

30 April 2015

VET Funding Review

By email: contact@vetfundingreview.vic.gov.au

Dear Reviewers,

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on how to improve the quality, stability and sustainability of the Victorian training market.

Although the majority of complaints we receive relate to non-Victorian Government funded courses, we have received some reports of misuse of Victorian Skills Guarantee funding. Our key concerns in regards to vocational education and training (**VET**) are misleading marketing practices, soliciting students for unsuitable courses, inappropriate use of brokers to recruit students and ineffective dispute resolution.¹ The VET student population is disproportionately made up of students from disadvantaged backgrounds, and we are particularly concerned about the impact these practices are having on Victoria's most vulnerable students.²

It is clear that significant national reforms are needed to protect Australian students and ensure taxpayer funds are being invested appropriately.

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

- ensuring all government subsidised training is high quality;
- meeting community service obligations to support vulnerable and higher needs learners to complete training and transition to employment; and
- managing training expenditure within the existing vocational training budget while preserving a framework of student driven choices.

¹ Dodd, 'Private colleges will hold talks over ratings downturn', Australian Financial Review, 30 October 2014, Sydney; Yu and Oliver, 'The capture of public wealth by the for-profit VET sector', Workplace Research Centre, University of Sydney, January 2015, p.18, available at: <http://www.aeufederal.org.au/Publications/2015/WRCAEU2015.pdf>; Senator Simon Birmingham, 'The Skills for the Job: Ensuring vocational education and training delivers for employees and employers', speech delivered to the Australian Chamber of Commerce and Industry, 5 February 2015, available at: <http://www.senatorbirmingham.com.au/Media-Centre/Speeches/ID/2606/The-Skills-for-the-Job-Ensuring-vocational-education-and-training-delivers-for-employees-and-employers>

² Noonan, Burke, Wade and Pilcher, 'Expenditure on education and training in Australia - Analysis and background paper', Mitchell Institute, 2014, available at: <https://www.vu.edu.au/sites/default/files/mitchell-institute/pdfs/Mitchell-Paper-Expenditure-on-Education-and-Training-Oct-2014.pdf>

We have also commented on how other government policy levers may be used to support the quality, stability and sustainability of the Victorian training market. This includes discussion about further reforms and external dispute resolution options.

1. Summary of recommendations

Our recommendations to the Review are summarised below:

Recommendation 1

We recommend that the Victorian Government:

- increase compliance and enforcement action to ensure that funding is only provided to training providers that demonstrate full compliance with the Statement of Expectations and relevant contractual obligations;
- enhance the framework to claw back government subsidies from training providers; and
- implement a framework that requires unscrupulous providers that close their doors or revoke qualifications to compensate students for consequential losses (in addition to paying for retraining).

Recommendation 2

We recommend that current requirements to complete suitability assessments be enhanced to ensure that providers are required to thoroughly assess the capacity of each student to complete a training course and the suitability of the course for the student.

Recommendation 3

We recommend that the Victorian Government undertake a review of whether the current framework of 'student driven choices' has actually delivered improved outcomes for students, with a particular focus on completion rates and graduate outcomes.

Recommendation 4

We recommend that Victorian regulators enhance cooperation with other state and federal regulators to improve enforcement and compliance outcomes, and work to simplify the complaints process for students.

Recommendation 5

We recommend that regular reviews of the VET regulatory framework and relevant regulators' capacity to enforce compliance with regulatory requirements be undertaken.

Recommendation 6

We recommend that the Victorian Government:

- refer appropriate powers to the Commonwealth to ensure recent bans on inducements apply to all courses (not just VET FEE HELP courses); and
- consider banning unsolicited sales of Government funded courses, or requiring students to 'opt in' rather than opt out during the cooling off period.

Recommendation 7

We recommend that the Victorian Government:

- restrict education brokers from using terms like 'career advisors' unless the relevant staff member is in fact a trained career advisor and is acting in that role (as opposed to a sales role);
- consider banning the use of education brokers for Victorian Government funded courses; and
- if brokers are permitted:
 - o consider moving to a fee for service model;
 - o requiring brokers to be registered or "approved" in order to contact potential students about courses; and
 - o improving disclosure of commissions.

