

Chapter 4

Concerns raised by Victoria and Western Australia

Position of the Victorian Government

4.1 From its submission to the committee, it is evident the Government of Victoria (Victoria) has two kinds of concerns with the proposal for national regulation of the VET sector. The first relates to the scope of the National VET Regulator's jurisdiction. The second concerns the implications of the NVR Bill for RTOs and students in Victoria.

4.2 Victoria submitted that it disputes the scope of the National VET Regulator's authority, arguing that the regulator should not manage any RTOs that operate in Victoria.¹ Victoria advised the committee that it did not endorse the COAG agreement under which the national regulator would oversee RTOs that operate in both referring and non-referring jurisdictions or that provide services to international students. Victoria also submitted that 'regulatory responsibility should sit alongside funding responsibility', saying that the state is responsible for approximately 70 per cent of government funding for VET providers in Victoria.²

4.3 Victoria also considered that the NVR Bill 'will have a significant impact on Victoria's VET sector and the State's policy autonomy and responsibility, and could also affect the State's finances.'³ The state identified the following issues with the operation the NVR Bill.

4.4 First, Victoria argued that in contrast to the position in referring states, the NVR Bill will restrict the regulation of TAFE providers and apprenticeships in non-referring states. Victoria noted that clause 9 of the NVR Bill states that the NVR will not interfere with the management of TAFE providers and apprenticeships. In contrast, the Bill does not provide this express guarantee for non-referring states.

4.5 Victoria considered that this will exempt TAFE providers in Victoria registered with the National VET Regulator from their obligations under Victorian law to comply with State Government directions on administrative and policy matters including program delivery.⁴ It was submitted that this potential interference with TAFE management in non-referring states is 'a fundamental flaw that must be corrected before the NVR Bill can become law'.⁵ In relation to the regulation of

1 Government of Victoria, *Submission 18*, p. 5.

2 Government of Victoria, *Submission 18*, p. 1.

3 Government of Victoria, *Submission 18*, p. 1.

4 Government of Victoria, *Submission 18*, p. 3.

5 Government of Victoria, *Submission 18*, p. 3.

apprenticeships, Victoria put forward that, as the exemption is not stated in relation to non-referring states, 'the clear implication of the Bill is that Victorian apprenticeship laws, at least to the extent that they may affect NVR providers, are to be overridden'.⁶ Victoria argued that this 'appears to create a substantial regulatory gap' in the management of apprenticeships.⁷

4.6 In response to this concern, DEEWR advised that it does not consider that the NVR Bill will interfere with the management of TAFE providers or apprenticeships in non-referring states:

The Commonwealth's view is ... that the NVR Bill does not show an intention to cover the field in relation to all matters relating to VET. Section 9(3) specifically confers immunity on NVR registered training organisations in non-referring States from complying with laws dealing with particular listed subject matters, and thereby strongly indicates that those organisations are *not* immune from complying with other laws of the State.⁸

4.7 Second, Victoria submitted that the NVR Bill will reduce consumer protection safeguards for VET students in Victoria. The jurisdiction notes that compared to the focus in the NVR Bill on regulatory and administrative frameworks, '[l]ess emphasis is given to the rights of students, and the obligations of providers in relation to students'.⁹

4.8 Victoria advised that it interprets subclause 9(3) of the NVR Bill as having the effect that Victorian laws regarding the following matters will not apply to RTOs operating in both Victoria and a referring jurisdiction:

- Handling of complaints by students against decisions, actions or omissions of registered training organisations;
- Regulations to set "fair contract terms" for student / provider contracts, and to set standards with which a registered training organisation must comply when dealing with students;
- Power of the Victorian Supreme Court to make, in certain circumstances, an order for judicial administration of a registered training organisation to protect the interests of students.¹⁰

4.9 Victoria submitted that preventing these laws from applying will undermine protections for VET students, as the NVR Bill 'does not contain provisions for

6 Government of Victoria, *Submission 18*, p. 4.

7 Government of Victoria, *Submission 18*, p. 5.

8 Department of Education, Employment and Workplace Relations, Answers to Questions on Notice, 7 March 2011 (received 11 March 2011), p. 9.

