

# CHAPTER 5

## Regulation

### The regulatory framework

5.1 The Department of Education and Training is responsible for overseeing the VET sector's quality assurance regime:

Providers, both public and private, are required to satisfy a suite of requirements to gain entry to the system and to continue to operate as Registered Training Organisations (RTOs) and offer nationally recognised training.

These are known collectively as the VET Quality Framework consisting of

- Standards for Registered Training Organisations (RTOs) 2015;
- Australian Qualifications Framework (AQF);
- Fit and Proper Person Requirements;
- Financial Viability Risk Assessment Requirements; and
- Data Provision Requirements.

The Framework is supported by the following requirements:

- Standards for Training Packages;
- Standards for VET Accredited Courses;
- Standards for BET Regulators 2015; and
- Risk Assessment Framework.<sup>1</sup>

5.2 Since 2011, Australia's VET sector has been regulated at the national level by the Australian Skills Quality Authority (ASQA), with the exception of Victoria and Western Australia, whose VET sectors are regulated by the Victorian Registration and Qualification Authority and Western Australia's Training and Accreditation Council, respectively.<sup>2</sup>

5.3 ASQA, under the National Vocational Education and Training Regulator Act 2011, is responsible for regulating RTOs that provide nationally recognised VET, and its functions include:

- Registering training providers;
- Registering organisation on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to deliver training to international students on student visas; and

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1 Department of Education and Training, *Submission 48*, pp. 8-9.

2 Department of Education and Training, *Submission 48*, p. 9.

- Ensuring that organisations comply with the conditions and standards for registration, including by carrying out compliance audits and accrediting VET courses.<sup>3</sup>

## Recent reforms and the New Standards

5.4 As of 1 January 2015, the revised Standards for RTOs 2015 (Standards) came into effect. Endorsed by the Council of Australian Governments' Industry and Skills Council and enabled by the National Vocational Education and Training Regulator Act 2011, the Standards describe the outputs by which Registered Training Organisations in Australia can be assessed.<sup>4</sup>

5.5 Eight Standards now govern the RTO sector:

- Responsive to industry and learner needs;
- Quality assurance;
- Secure and accurate certification;
- Accessible information about services;
- Informed and protected learners;
- Fair complaints handling;
- Effective governance and administration; and
- Legal compliance.<sup>5</sup>

5.6 These Standards were introduced after the commencement of this inquiry. While generally regarded as a positive step in the regulation of private VET providers, several witnesses argued that the Standards did not go far enough in preventing the unscrupulous behaviour of some RTOs.

5.7 It was noted by the Consumer Action Law Centre that the new Standards apply primarily to VET Fee-Help eligible courses, meaning that students in other courses are still exposed to many of the problems evident in the sector.<sup>6</sup>

5.8 One example of this identified by the law centre relates to when debts are incurred:

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3 Department of Education and Training, *Submission 48*, p. 9.

4 ASQA website, About the Standards for RTOs 2015: <http://www.asqa.gov.au/users-guide-to-the-standards-for-registered-training-organisations-2015/about-the-standards-for-rtos/about-the-standards-for-rtos.html>, accessed 6 September 2015.

5 ASQA website, *Users' Guide to the Standards for Registered Training Organisations 2015*: <http://www.asqa.gov.au/users-guide-to-the-standards-for-registered-training-organisations-2015/users-guide-to-the-standards-for-registered-training-organisations-2015.html>, accessed 6 September 2015.

6 Consumer Action Law Centre, *Submission 13.1*, p. 2.

Students who choose to pay for their study with VET FEE-HELP loans now have far greater consumer protections than those who choose to pay from their own pocket. However, many of the poor practices that led to the VET FEE-HELP reforms are also seen in non-VET FEE-HELP courses.

Of particular concern are courses, including those comprising multiple years of study, where students are liable for the full cost of a course upfront, even if they never attend a class. This is in stark contrast to university, where you incur liabilities incrementally. From 1 January 2016, tuition fees for VET FEE-HELP courses will also have to be spread evenly over four periods for each course. Students will receive invoices two weeks before each census date. The Federal Government said this is 'effectively banning the practice of the VET FEE-HELP loan debt for the whole qualification being levied on a student in one hit upfront.'