Recommendation 8

We recommend that the Victorian Government refer appropriate powers to the Commonwealth to ensure that all courses have multiple 'exit points', or otherwise ensure that the same requirements apply in Victoria.

Recommendation 9

We recommend establishing a national industry ombudsman to resolve disputes between students and training providers.

Our recommendations are detailed more fully below.

2. About Consumer Action

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

3. Ensuring all government subsidised training is high quality

According to the Productivity Commission, the VET system 'provides Australians with the skills to enter or re-enter the labour force, retrain for a new job or upgrade skills for an existing job.'³ However, we believe that the quality of education provided by some private training providers means courses are not consistently delivering these graduate outcomes.

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

³ Productivity Commission, 'Report on Government Services 2013, 2013, part 5.1, available at: <http://www.pc.gov.au/research/recurring/report-on-government-services/2013/2013/07-government-services-2013-chapter5.pdf>

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

- commit to excellence in service delivery and maximising outcomes for students;
- act in the best interests of students and with sensitivity to their diverse social, cultural and special learning needs;
- commit to the highest ethical standards;
- commit to honest, fair and respectful engagement with students, business, industry and the community; and
- avoid conflicts between private interests and professional responsibilities.⁴

The Department established the Victorian Training Guarantee Compliance Framework (**the Framework**) in 2012 'as a key mechanism for assuring the integrity of the Victorian government-subsidised training system'. The Framework sets out six 'escalating and proportionate' interventions to respond to non-compliance.⁵

In 2013, the Department was responsible for regulating 489 contracted Registered Training Organisations (**RTOs**).⁶ Of the 109 providers audited in 2013 by the Department, the majority had 'serious findings' in regards to student enrolment.⁷ 36 RTOs were also identified as having audit findings warranting funds reimbursement. The total amount of funds identified to be reimbursed was \$6.1 million, which represented 0.5 per cent of overall annual government expenditure on the Victorian Training Guarantee.⁸ Only 4 providers had their funding contracts terminated.⁹

While it is clear that the Department has undertaken some very positive enforcement work, we are concerned that only a small number of providers were required to reimburse the Government, and even fewer had their funding contracts terminated, despite the relatively high proportion of audited providers that had serious compliance problems. We recommend increased auditing and enforcement action to ensure unscrupulous providers are denied funding in the event of non-compliance.

We are also concerned about student outcomes following enforcement action. For example, we have seen examples where enforcement action has been taken which has resulted in a training provider closing its doors, meaning that our client was unable to seek a remedy for losses incurred as a result of the provider's misconduct. We have also seen examples where

⁴ Victoria Department of Education and Early Childhood Development, 'Statement of Expectations: Principles and obligations for government contracted training providers in Victoria', April 2013, available at: <http://www.education.vic.gov.au/Documents/training/providers/rto/statementsexpectations.docx>

⁵ Victoria Department of Education and Early Childhood Development, 'Victorian Training Guarantee Compliance Framework', October 2012, p. 1, available at: <http://www.education.vic.gov.au/Documents/training/providers/rto/victrainingguaranteecomplianceframework.pdf>

⁶ Victorian Training Guarantee Compliance Framework, p. 2.

⁷ Victoria Department of Education and Early Childhood Development, 'Victorian Training Guarantee Compliance Framework Annual Report 2013', 2013, p. 11, available at: <http://www.education.vic.gov.au/training/providers/rto/pages/guidelines1.aspx>.

⁸ Victorian Training Guarantee Compliance Framework, p. 12.

⁹ Victorian Training Guarantee Compliance Framework, p. 14.

training certificates have been revoked following compliance action, without appropriate compensation being offered to students.

Julia's story

Julia obtained a qualification in child care, which was recalled following enforcement action against her training provider. Julia had already begun full time work when she received notification of the qualification recall from the training provider. In order to obtain her qualification, Julia would be required to undertake a number of additional modules of study.