9 Government of Victoria, *Submission 18*, p. 5.

10 Government of Victoria, *Submission 18*, p. 4.

complaints systems, fair student contracts or judicial administration of failing providers of the kind found in the Victorian laws that are being displaced'.¹¹

4.10 Third, Victoria noted that it disagrees with the approach adopted in the NVR Bill of containing in the form of a legislative instrument national standards based on the AQTF. It argued that this approach would not promote efficient regulation of the VET sector for '[w]hilst adequate as statements of policy, [the AQTF] are not crafted to serve as the basis for a robust regulatory system in the modern administrative law context'. Victoria concluded that '[m]ore work needs to be done to articulate the standards with greater clarity and precision to give providers and regulators better guidance on what they require'.¹²

4.11 In response, DEEWR advised that '[t]he National Standards Council will continue to develop and refine the national standards'.¹³ The committee notes that the response does not address Victoria's concerns about the appropriateness of using the AQTF as the basis of national standards.

4.12 Victoria also noted its concerns with the Transitional Bill, arguing that the requirements to transfer records from state regulators to the Commonwealth is contrary to Victoria's privacy legislation. Victoria submitted that amendment of its privacy legislation is required before information may be transferred.¹⁴

4.13 Victoria recommended that the NVR only regulate RTOs in referring states.¹⁵

4.14 Victoria also recommended amendments to the NVR Bill to 'establish parity of treatment between referring and non-referring States'.¹⁶ Victoria submitted that clauses 9 and 10 should be amended to ensure that the laws of non-referring states regarding the management of TAFE providers and apprenticeships are not overridden, and to preserve consumer protection laws. As an alternative, Victoria recommended the Bill allow the Commonwealth Minister to exempt certain state laws from the operation of the NVR Bill, arguing that this model is provided for in clause 9(3) of the Tertiary Education Quality Standards Agency Bill (the TEQSA Bill).¹⁷

4.15 The committee notes DEEWR's advice that the NVR Bill is not intended to cover the field for all VET matters. The committee also notes that DEEWR informed

11 Government of Victoria, *Submission 18*, p. 4.

12 Government of Victoria, *Submission 18*, p. 5.

13 Department of Education, Employment and Workplace Relations, Answers to Questions on Notice, 7 March 2011 (received 11 March 2011), p. 10.

14 Government of Victoria, *Submission 18*, p. 5.

15 Government of Victoria, *Submission 18*, p. 5.

16 Government of Victoria, *Submission 18*, p. 6.

17 Government of Victoria, *Submission 18*, p. 6.

the committee that the TEQSA Bill does not operate as Victoria suggests but authorises the Minister to override additional laws.¹⁸

4.16 The committee recommends that Victoria and the Commonwealth discuss amending the NVR legislation to incorporate protections for students as consumers of VET services.

4.17 Victoria also submitted that a Memorandum of Understanding should be developed between the Commonwealth, Victoria and Western Australia to ensure a consistent national approach to VET regulation.¹⁹ In response, DEEWR advised the committee that the National VET Regulator and Victoria are negotiating an agreement regarding the implementation and operation of aspects of the NVR Bill.²⁰

Position of the Western Australian Government

4.18 The Government of Western Australian (Western Australia) has advised that it considers that the NVR legislation is not in line with the COAG agreement:

The Commonwealth Bill does not reflect the assurance given to our Premier from the then Prime Minister at the COAG meeting in December 2009 that these reforms would not result in the regulatory take-over of State owned public providers, including Western Australian TAFE Colleges.²¹

4.19 The committee notes that the COAG agreements of December 2009 and February 2011 do not refer to state-owned RTOs. However, Western Australia advised that:

...from the discussion that occurred at COAG, there was a clear understanding from officials who were attending and the Premier that the undertakings had been made: that the WA TAFE providers would not be party to the national VET regulation arrangements. It was on this basis that the Premier agreed to the recommendations made at the meeting.²²

4.20 Western Australia argued that the NVR Bill does not ensure that the state will retain responsibility for regulating state-owned RTOs. Western Australia further advised that the state had attempted to explore options with the Commonwealth, including that the National VET Regulator delegate authority over Western Australian

18 Department of Education, Employment and Workplace Relations, Answers to Questions on Notice, 7 March 2011 (received 11 March 2011), p. 10.

