

7 August 2015

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

VET Funding Review
Level 2, 41 St Andrews Place
East Melbourne Victoria 3002

Dear Sir/Madam,

VET Funding Review - Issues Paper

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on consultation questions on the future directions outlined in the VET Funding Review Issues Paper.

We welcome the Review's acknowledgment that students need to be better protected and supported to make informed training decisions that have the best chance of meeting their needs, and to avoid being overly influenced by providers.

Our submission has addressed the following consultation questions:

- Would a classification system help lift the quality of training? What measures provide an effective measure of provider capability?
- Can the number of providers be limited in some areas of training? How can this be done while preserving the benefits of contestability?
- What factors should be considered in targeting funding to courses?
- Would a minimum student fee lead to students giving greater consideration to their training choices? At what level should such a fee be set?
- What support could be given to students making training decisions?
- How can brokers and aggregators be effectively regulated?
- Under what circumstances should subcontracting be allowed?
- What are the merits of a separate regulator regime for private Registered Training Organisations (**RTOs**)?

Our submission also considers other relevant issues including dispute resolution, remediation and the complexity of the regulatory system.

Our comments are detailed more fully below.

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1. Summary of recommendations

Recommendation 1

Implement a simple and relevant classification system for training providers, that takes into account the following measures of capability:

- whether the training provider has received an adverse decision from a regulator;
- graduate outcomes (including average wage for the profession);
- average price of similar courses; and
- student and employer satisfaction with the course.

Recommendation 2

Consumer test any proposed classification system to ensure that the disclosure does what it is intended to do, that is, help consumers understand products and make informed decisions.

Recommendation 3

Undertake further research to determine whether students wishing to study a VET course currently have 'too much' choice. Any proposed limitation of student choice should involve thorough consumer testing before implementation.

Recommendation 4

Victorian Training Guarantee funding be allocated according to demonstrated student outcomes and compliance, with a particular focus on completion rates and employment outcomes.

Recommendation 5

Frequent audits and enforcement actions to monitor compliance and deal with misconduct.

Recommendation 6

Work with the Commonwealth and other states to ensure that all VET courses be required to have multiple census dates, and invoices to be posted before each census date.

Recommendation 7

Prohibit training providers from increasing course fees on the basis that students are no longer eligible for 'subsidies'.

Recommendation 8

Consider requiring students to speak to an independent and qualified course advisor before enrolling in a VET course.

Recommendation 9

Ban door-to-door sales and cold calling. Alternatively, adopt an 'opt in' requirement for unsolicited sales.

Recommendation 10

Ban or restrict commission-based sales and improving disclosure of commissions to students.

Recommendation 11

Prohibit training providers from placing barriers to withdrawal before the census date.

Recommendation 12

Prohibit training providers and brokers from inducements, such as laptops, cash or course discounts, for enrolments or referrals.

Recommendation 13

Consider banning the use of education brokers to spruik Victorian Training Guarantee courses, in conjunction with restricting commission-based sales arrangements. In the alternative, we recommend that brokers be required to be licensed in order to suggest and sell courses to consumers.

Recommendation 14

Restrict brokers and training providers from using the term 'career advisors' unless the salesperson is in fact a trained career advisor and is acting in that role.

Recommendation 15

All training providers delivering VET courses be required to be accredited by the relevant regulator. At a minimum, the obligations and liability of third party providers needs to be clarified, perhaps by requiring third parties to enter into contracts with the Victorian Government guaranteeing service levels.

Recommendation 16

Private and public providers be subject to the same regulatory regime, which should restrict commission-based and unsolicited sales.

Recommendation 17

Work with the Commonwealth and other states to establish a national industry ombudsman scheme.

Recommendation 18

Implementing a retrospective framework for remediating students who have been mis-sold courses, or have had qualifications revoked as a result of enforcement action.

Recommendation 19

The Victorian Government to work with the Commonwealth and other states to make improvements to simplify the regulatory system from a consumer perspective.