Although Julia was not required to pay for this additional study, she was not offered any compensation for losses that she may have suffered as a result of having to complete the additional modules (such as lost wages during time in retraining), or as a result of losing her qualification. The letter of notification also mentioned the training provider had established a dedicated service to answer student queries, but Julia says that she was unable to contact anyone on the number provided. Julia eventually chose to enrol in a different course with another provider.

While the cost of retraining is covered, other losses incurred by the student are not. Such losses may relate to lost employment, lost opportunity or lost wages due to time in retraining. While students will have their Victorian Training Guarantee funding reinstated, they may not necessarily be refunded other course fees. Students can also be left in limbo while waiting to be informed of the extent of retraining they will require.¹⁰ We recommend that the Victorian Government implement a framework to ensure students are compensated by training providers for these types of consequential losses.

Recommendation 1

We recommend that the Victorian government:

- increase compliance and enforcement action to ensure that funding is only provided to training providers that demonstrate full compliance with the Statement of Expectations;
- enhance the framework to claw back government subsidies from training providers; and
- implement a framework that requires unscrupulous providers that close their doors or revoke qualifications to compensate students for consequential losses (in addition to paying for retraining).

4. Meeting community service obligations to support vulnerable and higher needs learners to complete training and transition to employment

The Department reports that there has been a steady decline in the completion rate of Victorian Government funded courses since 2011. By the end of 2014, 34 per cent of

¹⁰ Josie Taylor, 'Hundreds of Vocation private training college graduates forced to hand back qualifications', ABC News, 22 April 2015, available at: <http://www.abc.net.au/news/2015-04-22/private-training-college-graduates-stripped-of-qualifications/6412318>.

courses commenced in 2013 were reported as being completed. This is in comparison to 41 per cent of courses commenced in 2011.¹¹

In our view, training is more likely to be completed if the course itself is suitable for the learner's needs and skill levels. We note that RTOs are already required to undertake some form of 'suitability' assessments. For example, Standard 5.1 of the *Standards for Registered Training Organisations (RTOs) 2015* requires RTOs to provide advice to prospective learners about the training product appropriate to meeting the learner's needs 'taking into account the individual's existing skills and competencies'. However, these current requirements are clearly not working, as we receive numerous complaints of students being signed up to completely inappropriate courses.

Ahmed's story

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

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

We welcomed recent Federal Government announcements that training providers will be required to assess the capacity of each student to complete a training course, with the student required to prove competency in core skills to a level 'appropriate for the course'. We expect the Federal Government to set clear minimum standards, rather than allow providers to determine their own entry requirements. We expect that assessments take into account the suitability of the course having regard to the student's educational and career objectives, foreseeable changes to the student's circumstances and attitude towards study. We recommend that the Victorian Government ensure that this requirement also applies to all RTOs in Victoria.

Recommendation 2

We recommend that current requirements to complete suitability assessments be enhanced to ensure that providers are required to thoroughly assess the capacity of each student to complete a training course and the suitability of the course for the student.

¹¹ Victorian Training Guarantee Compliance Framework Annual Report 2013, p. 4.

5. Managing training expenditure within the existing vocational training budget while preserving a framework of student driven choices

Historically, the states and territories have provided VET through the TAFE system. However, there has been a proliferation of enrolments at private training providers since demand-driven government funding was introduced. Between 2008 and 2013, the number of for-profit providers has more than doubled.¹²

Under the Council of Australian Governments (**COAG**) National Partnership Agreement on Skills Reform in 2012, all states and territories in Australia agreed to implement a new market-driven funding model for vocational education. Victoria was the first state to implement demand-driven VET funding. Under the Victorian Training Guarantee, which was phased in from July 2009, subsidised student places were opened up to private providers.¹³ Similar reforms have now been introduced in other states.¹⁴

Since the beginning of implementation of these reforms, state and federal government expenditures on payments to non-TAFE providers to deliver VET programs has skyrocketed, increasing by \$839 million between 2009 and 2013 (160.2%).¹⁵ This was driven mostly by Victorian government funding, which grew at an annual pace of 42% between 2008 and 2013, with funding rising from \$137.6 million to \$799.2 million.¹⁶