The disparity in protections between VET FEE-HELP and non-VET FEE-HELP students is not only unfair, but also significantly reduces competition between non-VET FEE-HELP training providers as students are unable to move between providers.<sup>7</sup>

5.9 Further, as discussed in Chapter 3, the committee heard evidence that the new Standards had not had any impact on the behaviour of some private providers. Enforcement, it was argued, needs to be strengthened.<sup>8</sup>

### **The role of the Australian Skills Quality Authority**

5.10 A common theme amongst submissions<sup>9</sup> was the argument for a more powerful regulatory role for ASQA). For instance, the Consumer Action Law Centre recommended that ASQA:

- (a) be given enhanced enforcement powers, including appropriate administrative powers to impose penalties for non-compliance with relevant standards;
- (b) increase the frequency of compliance audits of private VET providers and education brokers; and
- (c) increase enforcement action against VET providers and education brokers that contravene the relevant standards. Action should be based on a clear strategic compliance and enforcement policy.<sup>10</sup>

5.11 The rapid expansion of the VET market, in particular the effects of opening up contestable funding to for-profit providers, has meant that ASQA's role as the regulator of the sector has been undermined by the sheer number of RTOs they were

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7 Consumer Action Law Centre, *Submission 13.1*, p. 2.

8 *Committee Hansard*, 2 September 2015, p. 10.

9 TAFE Directors Australia, *Submission 12*, p. 1.

10 Consumer Action Law Centre, *Submission 13*, p. 3.

required to regulate. As noted in Chapter 2 of this report, as of 31 December 2014, ASQA was responsible for the regulation of over 85% of all RTOs in Australia, totalling 3,898.<sup>11</sup>

5.12 A key balancing act for the regulator in any industry is ensuring that regulation and enforcement are efficient in preventing or responding to non-compliance without overly burdening those who are seeking to comply.

5.13 Multiple submitters made the case for a regulatory regime that distinguishes between established providers who present a low risk to students and governments and newer providers or those who have demonstrated compliance issues in the past.<sup>12</sup>

5.14 For example, the AI Group argued:

On the one hand [ASQA's] auditing regime must continue to identify non-compliance and assist in rectifying training provider practices which are damaging the system. On the other hand, providers of proven quality should not be faced with heavy regulatory requirements.<sup>13</sup>

5.15 ASQA itself argues that its risk-based auditing process is designed to achieve that end:

ASQA has been working to implement a reform program to reduce the regulatory burden on high performing RTOs. A key outcome of the program is ensuring those RTOs with a strong track record of compliance are free to operate their businesses without unnecessary regulatory intervention by ASQA.

That outcome also allows ASQA to focus its attention on those areas of greatest concern.<sup>14</sup>

5.16 NCVER, in discussing international trends regarding the regulation of private VET providers, noted:

Risk-based approaches to reduce regulatory burden on the regulated and the regulator, and to improve the efficient use of resources, are also being commonly applied. This is especially the case for those systems which have given substantial independence and autonomy to providers. The identification of key risk factors helps regulators to establish audit or review schedules and to focus reviews on specific issues.<sup>15</sup>

5.17 ASQA explained the rationale behind the risk-based approach in its submission:

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11 Australian Skills Quality Authority, *Submission 60*, p. 3.

12 The Australian Industry Group, *Submission 30*; Australian Institute of Professional Education, *Submission 10*, p. 5; Adult Learning Australia, *Submission 35*.

13 The Australian Industry Group, *Submission 30*, p. 3.

14 Australian Skills Quality Authority, *Submission 60*, p. 7.

15 National Centre for Vocational Education Research, *Submission 19*, p. 5.

The primary risk that a VET regulator must manage relates to the potential for adverse impacts on students, employers, industry, governments, and the Australian community from the delivery of substandard training and assessment. In broad terms, this is the risk that an individual is certified by a RTO as possessing competencies that do not accurately reflect his/her true ability to apply the associated skills and knowledge.