Recommendation 20

Regulators use the media to increase the deterrence value of their enforcement actions and to gain maximum educative value from enforcement outcomes.

Recommendation 21

Regular reviews of relevant regulators and the regulatory framework to ensure it is in fact ensuring compliance with regulatory obligations.

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. Would a classification system help lift the quality of training? What measures provide an effective measure of provider capability?

At the outset, we caution against relying on disclosure (such as a classification system) as a 'fix-all' in the Vocational Education and Training (VET) market. There is a clear role for disclosure as long as it is going to allow consumers to engage more effectively in markets. However, disclosure will never be able to overcome problems created by products which are unfair, conflicted or overly complex. In these cases, the solution is to re-design the products and sales practices themselves.

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

"It is impossible for students to have the information required to make the same judgments about the quality of education and training as they would about a physical product or less complex service. This reinforces the need for quality arrangements that directly regulate the education inputs".¹

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

Improving disclosure

However, with the above cautions in mind, we welcome the proposal of a classification system to assist students to make informed decisions and so improve efficiency in education market. To be effective, disclosure must not only share information but positively influence consumer behaviour.

In order for the classification system to assist students, this disclosure must be simple and relevant to the student. The disclosure should not require the student to consider multiple ratings or classifications. A simple classification (such as a '5 star' rating system) that is prominently disclosed to students before enrolment is likely to be most effective.

¹ Yu and Oliver, 'The capture of public wealth by the for-profit VET sector', Workplace Research Centre, University of Sydney, January 2015, p.5, available at: <http://www.aefederal.org.au/Publications/2015/WRC-AEU2015.pdf>.

² See, for example, the Australian Securities and Investment Commission's Regulatory Guide on facilitating online financial services

In considering effective measures of provider capability to inform the rating system, we believe the following factors should be taken into account:

- whether the training provider has received an adverse decision from a regulator;
- graduate outcomes (including average wage for the profession);
- average price of similar courses; and
- student and employer satisfaction with the course.

Consumer testing

Designing effective disclosure should start with a consideration of how consumers actually use disclosure and how they make decisions, rather than a focus on compliance and risk avoidance. It should be designed with an understanding of what kind of information will be useful to consumers, and when and how to present it for maximum effect.

We therefore strongly recommend consumer testing any proposed classification system. This will ensure that the disclosure does what it is intended to do, that is, help students understand training products and make informed decisions. This is especially important given the current movement towards permitting providers to use more innovative disclosure.² We support this movement, but it will just produce new types of ineffective disclosure unless the innovative disclosure models are refined through consumer testing.

Recommendation 1

Implement a simple and relevant classification system for training providers, that takes into account the following measures of capability:

- whether the training provider has received an adverse decision from a regulator;
- graduate outcomes (including average wage for the profession);
- average price of similar courses; and
- student and employer satisfaction with the course.

Recommendation 2

Consumer test any proposed classification system to ensure that the disclosure does what it is intended to do, that is, help consumers understand products and make informed decisions.

4. Can the number of providers be limited in some areas of training? How can this be done while preserving the benefits of contestability?

As consumer advocates, we are generally supportive of students having choice. Free choice is the basis on which markets work, driving competition and generating economic growth, and often providing significant benefits to consumers.

² See, for example, the Australian Securities and Investment Commission's Regulatory Guide on facilitating online financial services disclosures released in July 2015: <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-221-facilitating-online-financial-services-disclosures/>.

However, behavioural economists have found that sometimes too much choice can lead to poor decisions, or no decision at all. As options multiply, there may be a point at which the effort required to obtain enough information to be able to distinguish sensibly between alternatives outweighs the benefit to the consumer of the extra choice. Too many options means too much effort to make a sensible decision: better to bury your head under a pillow, or have somebody else pick for you.³ This has been described by some as the 'tyranny of choice'.⁴

There may also be benefits in limiting choice if this amounts to some sort of quality assessment undertaken by whoever it is that is limiting choice. If a competitive market is to remain, however, this should be balanced by sufficient choice (i.e. at least 3-4 providers in an area) to provide some level of constraint on monopoly power. Further, the providers on the "approved list" should be regularly reviewed to ensure that quality providers that better meet student needs are not unduly excluded.