Prior to July 2009, public funding for VET in Victoria was allocated directly to (mostly public) VET providers, based partly on historical enrolments and skills needs. Now, the funding for subsidised places in Victoria "follows the student", with no overall cap per provider meaning that providers must compete to attract students and funding. Funding is provided as an hourly rate, the amount of which depends on the level of qualification and a weighting reflecting an assessment of the course's public value. These reforms were aimed at boosting participation in VET, making the sector more responsive to changing skill demands, and enhancing competition among providers to promote quality improvements. The theory appeared to be that choice and competition would drive efficiency in service delivery and improve standards. However, as noted by the National Centre for Vocational Education Research (**NCVER**), "it is far from certain that the reforms will have these desired effects."¹⁷

Between 2008 and 2010, the Victorian Training Guarantee was associated with a 60% growth in enrolments with private providers, and 300% growth between 2008 and 2011. The Victorian Training Guarantee has been associated with 7% lower growth in TAFE enrolments than otherwise would have been expected between 2008 and 2011. Based on these figures, NCVER suggests that "private providers have done better than TAFE in

¹² Yu and Oliver, p. 20.

¹³ Leung, McVicar, Polidano and Zhang, 'Early impacts of the Victorian Training Guarantee on VET enrolments and graduate outcomes', National Centre for Vocational Education Research (NCVER), 19 May 2014, available at: <http://www.ncver.edu.au/wps/wcm/connect/c10b759f-e467-4cdb-b310-087f6aca827b/Early-impacts-of-the-VTG-2724.pdf?MOD=AJPERES&CACHEID=c10b759f-e467-4cdb-b310-087f6aca827b>

¹⁴ Yu and Oliver, p. 3.

¹⁵ National Centre for Vocational Education Research (NCVER), 'Financial information 2013', 17 October 2014, p. 6, available at: <http://www.ncver.edu.au/wps/wcm/connect/22f9d79d-990b-42c1-9c07-bcfca2ace256/Financial-information-2013.pdf?MOD=AJPERES&CACHEID=22f9d79d-990b-42c1-9c07-bcfca2ace256>

¹⁶ Yu and Oliver, p. 3.

¹⁷ NCVER (2014), 'Early Impacts of the Victorian Training Guarantee on VET enrolments and graduate outcomes'.

responding in the short run to increased demand for publicly subsidised places under the training guarantee".¹⁸

Given the declining rate of enrolments and completion of courses, plus the numerous consumer issues identified elsewhere in this submission, we query whether the framework of 'student driven choices' is actually delivering the student outcomes desired by the Government.

Recommendation 3

We recommend that the Victorian Government undertake a review of whether the current framework of 'student driven choices' has actually delivered improved outcomes for students, with a particular focus on completion rates and graduate outcomes.

6. Other matters

Regulation

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

ASQA has jurisdiction over most VET providers, but Victoria and Western Australia also have their own regulators for VET providers that only deliver courses in these states. Certain conduct is also handled by the Australian Competition and Consumer Commission (**ACCC**). Victorian Government-funded courses providers are also regulated by the Department, while VET FEE-HELP is regulated by the Federal Department of Education & Training. This complex regulatory regime makes it difficult for students to know where to turn if they have a problem. We query the effectiveness of the National Training Complaints Hotline¹⁹ as students may still be referred to a number of regulators, even if the complaint relates to a single training provider or education broker.

We acknowledge that this is a difficult problem to solve, but believe improvements can be made to improve the complexity of the regulatory system from a consumer perspective. Regulators and other relevant departments must work more closely together to improve compliance and enforcement outcomes, and the complaints process. This co-operation should include, at a minimum, appropriate information sharing arrangements, transparent referral arrangements and the development of student portals to ensure the regulatory system is simple and effective from a consumer perspective. We need to ensure that regulators are clear about their responsibilities, and that consumers are not being passed from regulator to regulator when making a complaint.