Other risks to be considered by a VET regulator include:

- reputational damage to the sector caused by sub-standard RTO performance or inappropriate behaviour; and
- ineffective social and economic planning by government due to an inability to access accurate information about VET or to supply industry with adequate, appropriately skilled, workers.<sup>16</sup>

5.18 ASQA uses a risk profile approach to determine the type and frequency of scrutiny activities to apply to an RTO. The argument is that this approach allows the regulator to operate fairly and devote resources appropriately and efficiently.<sup>17</sup>

5.19 As at 28 February 2015, according to its website, ASQA had profiled RTOs as follows:

- High risk-385 providers (9.9 per cent);
- Medium risk-818 providers (20.9 per cent);
- Low risk-2263 providers (57.9 per cent);
- No rating assigned-442 providers (11.3 per cent).<sup>18</sup>

5.20 It is to be expected that a higher proportion of private providers will be assessed as high risk than the figures above suggest, given that the risk ratings may include public providers. According to the *Regulation Impact Statement: Proposed changes to the Education Services for Overseas Students framework*:

up to 15 per cent of education institutions could be assessed by the relevant quality assurance agencies as being 'high risk'. This assumption is intended to be a likely average across education sectors (from the perspective of calculating deregulatory savings), taking into account that:

- it is higher (by 50 per cent) than the 10 per cent of private registered training organisations assigned a high risk rating by ASQA for its quality assurance purposes
- VET institutions are generally considered to pose a higher risk of financial collapse and/or closure than other sector participants (such as schools and universities)

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16 Australian Skills Quality Authority, *Submission 60*, p. 4.

17 Australian Skills Quality Authority, *Provider risk ratings*, <http://www.asqa.gov.au/about/risk-based-regulation/provider-risk-ratings.html>, accessed 9 October 2015.

18 Australian Skills Quality Authority, *Provider risk ratings*, <http://www.asqa.gov.au/about/risk-based-regulation/provider-risk-ratings.html>, accessed 9 October 2015.

- there is such diversity across the sector and in the way education services are delivered
- there has been substantial growth across sectors in international student enrolments over the last year.<sup>19</sup>

5.21 However, this approach was also criticised, including by representatives of RTOs, for being inadequate in determining the level of quality a VET provider is delivering. For example, Ms Bond of the Guild Pharmacy Academy stated:

We [the Guild Pharmacy Academy] got audited three or four years ago. The guild has been identified as a low-risk organisation. We will not be audited for another two or three years. I could do anything within that period of time to my delivery, to what we do, to how we provide, to how we train and to how we assess, and ASQA would be completely unaware of it unless a complaint was made.<sup>20</sup>

5.22 When asked by the committee whether ASQA is fit for purpose, Ms Bond responded: 'I do not believe so'.<sup>21</sup>

5.23 Other submitters, such as Adult Learning Australia, noted the problems inherent in compliance burdens in the regulatory environment being equally applied to all providers, regardless of size:

[Adult Learning Australia's] not for profit RTO members are currently suffering under the ever-growing burden of compliance that accompanies each new RTO. Many of these providers have operated in the same local community for decades, offering a very narrow scope of foundation skills and other entry-level qualifications. By any definition, they are low risk, and yet, their compliance burden continues to grow and is out of all proportion with the amount of public funding they receive and the amount of qualifications they issue.<sup>22</sup>

5.24 Professor Lavarch of ASQA explained the authority's approach to regulating the industry in the following way:

The Australian system has been based over time on the regulation of training providers and not the regulation of individual students. The system as a whole is regulating over 4½ thousand-odd providers between the Commonwealth and the two state regulators rather than attempting to directly regulate the competencies of three million-odd students who have some contact with and move through the VET system each year. A consequence of that is that the focus of the system is on what I would call a

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19 Department of Education and Training, *Regulation Impact Statement: Proposed changes to the Education Services for Overseas Students framework*, p. 32, [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5544\\_ems\\_340269af-8afc-4fc7-941b-9bd6e5274784/upload\\_pdf/503811RIS.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5544_ems_340269af-8afc-4fc7-941b-9bd6e5274784/upload_pdf/503811RIS.pdf;fileType=application%2Fpdf), accessed 9 October 2015.

20 *Committee Hansard*, 2 September 2015, p. 38.

21 *Committee Hansard*, 2 September 2015, p. 38.