We recommend that the Government undertake further research to determine whether students wishing to study a VET course currently have 'too much' choice. Any proposed limitation of student choice should be thoroughly consumer tested before implementation, to ensure that reducing choice would in fact improve student decision making.

Recommendation 3

Undertake further research to determine whether students wishing to study a VET course currently have 'too much' choice. Any proposed limitation of student choice should involve thorough consumer testing before implementation.

5. What factors should be considered in targeting funding to courses?

We agree with the Review that moving to an outcomes-based funding model could potentially act as an incentive to reduce poor attrition rates and support employment outcomes for training conducted by providers accessing government funds.⁵ For this reason, we support targeting funding to courses that deliver quality student outcomes and demonstrate ongoing compliance with the requirements under the law and the Victorian Training Guarantee (VTG) contract.

We welcome the Victorian Government's announcement that it will prioritise quality when choosing providers for government funding, based on their track record and will implement tougher market entry requirements for providers to access funding.⁶

In addition, we recommend that VTG funding be allocated according to demonstrated student outcomes and compliance, with a particular focus on completion rates and employment outcomes. We also recommend more frequent audits and robust enforcement actions monitor compliance and deal with misconduct, to ensure the Government is basing its funding decisions

³ The Economist, 'The tyranny of choice: You choose', 16 December 2010, available at: <http://www.economist.com/node/17723028>

⁴ Ibid.

⁵ Victorian Government, 'Vocational Education and Training Funding Review: Issues Paper', July 2015, p. 22, available at: http://vetfundingreview.vic.gov.au/docs/vetissuespaper_WEB.pdf.

⁶ Victorian Government, 'Review of Quality Assurance in Victoria's VET System: Government response', July 2015, available at: <http://www.education.vic.gov.au/Documents/training/learners/vet/ReviewofQualityV11.pdf>.

on accurate and up-to-date information on compliance. In this regard, we welcome the Government's announcement that an audit blitz will commence shortly.⁷

Recommendation 4

VTG funding be allocated according to demonstrated student outcomes and compliance, with a particular focus on completion rates and employment outcomes.

Recommendation 5

Frequent audits and enforcement actions to monitor compliance and deal with misconduct.

6. Would a minimum student fee lead to students giving greater consideration to their training choices? At what level should such a fee be set?

We rarely receive complaints in relation to low or no-fee courses, as students are often prompted to contact us once they are contacted by debt collectors or receive notification of a large debt.

However, in considering whether to implement a minimum student fee, it should be considered whether this fee should be able to levied upfront or over a number of census dates. We note that the Victorian Government only provides funding per unit delivered, and not upfront. We recommend that students should incur liabilities incrementally, in line with this policy.

Of particular concern are courses 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.

Carrie's story

Carrie recently moved from country Victoria to Melbourne with Centrelink relocation assistance. Carrie enrolled in a two year Certificate IV in Allied Health Assistance with a private training provider on 30 April 2015. The course was due to commence on 30 May 2015. The course cost \$6,090 payable in weekly instalments of \$62.39. Carrie enrolled over the phone, and says she felt pressured by the salesperson to sign up quickly. Carrie contacted the training provider in mid-May 2015 and explained that she could not commence the course as she was unable to afford the course payments. The training provider informed Carrie that she would be required to pay the full amount, as the five day cooling off period had expired. Carrie has not yet resolved her dispute with the training provider.

Brenda's story

Brenda found an Interior Design course online and contacted the private training provider to find out more information. The training provider interviewed her briefly over the phone. Brenda

⁷ Ibid.

was told that although it would be a difficult course to complete, that Brenda could manage it. Brenda enrolled in a two year course at a cost of \$8,000 payable by weekly instalments of \$55. Brenda started the course but after 6 months she decided that she couldn't afford to continue and the course was too difficult for her.