¹⁸ NCVER (2014), 'Early Impacts of the Victorian Training Guarantee on VET enrolments and graduate outcomes'.

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

Recommendation 4

We recommend that Victorian regulators enhance cooperation with other state and federal regulators to improve enforcement and compliance outcomes, and simplify the complaints process for students.

The effectiveness of the regulatory framework, including the Victorian Training Guarantee Compliance Framework, also needs to be regularly reviewed. In 2013, Consumer Action published a report titled *Regulator Watch*,²⁰ which was conceived in the absence of a public mechanism to determine how much enforcement work was undertaken by various regulators. This report noted some good practice frameworks that apply to regulators, including for the need for strong feedback loops between consumer organisations, consumer dispute resolution services, and regulators. The report also emphasises the benefit in regulators being public about enforcement outcomes to have a deterrent effect. We were pleased to see that the Department publishes an annual report on the effectiveness of the Victorian Training Guarantee Compliance Framework and the Victorian Registration and Qualifications Authority (VRQA) reports on its regulatory activities to the National Skills Standards Council.

We would encourage continued regular reviews of the enforcement work undertaken by VRQA and the Department, as well as regular reviews of the regulatory framework to ensure it is actually encouraging compliance with regulatory obligations.

Recommendation 5

We recommend that regular reviews of the VET regulatory framework and relevant regulators' capacity to enforce compliance with regulatory requirements be undertaken.

Marketing

We have received a number of complaints about the marketing and promotional techniques employed by private training providers and education brokers. Our concerns about misleading conduct in the industry were confirmed by recent statistics released by ASQA, which indicated that 45.4% of RTO websites surveyed were identified as having one or more areas of possible non-compliance in relation to their marketing, fee collection, advertising and information provision practices.²¹

We are particularly concerned about training providers and education brokers that appear to target vulnerable consumers. We have received reports of education brokers in particular cold calling or door-knocking potential students and pushing them to enrol in unsuitable courses over the phone or on their doorstep.

²⁰ Renouf, Balgi and Consumer Action Law Centre, 'Regulator Watch: The Enforcement Performance of Australian Consumer Protection Regulators', March 2013, available at: <http://consumeraction.org.au/wp-content/uploads/2013/04/CALC-Regulator-Report-FINAL-eVersion.pdf>.

²¹ Australian Skills Quality Authority, 'Marketing and advertising practices of Australia's registered training organisations', 2013, p. 28.

Clare's story

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

We have suggested that unsolicited sales (such as door-to-door sales and cold calling) be banned. However, another option is introducing an 'opt in' requirement. This will be a better option than relying on the traditional cooling off period for unsolicited sales. Under this arrangement, a consumer could 'opt in' to an unsolicited agreement following the initial contact by the provider.

The opt-in system would require a consumer to confirm their decision to enter the contract at some point (preferably at least 24 hours) after initially signing the agreement without further contact or inducements from the trader. An opt in requirement will be particularly useful in transactions that involve significant power imbalances and where high pressure sales techniques are used.

An opt-in requirement would not prevent a training provider from marketing their courses, nor would it prevent students from enrolling. It would, however, encourage at least some level of reflection on the product, price and conditions which is often absent where purchases are made under pressure or where there is poor disclosure of terms.²²

Each step towards a purchase, even minor commitments from a consumer, can make it increasingly likely that a consumer will sign up. While such commitments initially include agreeing to a visit to the home, or simply agreeing with the salesperson's statements, more significant commitments such as accepting delivery of goods or making payment for goods, can act to "seal the deal" in a consumer's mind and reduce the likelihood of "cooling off".²³

We also note recent Federal reforms banning the provision of inducements, and urge the Victorian Government to refer any powers necessary to ensure that this ban applies to all courses (not just VET FEE HELP courses).

²² See ACMA, Mobile Premium Services Code, available at: http://www.acma.gov.au/WEB/STANDARD/pc=TEL_PUB_CONS_PREMIUM

²³ This option is currently being considered by the Federal Government as part of its package of VET FEE HELP reforms. For further information see: <http://www.theaustralian.com.au/national-affairs/education/escape-clause-for-vet-students-signed-up-on-the-spot/story-fn59nlz9-1227292320133>.