22 Adult Learning Australia, *Submission 35*, p. 6.

'cake making approach' rather than a 'cake tasting approach'. I will explain my analogy. Our system assumes that, if you get the ingredients right—that is, if you put together the generic requirements of the national standards and the requirements of the VET quality framework and combine that with the particular elements of the particular training package or the accredited course requirements—and they are delivered adequately and properly together then the cake that will be made will be of a decent quality. The system does not put direct focus on 'tasting the cake'; the system is not about testing independently the competencies held by individual students. Of course, you get reactions from the market in terms of the quality of the students. That manifests itself through the quality indicators—surveys of employers or the students themselves of how satisfied they are and feedback and the like in terms of the satisfaction of industry in terms of the attributes of graduates as they move into the system. But the individual student is not as such tested.<sup>23</sup>

5.25 ASQA's figures show that, to the end of 2014, they had carried out 4387 audits, covering just over half (57%) of active RTOs.<sup>24</sup> Consequently, this means that 43% of RTOs in the Australian VET sector had not, as of 31 December 2014, been audited by ASQA.

5.26 Of those that had been audited, ASQA found a high percentage of non-compliance with the national Standards, with 74% of RTOs found to be non-compliant on one or more of the Standards on the initial audit.<sup>25</sup>

5.27 While this number is high, given 20 days after the initial in which to rectify their compliance failings, all but 16% of RTOs were able to demonstrate complete compliance.<sup>26</sup>

5.28 ASQA argues that this proportion of RTOs rapidly rectifying their non-compliance issues suggests that 'the majority of RTOs are, when provided with the opportunity, willing to quickly address non-compliance'.<sup>27</sup>

5.29 The high initial level of non-compliance findings, however, suggests that RTOs have difficulty either understanding or applying the Standards until they receive a non-compliance finding at the time of their initial audit.

5.30 The evidence suggests that there are two unresolved questions. Why is non-compliance so high in the vocational education sector, and is this a cultural issue? Why is behaviour so much better in the non-university higher education sector where academic and commercial functions must be separated?

5.31 A further unresolved issue is that of the founding principles of national regulation in the vocational education sector. ASQA's role appears to be envisaged as

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23 *Committee Hansard*, 16 July 2015, p. 54.

24 Australian Skills Quality Authority, *Submission 60*, p. 11.

25 Australian Skills Quality Authority, *Submission 60*, p. 11.

26 Australian Skills Quality Authority, *Submission 60*, p. 11.

27 Australian Skills Quality Authority, *Submission 60*, p. 11.

being more about accreditation and entry standards than quality standard assurance. This suggests that there may be a case for reviewing the principles underpinning the foundations of regulation in the vocational education sector. The committee is of the view that the powers and cultural mode of operation of ASQA must be called into question.

5.32 There is a clear contrast between the actions of the Commonwealth Government and that of the Victorian government. In Victoria the new government has acted to clean up a VET sector in crisis in that state, with the withdrawal of 8,000 qualifications, and the naming and shaming of providers, the recovery of public monies and is conducting a far reached review of VET quality and funding in that state.

5.33 The Commonwealth government has been slow to act. It has dithered for two years. New standards have only just come into effect as of 1 July 2015. Additional reforms to VET FEE-HELP come into effect on 1 January 2016, and the new Minister for Vocational Education has only just recently flagged additional legislation.

5.34 The committee heard evidence that no VET FEE-HELP provider has been called to account for their activities, and no provider has had their status revoked by the Department of Education and Training.<sup>28</sup>

5.35 The committee also heard evidence to the effect that the Department of Education and Training does not do on-site visits or audits when determining whether a RTO is approved as a VET FEE-HELP provider.<sup>29</sup>

5.36 The national regulator, the Australian Skills and Quality Authority, is diligent. It has highly competent public servants and the Chief Commissioner, Mr Chris Robinson, is highly respected. However ASQA, and the Department of Education and Training which regulates access to VET FEE-HELP, has faced severe challenges dealing with the abuses of some private providers. The committee is of a view that there is every reason to doubt that ASQA is fit for purpose, and that the regulatory architecture of VET may need a revamp. As the Chief Commissioner told Senate estimates in June, 'I work with the tools that I have'.<sup>30</sup>

5.37 The committee is of a view that the Commonwealth government, the Department of Education and Training and the regulatory authorities have lacked appropriate agility in dealing with the exploitative practices that the rollout of state and Commonwealth demand driven entitlement schemes have produced.

5.38 It is great concern to the committee that the regulator has been accused of being a "paper tiger", or that respected economist, John Quiggin from the University of Queensland, has compared the performance of ASQA to that of the Queensland Greyhound Racing board:

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28 *Committee Hansard*, 16 July 2015, p. 72.

29 *Committee Hansard*, 16 July 2015, p. 68.

30 *Estimates Hansard*, 3 June 2015, p. 83.