Brenda discontinued the course but the weekly instalments continued to be withdrawn from her account. Brenda successfully cancelled the direct debit order, but had already paid the training provider approximately \$3,500. The training provider insisted that Brenda was liable for the full amount.

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.'⁸

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 freely between providers. We recommend that the Victorian Government work with the Commonwealth and other states to ensure that all VET courses be required to have multiple census dates, and invoices to be posted before each census date.

We also have concerns about private training providers offering 'discounts' to students on the basis that their places are government funded. We have seen examples of students being enrolled in courses as a 'subsidised' rate, but then charged the 'full fee' rate if they withdraw before the end of the course. For some students, like Helen and Charlotte, the difference amounted to thousands of dollars.

Helen and Charlotte's story⁹

Helen enrolled in an Advanced Diploma of Fashion. Helen says she has always been drawn to the "creative side", and found the training provider on the internet. She planned to enrol for one year, but on advice from the training provider, signed up for a three-year diploma paying about \$450 a month. After about 18 months, suffering depression and stress, she pulled out.

Charlotte enrolled in a Diploma in Fashion Business, but withdrew after two months. Charlotte had weekly calls from a debt collector after she withdrew, saying that if she didn't pay up they would take her to court. The training provider gives refunds only if a course is cancelled or delayed - there is no provision for students to withdraw. Following their withdrawals, Helen and Charlotte were liable for thousands more than if they had kept studying, as the training provider said they were no longer eligible for "subsidies".

⁸ Department of Education and Training, 'VET FEE-HELP Reforms', July 2015, available at: http://studyassist.gov.au/sites/StudyAssist/HELPpayingMyFees/VET-FEE-HELP/Documents/VET%20FEE%20HELP%20Reforms%20Factsheet%20Update_05_ACC.pdf.

⁹ Kathryn Powley, 'Melbourne Fashion Institute sets debt collectors onto students', Herald Sun, 21 July 2015, available at: <http://www.perthnow.com.au/news/melbourne-fashion-institute-sets-debt-collectors-onto-students/story-fnii5smr-1227450886086>.

In our view, training providers need to have fairer withdrawal and refund policies. Course fees should be incurred incrementally, and at a set price. In addition to our recommendation for multiple census dates, we strongly recommend that training providers be prohibited from increasing course fees on the basis that students are no longer eligible for 'subsidies'.

Recommendation 6

Work with the Commonwealth and other states to ensure that all VET courses be required to have multiple census dates, and invoices to be posted before each census date.

Recommendation 7

Training providers be prohibited from increasing course fees on the basis that students are no longer eligible for 'subsidies'.

7. What support could be given to students making training decisions?

As discussed above, we do not consider disclosure as an end unto itself. Disclosure will never be able to overcome problems created by training courses or remuneration structures which are unfair, conflicted or overly complex. In these cases, the solution is to re-design the courses and sales practices themselves.

However, we welcome the suggestion of a simple and relevant classification system for students, which would provide students clearer information to base their training decisions on. We also consider that further support could be provided to students before they enrol in a course, such as independent course advice.

This independent advice, as opposed to the 'advice' provided by training provider and broker salespeople, would consider the student's individual circumstances and recommend the best course for that student's needs. In delivering this advice, the Government should consider innovative ways to communicate with potential students, for example through mobile apps, online and webchat.

Obtaining this advice would preferably be mandatory and delivered by a genuinely independent and qualified course advisors. We anticipate this could occur after a student contacts a training provider (or vice versa), but before the student enrolls in a course. This could be during the 'opt in' period discussed further below, which would slow down the enrolment process and allow students to reflect on their enrolment choices.

Recommendation 8

Consider requiring students to speak to an independent and qualified course advisor before enrolling in a VET course.

8. What additional steps are required to regulate marketing practices?

We have received numerous complaints about aggressive and unethical marketing tactics, which makes this an area of particular concern to us. We have seen examples of training providers and brokers targeting vulnerable groups, and signing students up to unsuitable training courses.

