainty and clarity.

Ms Quagliata—Without commenting on the validity of that statement as to whether it was the actual enforcement or the standards that were the issue in Victoria, I can comment to say that in the December 2009 COAG meeting there was also a decision on the part of COAG to strengthen the standards which apply. Those standards are the Australian Quality Training Framework standards. They were strengthened in a number of ways in a process in 2010 to include a requirement for fit and proper person standards to be met; for financial viability standards to be met; and for continuous improvement not to be seen as an alternative to meeting the standards but rather being in addition to meeting the standards. There was a separation of the standards for initial registration with the standards for continuing registration, as that resulted in some uncertainty as to how the standards applied in relation to initial registration, and there was a strengthening of the data requirements, in that there is now a requirement that registered providers keep AVETMISS compliant student records.

Senator BACK—The concern I have is that you are referring back to and relying on the decisions made in the outcome of the COAG meeting in December 2009, yet when I read Collier's submission again he makes the point: 'The Commonwealth bill does not reflect the assurance given to Premier Barnett from the then Prime Minister at the COAG meeting in December '09 that these reforms would not result in regulatory takeover of state owned public providers, including Western Australian TAFE colleges, and that Western Australia then as a result does not support the Commonwealth bill in its current form as it makes provision for the Commonwealth to draw on its constitutional powers to regulate all multijurisdictional and international education providers, including state owned public providers.'

I have a real difficulty if we are going to draw upon the conclusions in the outcome of COAG to go down one path but then not accept an assurance given at the same COAG meeting which clearly, in the case of the Western Australian jurisdiction, sees that it is constitutionally compromised. Without going through the Victorian document—because I am sure you will want to consider that, and I will be asking you to take on notice a response back to the committee, because the Victorian document is obviously much more detailed—nevertheless it does go to the constitutionality of the provision of these services by states. The Victorians get into all sorts of legalese that you would understand far better than I would in terms of the anomalies that exist between the legislations in the two and in fact points to a complete separation between the referring states and the two non-referring states. I would have thought that, before this legislation goes finally to its consideration in the Senate, those anomalies would need to be addressed—and I think better addressed at this stage rather than later.

Ms Quagliata—So the committee is asking for a response from the department?

Senator BACK—I certainly am. I have not consulted with the chairman and I certainly would not be asking you in this forum now to respond to 40 points made by the Victorians, but they are detailed and I for one would certainly want to know the department's reaction and the minister's reaction.

Ms Quagliata—I will have to take that one on notice.

Senator BACK—Yes, of course. I understand that. But I do ask you again to consider this constitutional logjam that exists now. Clearly what we are going to end up with—unless it is in some way negotiated—is exactly what everyone is hoping we do not end up with. That is a national VET regulator overseeing certain aspects especially now to do with delivery from TAFE in Western Australia and Victoria and a separate set for those over which the Commonwealth does not or chooses to not exercise its constitutional rights.

Ms Quagliata—I think we will do a response, Senator.

Senator BACK—I was going to address some other questions with regard to aspects of the audit process and the risk managed approach but, taking your comments on board, I think for both of you it is as yet premature to get too far into that discussion. Would that be right?

Mr Smyth—I am happy to comment on where we are moving with risk assessment and how that would take shape.

Senator BACK—Perhaps if I could introduce it briefly by saying that my reading of the answers to questions today would appear to support that the audit processes to date, however adequately or inadequately undertaken at state and territory level, seem to have focused principally on inputs and outputs rather than outcomes. Without going back too much back into the famous baking exercise one would have thought, if an audit process was undertaken and you were to actually look at the outcome of that young person's two weeks of training, it would not take very to establish both from the student's point of view and from their employer's point of view that the outcomes were hopelessly inadequate. Is it the case in the development of the audit processes that there will be concentration given to outcomes as measured by the graduated student and by the employer for whom they are working?

Mr Smyth—If you look at the current state and territory regulatory processes and you used an 80/20 type of mix you would have to say that 80 per cent of the effort currently goes into processing applications and responding to an application for registration, re-registration, extension of scope and so forth. But a much smaller proportion of effort goes into risk analysis, risk management and risk assessment processes. I guess we have looked at ISO 31,000 as underpinning a risk process and what we would want to do. In the organisational model that we have developed we have fairly well flipped out everyone that we certainly would need to continue and must continue to process applications that come to us. We have invested much more in a risk assessment process and many, many more staff resources into risk assessment. We will have an industry engagement team, who will work closely, and we are developing MOUs with each of the industry skills councils and the licensing bodies. We will take that down to the state bodies when we get to the next stage of our consultations.