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AQSA is a proven failure. It needs to be scrapped and its functions turned over to a body with some real teeth and a willingness to defend the interests of students and the public purse, rather than being a captive of the industry it is supposed to regulate.<sup>31</sup>

5.39 The evidence therefore emphasises that regulation of the private VET sector needs to balance some competing requirements, including ensuring that all providers are aware of and compliant with industry standards.

5.40 The committee notes that high-quality providers should not be overly burdened by regulatory requirements; however, the regulator's top priority should be ensuring that vocational education in Australia is of a high standard and adequately prepares its students for employment, and protects the community from the consequences of shoddy training.

### **Need for greater clarity and consistency of standards**

5.41 A theme evident in the submissions of multiple witnesses was the shortcomings presented by the complexity of the regulatory framework in which the VET sector operates.<sup>32</sup> Put simply, the system is complex and the lack of clarity may be contributing to some non-compliance.

5.42 From both providers and representatives of students, the argument was made that a simpler system, consistent across the country, would be to the advantage of all stakeholders in the VET system.

#### ***Compliance confusion***

5.43 A point which emerged during this inquiry is that confusion exists amongst providers about the regulatory regime in which the sector operates. While clarification and standardisation of regulations was a broadly made recommendation, several submitters noted that the sector has suffered in recent years as a consequence of regular changes at the regulatory level.

5.44 For example, the Melbourne City Mission, an organisation that works with some of Melbourne's most disadvantaged people, including providing training opportunities, argued that:

In the past decade, the regulatory system has been characterised by constant policy and funding changes... The constant shifting of the rules that this creates causes significant (and often unmerited) administration pressure on small VET providers. In particular, the regulatory burden has a

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<sup>31</sup> John Quiggin, 'Some post-school education bodies we could do without', 1 October 2015, <http://johnquiggin.com/2015/10/01/some-post-school-education-bodies-we-could-do-without/>, accessed 7 October 2015.

<sup>32</sup> Melbourne City Mission, *Submission 46*; The Institute of Learning Professionals, *Submission 22*; Mr Camm, Australian Council for Private Education and Training, *Committee Hansard 16* July 2015; Ms Bond, Guild Pharmacy Academy, *Committee Hansard 2* September 2015.

disproportionate impact on values-driven, not-for-profit community sector providers.<sup>33</sup>

5.45 The Institute of Learning Professionals made a similar point, arguing that regulations applied to private VET providers are changed frequently but suffer from a lack of clarity and definition:

The tweaking and revision of standards with little published justification and/or shortcomings of former standards (four major changes to date) continues. Every new version sets the same standards as the previous version, just in slightly different wording: be a sound business, employ competent people, and look after your clients. The changes are always just different enough that RTO managers need to redesign forms, processes and systems...

Too many key terms like 'currency', 'industry expert', 'moderation' and 'volume of learning' appearing with no definitive definition as to what the term actually means. It only adds to the interpretation disparity by RTOs and the paperwork it produces. VET creates this language and terminology and then leaves it open to interpretation as to what it actually means.<sup>34</sup>

5.46 It appears that confusion amongst providers may be contributing to some of the problems raised, and further that frequent regulatory changes may be worsening this situation. Even the many providers seeking to provide high-quality and fully compliant education and training may find the network of regulations difficult to abide by. If so, this should be addressed to give providers the best possible chance to comply.

5.47 Thus, in principle, the committee supports simplifying the regulatory system governing the VET sector and making it consistent across all states and territories. However the committee is unable to give full support to this given the recurring doubts raised about ASQA's capacity to adequately control the industry.

### ***Transparency***

5.48 Evidence provided suggests that quality concerns could be better managed for students by increased transparency surrounding providers. As the VET sector currently stands, students interested in undertaking a VET course may find it difficult to adequately check the reputation of a specific provider or compare the merits of competing providers, since there is no single source of information which allows students to assess different providers on a set of meaningful or useful criteria.

5.49 In considering this issue, Mr Rodney Camm, CEO of ACPET, opined:

The sector is a bit opaque. We want students to be able to understand the performance of a potential provider, whether it is around completion rates or job outcomes.

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33 Melbourne City Mission, *Submission 46*, p. 8.