Recommendation 6

We recommend that the Victorian Government:

- refer appropriate powers to the Commonwealth to ensure recent bans on inducements apply to all courses (not just VET FEE HELP courses) and
- consider banning unsolicited sales of Government funded courses, or requiring students to 'opt in' rather than opt out during the cooling off period.

Education brokers

In a perfect world, there would be no education brokers as they distort a “demand-driven” system by creating artificial demand through their focus on sales, as demonstrated by the case study below.

Sarah's story

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

We have received numerous reports of students being enrolled by brokers in courses that do not meet their objectives or academic abilities. Education brokers essentially operate on a commission sales model, which presents an inherent conflict between the interests of the salesperson and the interests of the student. We are particularly concerned by brokers that market themselves as 'career advisors', when in fact they are salespeople. We recommend that brokers be restricted from using this term unless the salesperson is in fact a trained career advisor and is acting in that role.

Disclosure of commissions to students is also essential, but disclosure alone may not be sufficient to address the conflicts created by conflicted remuneration structures. The conflicts created are strong and consumers may continue to have difficulty understanding the impact of the remuneration on the 'career advice' provided by salespeople. Moving to a fee-for-service model should be considered.

We believe there is merit in banning the use of education brokers to spruik Victorian Government funded courses. In the alternative, brokers could be required to be registered or “approved” in order to contact consumers about courses.

Recommendation 7

We recommend that the Victorian Government:

- restrict education brokers from using terms like 'career advisors' unless the relevant

staff member is in fact a trained career advisor and is acting in that role (as opposed to a sales role);

- consider banning the use of education brokers for Victorian Government funded courses; and
- if brokers are permitted:
 - o consider moving to a fee-for-service model;
 - o requiring brokers to be registered or “approved” in order to contact potential students about courses; and
 - o improving disclosure of commissions.

Unitised payments

Consumer Action has received a significant number of complaints about the pricing, hardship and refunds practices of some private colleges.

Of particular concern is that courses, including those comprising multiple years of study, are charged as a one-off amount. This means students can be 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. This is not only unfair, but also significantly reduces competition between training providers as students are unable to move between colleges.

Tom's story

Tom applied online for an 8 module course costing \$3400 from a private vocational college. He completed module 1 and 2, but while working on module 3, he realised he could not complete the course because of a deterioration in his health. Tom called the college to cancel the course and cease payments. The college refused and demanded that he pay the full balance and fees. He had already paid \$2000 towards the course.

Brenda's story

Brenda found an Interior Design course online and contacted the private college to enquire. They interviewed her briefly over the phone. While the college stressed that it would be difficult the salesman said she could manage it. Brenda enrolled in a two year course at a cost of \$8,000 payable by payments of \$55 per week. Brenda started the course but after 6 months, she decided that she couldn't afford it and the course was too hard for her.

Brenda discontinued the course but money is still being taken for her account. Client has successfully cancelled the debit order but not before she paid the college \$3,500. However, the debt remains.

From 1 July 2015 training providers will have to give students separate census dates for each unit of study. 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.' It is imperative that these reforms also apply to non-VET FEE-HELP courses. We urge the Victorian Government to refer any necessary powers to the Commonwealth to ensure that all students can benefit from these reforms, or otherwise ensure that the same requirements apply to all RTOs in Victoria.

Recommendation 8

We recommend that the Victorian Government refer appropriate powers to the Commonwealth to ensure that all courses have multiple 'exit points', or otherwise ensure that the same requirements apply to all RTOs in Victoria.

External dispute resolution

While ASQA, the Department and VRQA accept complaints from students about private VET providers, these regulators do not respond to or resolve individual complaints.