Banning door-to-door sales and cold calling

We recommend banning door-to-door sales and cold calling, given the poor conduct of some training providers and brokers using these recruitment methods. In the alternative, we recommend the Victorian Government pursue an 'opt in' model for enrolments. 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, rather than encouraging a sales model where purchases are made under pressure or there is poor disclosure of terms.¹⁰

The recent change to the *VET Guidelines 2015* enacts a similar reform. Clause 4.9.2 of those guidelines states that a provider must not accept a Request for Commonwealth Assistance form (VET FEE-HELP loan form) from a person either electronically or in paper form unless two business days have passed from the date and time the person enrolled and the person has received the required information disclosure about the loan. This requirement is designed to give a prospective student time to think through the decision to enrol and pay for the course via the VET loan.

Banning or restricting commission-based sales

We understand that some private training provider salespeople and 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. This model provides incentives to salespeople to 'sell' a course even if it is not suitable.

We recommend banning or restricting commission-based sales, perhaps by moving to a fee-for-service model or capping commissions. We also recommend improving disclosure of commissions to students, but disclosure alone may not be sufficient to address the conflicts created by conflicted remuneration structures.¹¹ 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.

¹⁰ See Australian Communications and Media Authority, 'Mobile Premium Services Code', 2012, available at: <http://www.acma.gov.au/theACMA/mobile-premium-services-code>.

¹¹ Research suggests disclosure of commissions can create perverse outcomes. For example, a rewrite of mortgage disclosure information to disclose broker commissions actually lead to more confusion over the total cost of a mortgage: James Lacko and Janis Pappalardo, 'The effect of mortgage broker compensation disclosures on consumers and competition: A controlled experiment', Federal Trade Commission Bureau of Economics Staff Report, 2004 as referenced in Financial Services Authority, 'Financial Capability: A Behavioural Economics Perspective', 2008, available at: <http://www.fsa.gov.uk/pubs/consumer-research/crpr69.pdf>.

We also recommend prohibiting training provider from placing barriers to withdrawal before the census date, as has been adopted by the Federal Government as part of its VET FEE-HELP reforms.¹²

Banning offering inducements

While there have been many well-publicised cases of VET FEE-HELP courses being sold by salespeople offering inducements (such as 'free' laptops), we have also seen non-VET FEE-HELP training providers offer inducements to students. While these practices are now banned for VET FEE-HELP courses, and are banned by VTG contracts, they are not specifically outlawed under Victorian legislation.

Jim's story

Jim says that he applied for a job working on the mines in South Australia via an online job board. Jim says he received a call from a recruiter, who told Jim that there was a fly in-fly out job available at the mines and invited him to an interview at their offices. Jim says that at the interview he was told that his application was successful and that he had got a position. However, he was told that he needed to complete a six month course in Fabrication Engineering, which included a welding kit, before he started.

Jim says that he paid an administration fee and attended an orientation day at the training provider's premises, where he was given a piece of paper to sign saying that he had not been given any promise of a job. Jim says he realised that there was no job available. Thankfully, Jim says that he did not sign a contract so does not believe his is liable for the course fees.

We recommend banning the offering of inducements, such as laptops, cash or course discounts, for enrolments or referrals through legislation (in addition to VTG funding contracts).

Recommendation 9

Ban door-to-door sales and cold calling, or adopting an 'opt in' requirement for unsolicited sales.

Recommendation 10

Ban or restrict commission-based sales and improving disclosure of commissions to students.

Recommendation 11

Prohibit training provider from placing barriers to withdrawal before the census date.

¹² Department of Education and Training, 'VET FEE-HELP Reforms', July 2015, available at: http://studyassist.gov.au/sites/StudyAssist/HELPpayingMyFees/VET-FEE-HELP/Documents/VET%20FEE%20HELP%20Reforms%20Factsheet%20Update_05_ACC.pdf.

Recommendation 12

Prohibit offering of inducements, such as laptops, cash or course discounts, for enrolments or referrals.

9. How can brokers and aggregators be effectively regulated?

We have received a number of complaints about the marketing and promotional techniques employed by private training providers and education brokers. 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.