34 Institute of Learning Professionals, *Submission 22*, p. 6.

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We want students to be able to select the courses which suit them and the provider which best suits them. Certainly, we think there is a range of information which is out in the public space but it might be too difficult for a student to find. So we think it should constantly be consolidated and I appreciate the MySkills initiative is a key part of that.<sup>35</sup>

5.50 When asked about greater transparency, the MySkills website and other transparency measures which might contribute to, Mr Camm responded:

I think it is about what key pieces any reasonable student would want in order to compare a provider. I think it is certainly completion. I think enrolment numbers would be helpful, and certainly price, in relation to Senator Carr's question, and industry relationships—those sorts of things you should be able to pick up and find easily.<sup>36</sup>

5.51 It was suggested to the committee that one way of managing this issue would be a more functional MySkills website. As Service Skills Australia noted:

While the MySkills website, launched in October 2012, was an important introduction in simplifying and centralising information for prospective students and despite its intention to be 'an integral part of the transparency agenda of the National Partnership Agreement on Skills Reform between the Commonwealth and the states and territories', it currently functions as little more than a web directory with little useful data on providers... While total VET activity reporting will be a registration requirement from 1 January 2015, thus leading to more complete figures... it is also not clear that this data will be terribly beneficial for student decision making. At present, the website data tab covers total enrolment numbers and student numbers by AQF level, age, field of education and gender. This information bears no relationship to the quality of the provider.<sup>37</sup>

5.52 Service Skills Australia suggests that more useful information for potential students would be the provider's course outcomes and audit history, including data from the Student Outcomes Survey.<sup>38</sup>

5.53 Ms Sue Bond, of the Guild Pharmacy Academy, argued that there needs to be a robust and comprehensive information system that provides both learners and employers with information about qualifications, funding and providers.

5.54 During the hearing, Ms Bond added:

At the moment, if I or my child or whoever were looking to become a pharmacy or dispensary assistant, the only information that is available is through the providers or My Skills. There is no organisation, body or source of information that actually determines whether that organisation provides quality training, what their completion rates are, what their outcomes are—

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35 *Committee Hansard*, 16 July 2015, p. 10.

36 *Committee Hansard*, 16 July 2015, p. 13.

37 Service Skills Australia, *Submission 27*, p. 4.

38 Service Skills Australia, *Submission 27*, p. 4.

those sorts of measures, which I think would be very useful to both students and their families.<sup>39</sup>

5.55 NCVER noted that one of the main trends internationally in VET sector regulation revolves around this point:

There are also definite moves to increase the transparency of information about the expectations and outcomes of service provision supporting consumer choice. Across systems and sectors transparency initiatives are promoted as ways of helping governments, systems, providers and clients make informed decisions. Nevertheless, what are considered to be traditional approaches to ensuring quality continue to operate (for example, defined curriculum and qualifications, external examinations, and inspections). The use of mechanisms to regulate and quality assure providers eligible for government funding is also used in voluntary systems, as in the United States.<sup>40</sup>

5.56 Completion rates are often used in the sector to compare providers, or to comment on the industry more generally. However, this is a contested method, as Evocca College, a private provider, argued:

Recognising that students move in and out of the VET system for various reasons including – for example – because they have secured a job, means that completion rates as being reviewed by Government may need to be modified to take account of various other outcomes. Securing a job is of course a great outcome. Accordingly, the number of units completed instead of the number of qualifications may be a more robust measure to put in place.<sup>41</sup>

5.57 As noted by NCVER, while completion rates for VET courses may appear low:

One response to this is the argument that there are many students who do not need to complete their qualification as they acquire the skills they need without going through the entire curriculum of a qualification. For them, completion is not an issue.<sup>42</sup>

5.58 However, NCVER's research challenged that argument, showing that:

Completion matters and therefore the overall low completion rate for the sector is a serious matter of concern... We cannot assume that students do not complete because they have got what they wanted out of the training. Our finding that the completion rates are not related to pay-offs from completion, together with some evidence that satisfaction with training is related to completion, suggests that providers need to pay better attention to their students. We cannot leave it to students to understand the benefit from

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39 *Committee Hansard*, 2 September 2015, p. 35.