We want to significantly shift risk assessment that is often best on profile. If you are big, have lots of sites and the impact of your failure would be great you are a high risk, as opposed to if you are small therefore you are low risk. Our belief is that 10 small RTOs can create as much risk as a big RTO. We have changed our round to put much less emphasis of profile, size and skill and much more on governance and educational expertise of the people and much, much more on performance. Also in bringing in student complaints and industry intelligence, I guess, and data on quality performance. We are working currently with NCBER to try to find some intelligent way to use the data that exists in the system so that we do not use simplistic performance indicators but find relationships between performance indicators. For example, they have two staff but they deliver 100 qualifications. That is a pretty risk business. We are trying to find those intelligent indicators that will direct us more towards outcomes that we see are not good and will increase the risk profile of an RTO. Those are the sorts of things we have been discussing a lot with industry bodies, and they are enthusiastic about working with us to implement them.

It has been a good process. We are well down that track. We have much of the processes done and developed. As I said, we are still doing some work with NCBER on data indicators. Again it is going to take, probably, 12 months to get those indicators effective and then collect the data that we can use to do it. We certainly feel we have a better and different model and one that pulls good practice—there is a lot of good

practice in states and territories—but develops a new and fresh model with a much different emphasis on what we have had before. That is the opportunity the legislation gives us to go and do that.

Senator BACK—You do not believe that can be implemented by those states that want for whatever reason to continue that audit process.

Mr Smith—It is difficult without commenting on what state practices have been in the past. If we were to look at history and performance, we would still say that it was based fairly much in processing and not in a high-risk management process

Senator BACK—Agreeing with your approach, those delivering it should be equally capable of delivering the new approach, should they not?

Mr Smith—Yes. Within the legislation there is the capability of the commissioners to give a delegation if they saw that as an appropriate thing to do. They would need to be very, very sure that the delegate they were giving it to was capable of delivering the outcomes from the legislation for which they are responsible.

Senator BACK—And they would need to be satisfied, presumably, on some sort of closing of the loop in terms of feedback to make sure that not only are they capable of it but they are actually doing it, whoever they are.

Mr Smith—We have worked through the process because there are other delegations that exist—the Board of Studies for schools and RTOs—so it is not unique not to have those arrangements in place. We have looked at how you would manage that delegation, audit that delegation, perhaps including sampling RTOs that have been delegated.

Senator BACK—And hopefully sampling employers and graduates of the program. Thank you.

CHAIR—Coming back to the consultation process: the exposure draft on 29 October involved one day—and I think you have taken on notice to give me a list of the stakeholders that were at that. It would then appear that the only other consultations after that time were state and territory working groups through meetings about that.

Ms Quagliata—That is right. As I said, the legislation was tabled in New South Wales parliament as part of the referral process.

CHAIR—Sure. People say—and they say it in submissions—that they were not adequately consulted, and I want to make sure that is the case. First of all, I want to be very clear in my own mind what the consultation was, so the draft exposure consultation was a single day for those stakeholders and you are going to let me know who they were. Can you tell me what changes were incorporated from that day?

Ms Quagliata—Not off hand, no.

CHAIR—Were any?

Ms Quagliata—There were changes after that day, but I cannot recall specifically what.

CHAIR—Were there any significant changes?

Ms Quagliata—There was no rewriting of the legislation. The legislation was not finalised until towards the middle of November.

CHAIR—I guess that is the point—and I am not making a value judgment just yet—people are presented with the legislation in the morning; they get an opportunity to comment and make suggestions in the afternoon. That is the level of consultation with stakeholders on the exposure draft.

Ms Quagliata—As I said, we consulted and informed the legislation.

CHAIR—We should wrap up by saying there are a number of things you have taken on notice. I think it would be appropriate—and I know you have agreed to do this—for you to take some time to look at the Victorian submission, which has only come in today and I have not read it yet either, and take the opportunity to advise the committee of the department's view or the government's view on that submission and challenge anything you think needs to be challenged for the benefit of the committee. I am not quite sure how long it will take for the *Hansard* to be up, but again the invitation is there from the committee for you to respond to or correct any of the evidence that you think needs to be corrected—not by yourselves, I mean by others; and by yourselves if it needs to be corrected of course. We are running a fairly tight time frame, so the sooner the better with all of those things, if you can. Is there anything you wanted to say before I close the inquiry?

Ms Quagliata—No.

CHAIR—Thank you for your submission. I am sorry I did not read the appendix on the last submission of the day but I have now. Thank you for your submission and your appearance before the committee today.

Committee adjourned at 3.35 pm