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 discussed above, the commission-based sales system creates an inherent conflict between the interests of the salesperson, and the student. We believe there is merit in banning the use of education brokers to spruik VET courses, in conjunction with measures to restrict commission-based sales arrangements. In the alternative, we recommend that brokers be required to be accredited in order to suggest and sell courses to consumers.

We are particularly concerned by brokers (and training providers) that market themselves as ‘career advisors’, when in fact they are simply salespeople. We therefore also 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.

Recommendation 13

Consider banning the use of education brokers to spruik Victorian Training Guarantee courses, in conjunction with restricting commission-based sales arrangements. In the alternative, we recommend that brokers be required to be licensed in order to suggest and sell courses to consumers.

Recommendation 14

Restrict brokers and training providers from using the term 'career advisors' unless the salesperson is in fact a trained career advisor and is acting in that role.

10. Under what circumstances should subcontracting be allowed?

As the Reviewers are be aware, some training providers use third parties to deliver training that may not be accredited by relevant regulators. While these third parties may be contractually obliged to obey all relevant laws and regulations, the burden of compliance ultimately rests with the RTO.

Some other RTOs establish 'alliance partnerships' whereby they provide national recognition to training provided by non-RTOs. For example, the National Training Services Pty Ltd (NTS) website states:

National Training Services Pty Ltd is an Australian registered training organisation regulated by the Australian Skills Quality Authority. NTS works with Alliance Partners to provide recognition of the training they provide, award Nationally Recognised certification and maintain the records and documentation required by State and Federal Government regulatory and funding authorities.¹³

It is sometimes unclear from the training provider's website that it is not an RTO, and that these services are being delivered by a third party.¹⁴ This is understandably confusing for many students, and it may be unclear from which training provider the student should seek a remedy in the event of misconduct.

We welcome the Victorian Government's announcement that it will place tighter controls on subcontracting.¹⁵ In this regard, we recommend that all training providers delivering VET courses be required to be accredited by the relevant regulator. In the alternative, the obligations and liability of third party providers needs to be clarified, perhaps by requiring third parties to enter into contracts with the Victorian Government guaranteeing service levels.

Recommendation 15

All training providers delivering VET courses be required to be accredited by the relevant regulator. At a minimum, the obligations and liability of third party providers needs to be clarified, perhaps by requiring third parties to enter into contracts with the Victorian Government guaranteeing service levels.

11. What are the merits of a separate regulatory regime for private RTOs?

Private training providers are obliged to act in the best interests of shareholders, which means generating returns for shareholders is a priority. While not mutually exclusive to quality teaching and learning, this clearly creates a tension between acting in the best interests of students (which often involves capital expenditure on support services) and maximising profits. Private training providers' focus on profits also arguably provides an incentive to offer courses that attract the highest subsidy at the lowest cost, without taking into consideration likely student outcomes.¹⁶

The incentive to generate profits is one explanation for the proliferation of low cost, high demand courses such as management and business courses. 'Management and Commerce' was the most common field of education undertaken by students accessing VET FEE-HELP loans in 2013, representing 44 per cent of total course enrolments.¹⁷ One example of a provider

¹³ National Training Services, accessed 17 July 2015, available at: <http://www.nationaltrainingservices.edu.au/>.

¹⁴ For example, see: <http://melbournefashioninstitute.com.au/>.

¹⁵ Victorian Government, 'Review of Quality Assurance in Victoria's VET System: Government response', July 2015, available at: <http://www.education.vic.gov.au/Documents/training/learners/vet/ReviewofQualityV11.pdf>.

¹⁶ Yu and Oliver, 'The capture of public wealth by the for-profit VET sector', Workplace Research Centre, University of Sydney, January 2015, p. 25, available at: <http://www.aeufederal.org.au/Publications/2015/WRCAEU2015.pdf>.