40 National Centre for Vocational Education Research, *Submission 19*, p. 5.

41 Evocca College, *Submission 20*, p. 12.

42 National Centre for Vocational Education Research, *The value of completing a VET qualification*, Occasional Paper, 2012, p. 3.

completion. An obvious incentive to improve completion rates would be to fund providers partly on completions rather than enrolments, as is currently the case.<sup>43</sup>

5.59 The Institute of Learning Professionals suggested that problems with unclear information in the sector could be at least partially resolved by providers themselves:

Recommendation: RTOs to conduct exit interviews for all enrolments and publish their completion statistics on their websites.<sup>44</sup>

5.60 Industry body ACPET also noted the benefits to students and quality providers of increased transparency of completion rates and other data:

ACPET would welcome the public scrutiny of student completion data for enrolments funded by VET FEE HELP loans. If such information was more readily accessible, consumers, regulators and policy direction could focus on supporting successful providers and removing ineffective providers.<sup>45</sup>

5.61 The committee notes evidence that suggests that students, providers and employers alike would benefit from increased transparency in the VET sector. Students would find it easier to compare different providers offering the same courses, while quality providers would be able to demonstrate their strengths and employers would have a more meaningful way of assessing the worth of qualifications of job applicants, as well as being able to make informed decisions about which courses might benefit their employees in terms of retraining or upskilling.

## **Changes to the operation of VET FEE-HELP**

### *Census dates*

5.62 Witnesses and submitters to this inquiry consistently made the point that the existing system of a single census date – at which a student's fee liability is incurred – can cause substantial problems for students.<sup>46</sup>

5.63 Evidence was provided that suggested that some private RTOs place deliberate blocks in the way of students intending to withdraw from their course, making it difficult for them to do so.<sup>47</sup> This means that the student incurs the debt and the provider is paid accordingly.

5.64 The committee notes that the new Standards for RTOs, in effect from 1 January 2015, have introduced a system of four census dates for VET FEE-HELP eligible courses.

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43 National Centre for Vocational Education Research, *The value of completing a VET qualification*, Occasional Paper, 2012, p. 25.

44 Institute of Learning Professionals, *Submission 22*, p. 6.

45 Australian Council for Private Education and Training, *Submission 28*, p. 18.

46 TAFE Community Alliance, *Submission 31*, p. 4; Consumer Action Law Centre, *Submission 13*, p. 14; Redfern Legal Centre, *Submission 16*, p. 1.

47 Penny Martin, *Submission 50*, p. 3;

5.65 The Redfern Legal Centre noted that this change could address some of the problems which had been seen in the area:

It certainly removes the incentive just to sign up a high volume of students with no focus on ongoing student welfare and, really, no consideration of whether or not they finish the course. I think the staggered approach to payment of portions of the fees as the course is completed is a much better approach. The incentive is there for the colleges to ensure the students complete the course, not just to get them to sign up, and that is crucial.<sup>48</sup>

5.66 The Department of Education and Training further noted in their evidence that the government intends to further regulate in this area to prevent behaviour evident under the existing system:

From 1 January 2016, it is also proposed that students receive invoices from providers before each census date, ensuring they have all the information they need to make study and payment decisions. Providers must ensure there are no barriers to a student being able to withdraw from a VET unit on or before the census date for that unit, including no withdrawal fees. Under proposed legislative changes from January 2016, the government will make it easier for students to remove any VET FEE-HELP debt which is unfairly applied in breach of the new guidelines, with the minister able to remit the debt in this circumstance at the training provider's expense.<sup>49</sup>

5.67 A further solution suggested by some witnesses was that providers should be paid via VET FEE-HELP upon the completion of units, rather than at the time on enrolment.

5.68 The Spectrum Organisation noted that a shift to this system would put VET FEE-HELP:

in line with other funding types of funding from the state governments. Paying upfront before anything has been delivered or completed is a recipe for disaster.<sup>50</sup>

5.69 The committee notes the problems associated with census dates and is concerned by evidence provided that students are prevented from withdrawing from courses. In principle, a pay on completion system appears to be a solution worth exploring as a way to combat this problem.

## **Ombudsman**

5.70 The committee noted from evidence received that disputes between students and providers cause significant levels of stress and difficulty for students. The addition of a dedicated office to assist with dispute resolution for students with complaints against RTOs would therefore have the potential to assist in this process.

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48 *Committee Hansard*, 16 July 2015, p. 23.

49 *Committee Hansard*, 16 July 2015, p. 64.