We recommend establishing a national industry ombudsman to resolve disputes between students and training providers. Consumer Action believes that effective, accessible dispute resolution, particularly in the areas of consumer and business matters, not only benefits individuals in terms of access to justice, but contributes to the functioning of competitive markets thus supporting broader economic and social outcomes. The Productivity Commission has made the case that allowing market misconduct to occur without redress can be anti-competitive in that it gives legally non-compliant traders an anticompetitive advantage over those that do comply.²⁴

In our view, an industry ombudsmen contain a number of useful features which contributes to strong justice outcomes, including:

- industry ombudsman schemes are typically a condition of holding a relevant licence or registration, so all businesses in an industry must participate in the scheme;
- industry ombudsman schemes are funded by industry, so industry has a financial incentive to minimise consumer disputes;
- industry ombudsman schemes typically have independent boards with 50 per cent representation from consumers so the dispute resolutions processes are fair and balanced;
- the ombudsman scheme process provides flexible solutions to disputes but also has 'teeth' because the Ombudsmen can make findings binding upon the trader;²⁵
- ombudsmen are typically required to investigate and report on systemic problems, meaning that they not only provide solutions for individual disputes but also help bigger problems be solved at their source; and
- ombudsmen keep detailed records and make detailed reports that assists the advancement of consumers' interests.

²⁴ Productivity Commission, Review of Australia's Consumer Policy Framework—Inquiry Report 45 (volume 2), April 2008, available at: <http://www.pc.gov.au/projects/inquiry/consumer/docs/finalreport>, p 193

²⁵ One of the key pitfalls of the Office of the Training Advocate in South Australia is that it cannot make binding decisions. For more information see: <http://www.trainingadvocate.sa.gov.au/Complaints/Overview>.

Consumer Action has significant experience in supporting and acting on behalf of consumers with disputes considered by industry ombudsman schemes (such as the Financial Ombudsman Service, the Credit Ombudsman Service, the Energy & Water Ombudsman Victoria, and the Telecommunications Industry Ombudsman). We believe that, in providing access to justice, the establishment of these schemes has been one of the most significant advances in consumer protection of the past 30 years. Without industry ombudsman schemes, hundreds of thousands of people would have been left with no avenue for redress other than courts, or more likely, because of cost and other access barriers, would have been left with nowhere to turn.

The below table provides some further detail about certain features of industry ombudsman scheme, and compares them with government ombudsmen:

	Government Ombudsman	Industry Ombudsman
Power to make a binding decision in an individual dispute	No	Yes – can make a decision binding on industry member (although encourages settlement)
Quality assurance	Subject to government oversight (i.e. Auditor-General)	Reviews and evaluations are reported publicly or to Boards
System issues	Yes, can report to Parliament or through annual reports	Report systemic issues arising from cases to the relevant regulator and publish de-identified outcomes
Outcome expectations	No power to make binding decisions so not applicable.	Binding determinations may be published. Case studies also published in annual reports etc or in bulletins can give parties a guide to likely outcome

It is critical that such a scheme be independent from industry. One of the main benchmarks of the Key Practices for Industry-Based Consumer Dispute Resolution, published by the Federal Government, is independence.²⁶ Any industry-based ombudsman will be expected to comply with the key practices set out in that publication.

At present, disputes between private colleges and international students can be heard by the Commonwealth's Overseas Students Ombudsman (**OSO**), but no such process exists for domestic students. Complaints by domestic students in Victoria must be taken to the Victorian Civil and Administrative Tribunal (**VCAT**). The VCAT process involves a court-like, adversarial hearing, which is much more formal and intimidating for a consumer than an

²⁶ The Treasury, 'Key Practices for Industry-based Consumer Dispute Resolution', February 2015, available at: http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/key%20pract%20ind%20cust%20dispute%20reso/Documents/PDF/key_pract_ind_cust_dispute_resol.ashx.

ombudsman process. The process remains informal and avoids some of the pitfalls of face-to-face dispute resolution where a power imbalance exists between the parties. An ombudsman process is more appropriate for the majority of disputes relating to private colleges.

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

Recommendation 9

We recommend establishing a national industry ombudsman to resolve disputes between students and training providers.

Please contact Katherine Temple on 03 9670 6912 or at katherine@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer



Katherine Temple
Senior Policy Officer