¹⁷ Department of Education, '2013 VET FEE-HELP Statistical Report - Summary', 2014, available at: http://docs.education.gov.au/system/files/doc/other/2013_vet_fee-help_statistical_report_-_summary_0.pdf

specialising in these kinds of low cost courses is the Australian College of Training and Employment (trading as Evocca College), the largest single recipient of VET FEE-HELP loans. The Workplace Research Centre reported that Evocca's website indicates it solely caters for diploma and advanced diploma studies in business, information technology and media, community services, and tourism.¹⁸

However, in our view this incentive alone does not justify having a separate regulatory regime for private training providers. Addressing the inherent conflicts of interest created by commission-based and unsolicited sales, which are generally only undertaken by private providers in any case, is likely to be a far more effective reform. Students should have the same protections no matter where they study, or how they choose to pay for it.

Recommendation 16

Private and public providers be subject to the same regulatory regime, which should restrict commission-based and unsolicited sales.

12. Other issues

External dispute resolution

We reiterate our recommendation in our initial submission to the VET Funding Review that the Victorian Government should consider establishing a national industry ombudsman to resolve disputes.

The Review of Quality Assurance in Victoria's VET system recently recommended that, in the absence of a national VET complaints system, that the Victorian Government establish a body responsible for ensuring the resolution of student complaints. It was also recommended that the Victorian Government pursue the establishment of an appropriate VET Ombudsman function 'through national fora'.¹⁹ We strongly support this recommendation. This recommendation was also supported by the Australian Council for Private Education and Training (**ACPET**).²⁰ We welcomed the Victorian Government's announcement that it would establish a new body to investigate and resolve student complaints, but urge that this body be part of a national scheme.

We note that the Overseas Student Ombudsman was established following the Baird Review, which recommended that international students have access to an ombudsman service, agreeing that 'international students should have access to the highest standard of complaints handling'.²¹ We see no reason why our domestic students should not also have such access.

¹⁸ Yu and Oliver, 'The capture of public wealth by the for-profit VET sector', Workplace Research Centre, University of Sydney, January 2015, p. 17, available at: <http://www.aeufederal.org.au/Publications/2015/WRCAEU2015.pdf>.

¹⁹ Victorian Department of Education and Training, 'Review of Quality Assurance in Victoria's VET System', May 2015, available at: <http://www.education.vic.gov.au/Documents/training/learners/vet/reviewQAreport.pdf>.

²⁰ Australian Council for Private Education and Training, 'ACPET Submission to the VET Funding Review', April 2015, available at: <http://www.acpet.edu.au/uploads/files/ACPET%20submission%20VET%20Funding%20Review.pdf>.

²¹ Australian Government, 'Stronger, simpler, smarter ESOS: supporting international students', February 2010, available at: https://internationaleducation.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/ESOS-Review/Documents/ESOS_REview_Final_Report_Feb_2010_pdf.pdf.

In order to ensure all RTOs are members of the ombudsman scheme, such membership should be a condition of registration as an NVR training organisation under Division 1 of the *National Vocation Education and Training Regulator Act 2001* (Cth), and Part 4.3 of the *Education and Training Reform Act 2006* (Vic). As noted above, 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.

Remediation

As set out in our initial submission, we are concerned about the lack of compensation for students following enforcement action against providers. While we welcome regulators taking a robust approach to enforcement, it is important that consumers are appropriately compensated for losses that are essentially not their fault.

For example, we have seen examples in Victoria where enforcement action 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 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 course fees for retraining are 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 VTG 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.²² We recommend that the Victorian Government consider how to ensure that appropriate compensation is provided to students who lose their qualifications as a result of successful enforcement action.

We also recommend implementing a retrospective framework for remediating students who have been mis-sold courses. The framework should ensure that the process for seeking refunds is

²² 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>.

simple and effective, with a clear contact point for students. Training providers should also be required to notify students of their right to seek a refund and the process for doing so. This should not only encourage students to seek redress, but also encourage training providers to ensure that enrolments and course delivery is appropriate.

Complexity of regulatory system

In our initial submission, we noted the complexity of the regulatory system and the difficulties this can cause for students wishing to make a complaint.