50 The Spectrum Organisation, *Submission 64*, p. 5.

5.71 Currently, international students have access to the Overseas Students Ombudsman (OSO), a function of the Commonwealth Ombudsman's office. The OSO has three roles:

- investigating individual complaints about the actions or decisions of private registered education providers in connection with intending, current or former overseas students;
- working with private registered education providers to promote best practice handling of overseas students' complaints; and
- reporting on trends and broader issues that arise from complaint investigations.<sup>51</sup>

5.72 A recommendation made by numerous witnesses throughout the course of this inquiry was that domestic students of VET providers would benefit from having a specifically focused Ombudsman to assist with resolving complaints.<sup>52</sup>

5.73 One such recommendation came from ACPET:

ACPET advocates for a national consumer-focused complaint handling process for students and providers to complement the new National Training Complaints Hotline, as existing ombudsman arrangements focus either on government owned providers or international student issues.

APCET believes such a scheme would result in a number of major benefits: improved industry image, cost effective resolution option, improved communication, early warnings to regulators and market research for the sector.

To date, VET regulators (ASQA, VRQA, and TAC) have had limited capacity to focus on complaints, and responses are limited to formal processes such as audits, informing risk assessments and strategic reviews for the sector, thus not directly resolving the complaint. The new National Complaints hotline will not investigate complaints; as it is a referral service to other agencies for their consideration.<sup>53</sup>

5.74 The Consumer Action Law Centre also supported this, indicating:

A key feature of the student remediation framework should be a national industry ombudsman that would independently resolve disputes between students and training providers at no cost to students or the taxpayer. At the moment, disputes between private colleges and international students can be heard by the Commonwealth's Overseas Students Ombudsman but no such process exists for domestic students. We note that the review of quality assurance in Victoria's VET system recently recommended the establishment of such a body. The Victorian government has committed to introduce in 2016 a new body to resolve student complaints. In South

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51 Overseas Students Ombudsman, *Submission 65*, p. 2.

52 Australian Council for Private Education and Training, *Submission 28*; Consumer Action Law Centre; Redfern Legal Centre.

53 Australian Council for Private Education and Training, *Submission 28*, p. 16.

Australia, which already operates a training advocate, the Minister for Employment, Higher Education and Skills, Gail Gago, has expressed her support for a national industry ombudsman to streamline the handling of complaints. That is particularly important in the case of private RTOs that are providing services.<sup>54</sup>

5.75 The Redfern Legal Centre noted that the very existence of an Ombudsman in the VET sector could have a behaviour-modifying effect:

Senator O'NEILL: If there were an ombudsman for students to be able to report and automatically that triggered a response from the RTO where they might not only have to return the fee that they received but a penalty, do you believe that would impact on the behaviours you are seeing experienced by your clients?

Mr Dwyer: Certainly. I think it would be a really good disincentive for this sort of conduct.<sup>55</sup>

5.76 It was further suggested by witnesses that the proposed Ombudsman should be industry-funded and the committee expressed interest in why this would be preferable. Ms Denise Boyd of the Consumer Action Law Centre said:

We have actually had relatively positive experiences—I would not say it is across the board, and there are always issues. Certainly, we think that an industry ombudsman scheme can provide effective accessible dispute resolution. One of the attractive aspects of it is that it does not cost the taxpayer. It is an industry funded scheme. Because it is funded by industry, the industry sector itself therefore has a financial incentive to minimise consumer disputes.<sup>56</sup>

5.77 The committee notes the case made for a dedicated VET sector Ombudsman to assist with dispute resolution, along with other functions such as those carried out by the Overseas Students Ombudsman.

## **Recommendation 14**

**5.78 The committee recommends that the underpinning legislation for the Australian Skills Quality Authority be revamped in order to give the regulator sufficient powers to adequately regulate the Vocational Education and Training sector, to protect the rights of students and to act more firmly and quickly to stamp out abuses.**

## **Recommendation 15**

**5.79 The committee further recommends that the Australian Skills Quality Authority improves its processes to enable it to more swiftly share information**

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54 *Committee Hansard*, 2 September 2015, p. 10.

55 *Committee Hansard*, 16 July 2015, p. 24.

56 *Committee Hansard*, 2 September 2015, p. 12.

**with other levels of government, regulators, government departments and law enforcement agencies.**

**Recommendation 16**

**5.80 The committee recommends that an Ombudsman focused on domestic students in the VET sector be created, and further suggests that this position be industry-funded.**

**Senator Sue Lines**

**Chair**