19 Government of Victoria, *Submission 18*, p. 5.

20 Department of Education, Employment and Workplace Relations, Answers to Questions on Notice, 7 March 2011 (received 11 March 2011), p. 10.

21 The Hon Peter Collier MLC, Minister for Energy; Training and Workforce Development; Indigenous Affairs, *Submission 16*, p. 1.

22 Mr Mark Brown, Director, Department of Education Services, Western Australian Government, *Proof Hansard*, 9 March 2011, p. 3.

state-owned RTOs to the Western Australian regulator, however the matter was not resolved.²³

4.21 At the hearing on 9 March 2011, Mr Mark Brown, from the Western Australia Department of Education Services, advised that Western Australia considers TAFE providers are low risk and authority for their regulation should rest with state regulators. Mr Brown explained that Western Australia is of the view that 'a state regulator would provide a greater level of quality assurance to our state government than what a national regulator would be able to provide'.²⁴

4.22 Concern about the regulation of state-owned RTOs is important to Western Australia's reluctance to participate in a national VET system. Western Australia advised that unless the matter is resolved, it is unlikely the state will apply the national VET regulation framework:

It will rigorously apply the national standards, will enter into MOUs require[d] for information sharing and so on, and will mirror the Commonwealth legislation in its state parliament but only when it has the surety it requires that WA state owned providers will continue to be regulated by the state regulator, as was agreed at COAG.²⁵

4.23 To this end, Western Australia proposed an amendment to the NVR Bill to ensure that the state retains responsibility for regulating state-owned RTOs:

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.²⁶

4.24 In addition to this central matter, Western Australia is also concerned that national regulation will reduce standards for VET providers and students in Western Australia. Mr Brown reported that a survey conducted by the Western Australian Department of Training and Workforce Development suggests approximately 86 to 87 per cent employer and student satisfaction with the state's VET program.²⁷ The committee was further advised that 'Western Australia is a nationally recognised a leader in VET regulation and one of our key concerns is that there will be a lowering of the standards to meet the requirements in other states and territories'.²⁸

23 Mr Mark Brown, *Proof Hansard*, 9 March 2011, p. 6.

24 Mr Mark Brown, *Proof Hansard*, 9 March 2011, p. 6.

25 Mr Mark Brown, *Proof Hansard*, 9 March 2011, p. 2.

26 The Hon Peter Collier MLC, *Submission 18*, p. 1.

27 Mr Mark Brown, *Proof Hansard*, 9 March 2011, pp. 5-6.

28 Ms Stephanie Trestrail, Assistant Director, Department of Education Services, Western Australian Government, *Proof Hansard*, 9 March 2011, p. 4.

4.25 Western Australia also disputed that the Commonwealth has the constitutional authority to regulate providers in Western Australia who also operate in a referring state.²⁹

Conclusion

4.26 Like all stakeholders, the committee would like to see a national approach to which every jurisdiction could fully subscribe. All jurisdictions other than Victoria and Western Australia support the current proposal, and New South Wales has established a referral of powers that will allow implementation of these important VET reforms to take place.

4.27 It is important that the momentum for change not be lost, and that the National Vocational Education and Training Regulator be established, giving concrete form to a national VET system. The committee strongly supports continuing discussions with a view to ensuring the national system eventually includes all jurisdictions, but without compromising national consistency. It notes that Victoria and Western Australia, notwithstanding their concerns, have committed to passing mirror legislation. The committee hopes that, in time, every state will become part of a national system that promises greater consistency, greater quality, and reduced complexity for training providers.

Recommendation 8

4.28 The committee recommends that negotiations between jurisdictions continue with the aim of ensuring that all jurisdictions refer powers.

Senator Gavin Marshall

Chair

29 Ms Stephanie Trestrail, *Proof Hansard*, 9 March 2011, pp. 2 – 3.