The establishment of the National Training Complaints Hotline (**the Hotline**)²³ has been a positive step towards reducing this complexity. We recommend that the Hotline not only refer complaints to the appropriate regulator, but inform complainants about how to resolve individual complaints. This could be as simple as explaining the role of regulators and referring students to local community legal assistance services for advice. We also recommend that governments and regulators work together to increase awareness of the Hotline, perhaps by requiring training providers to notify students of its availability.²⁴

We acknowledge that the complexity of the current regulatory framework is a difficult problem to solve, but encourage the Victorian Government to work with the Commonwealth and other states to make improvements to simplify the regulatory system from a consumer perspective.

Enforcement

As set out in our initial submission, in 2013 the Victorian Education and Training Department (**the Department**) was responsible for regulating 489 contracted RTOs.²⁵ Of the 109 providers audited in 2013 by the Department, the majority had 'serious findings' in regards to student enrolment.²⁶ Thirty-six 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 VTG.²⁷ Only four providers had their funding contracts terminated.²⁸

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 have therefore welcomed the announced audit blitz.

²³ 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>.

²⁴ For example, Australian credit licensees are required to include information in credit guides about the licensee's procedure for resolving disputes with a consumer, including contact details for a consumer to access the licensee's internal dispute resolution procedure and the approved external dispute resolution scheme of which the licensee is a member - section 126(2)(e) of the *National Consumer Credit Protection Act 2009* (Cth).

²⁵ Department of Education and Early Childhood Development, 'Victorian Training Guarantee Compliance Framework', 2012, p. 2, available at: <http://www.education.vic.gov.au/Documents/training/providers/rto/victrainingguaranteecomplianceframework.pdf>.

²⁶ 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>.

²⁷ Department of Education and Early Childhood Development, 'Victorian Training Guarantee Compliance Framework', 2012, p. 12, available at: <http://www.education.vic.gov.au/Documents/training/providers/rto/victrainingguaranteecomplianceframework.pdf>.

²⁸ *Ibid*, p. 14.

In 2013, Consumer Action published a report titled *Regulator Watch*,²⁹ which was conceived in the absence of a public mechanism to determine how much enforcement work was undertaken by various regulators. This report recommended that all consumer protection regulators significantly improve the way they report on their enforcement work to the community. We also recommended that regulators use the media to increase the deterrence value of their enforcement actions and to gain maximum educative value from enforcement outcomes. We reiterate these recommendations in this submission.

We note that to perform well, regulators must have appropriate resources. We need to equip the regulators in this sector not only with appropriate funding, but also the staff and investigative tools required to ensure the maximum public benefit can be obtained from investigations and enforcement actions. Regulators also need to be provided with the powers and jurisdiction to address complaints holistically, which would also help to reduce complexity for consumers. We query whether the Department, rather than a regulator, is the appropriate body to handle enforcement and compliance in this regard.

The effectiveness of the regulatory framework, including regulators and relevant government departments, needs to be regularly reviewed. The *Regulator Watch* report noted some good practice frameworks that apply to regulators, including for the need for strong feedback loops between consumer organisations, consumer dispute resolution services, and regulators. We would encourage regular reviews of relevant regulators and the regulatory framework to ensure it is in fact ensuring compliance with regulatory obligations.

Recommendation 17

Work with the Commonwealth and other states to establish a national industry ombudsman scheme.

Recommendation 18

Implementing a retrospective framework for remediating students who have been mis-sold courses, or have had qualifications revoked as a result of enforcement action.

Recommendation 19

The Victorian Government to work with the Commonwealth and other states to make improvements to simplify the regulatory system from a consumer perspective.

Recommendation 20

Regulators use the media to increase the deterrence value of their enforcement actions and to gain maximum educative value from enforcement outcomes.

²⁹ Gordon Renouf, Teena 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>.

Recommendation 21

Regular reviews of relevant regulators and the regulatory framework to ensure it is in fact ensuring compliance with regulatory obligations.

Please contact Katherine Temple on 03 9670 5088 or at katherine@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

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