



25 November 2015

By email: senator.mckenzie@aph.gov.au and eec.sen@aph.gov.au

Senator Bridget McKenzie
Chair, Senate Standing Committee on Education and Employment
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator

Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015 inquiry

I write in relation to the referral of the Higher Education Support Amendment (VET FEE-HELP Reform) Bill to the Senate Standing Committee on Education and Employment.

Consumer Action Law Centre provides free legal advice and pursues litigation on behalf of vulnerable and disadvantaged consumers across Victoria. In recent years we have built up substantial experience assisting Victorians who have been exploited by Vocational Education and Training (VET) providers and their promoters. As you are no doubt aware, many individuals have been left with little or no educational benefit to show despite incurring substantial debt associated with VET courses.

Unfortunately, among the submissions received by the Committee there appears to be no student or consumer focused voice. We apologise for not providing a submission to the committee via the due date, but we provide this letter so that the committee has the opportunity to consider the key challenges faced by those Australians who have incurred a VET FEE-HELP loan through the mis-selling of vocational courses. The committee is also encouraged to consider a number of measures outlined below that would serve to ameliorate detrimental outcomes for vulnerable groups, students and taxpayers.

Dispute Resolution

We have long championed the establishment of a national ombudsman for the VET sector. This ombudsman would be funded by industry, and provide free and independent dispute resolution services to students. The establishment of a national ombudsman has been widely supported, including by the Education and Employment References Committee, and the Victorian Review of Quality Assurance in Victoria's VET System.¹

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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 ombudsman process. An ombudsman scheme 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.

The VET FEE-HELP Reform Bill includes provisions designed to broaden the circumstances in which a student can seek a re-credit of their VET FEE-HELP loan debt balance and remission of debt, where it is proven that as a result of unacceptable behaviour by the provider (or their agent) the student enrolled and subsequently received a loan. It remains unclear exactly how a student is to access these new measures. It also appears from the Bill (specifically item 14, proposed section 46A) that the bases upon which an individual can seek remission is limited. While we note that the VET Guidelines, yet to be developed, will provide further details about the types of unacceptable conduct that might give rise to a remission of debt, we are concerned that this process will not consider broader consumer law rights, particularly rights pursuant to the Australian Consumer Law.

In our view, an accessible ombudsman would be best placed to resolve applications for re-crediting of a VET FEE-HELP debt, rather than an administrative process run by a government department. Ombudsman schemes have the power to resolve disputes flexibly, considering a consumer's broad legal rights (not just those based in VET Guidelines), and are based upon agreed standards. The Federal Government released the revised *Benchmarks for Industry-based Customer Dispute Resolution* in March, which provides standards for industry-based dispute resolution in Australia and New Zealand.ⁱⁱ The document articulates the underlying principles and purposes for six benchmarks of dispute resolution services: accessibility, independence, fairness, accountability, efficiency and effectiveness. Also released were *Key Practices for Industry-based Customer Dispute Resolution* which provide dispute resolution services with practical ways of implementing the benchmarks in their schemes. We strongly support these initiatives and believe that they could be applied to the establishment of an ombudsman scheme in the vocational training sector.

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. Should a government department be solely responsible for administering applications for re-crediting VET FEE-HELP loans, we believe that students will face accessibility barriers and their full suite of consumer rights will not be considered.

Importantly, effective ombudsman schemes can also contribute to compliance, monitoring and enforcement by providing information about common and systemic issues of complaint. This should improve the Department of Education's access to data, thereby improving its regulatory

role. Ombudsman schemes may also improve complaint handling standards by education providers themselves, by acting as an additional discipline to avoid complaints.

Remediation

As noted above, we support the provisions in the VET FEE-HELP Reform Bill that broaden the bases upon which students can seek a re-credit of VET FEE-HELP debt. However, the Bill proposes this to operate prospectively. We recommend that the proposed framework for remediating students be retrospective, particularly given the significant misconduct that has occurred during 2014 and 2015. Reforms implemented already this year has diminished some of the worst misconduct in the sector, yet there is no reason that individuals who have accumulated debt on the basis of this prior unscrupulous conduct should continue to be saddled with ongoing debt.

Recent court action led by the Australian Competition and Consumer Commission and NSW Fair Trading is seeking redress for affected consumers (by cancelling VET FEE-HELP debts), and orders for the repayment of course fees paid by the Commonwealth to affected institutions.ⁱⁱⁱ We welcome this. However, we submit that this outcome should be achievable for private colleges beyond the two institutes given the widespread evidence of misconduct. Legislation should be introduced to facilitate a scheme of remediation for all affected students provided VET FEE-HELP loans during recent years. This should be proactive and not rely on individual complaints, but involve a review of all loans advanced to determine if there was misconduct.

Commission-based sales

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. This model provides incentives to salespeople to 'sell' a course even if it is not suitable, and to provide barriers to withdrawal before the census date. The Government has indicated that it may consider further reforms in vocational training, additional to the VET FEE-HELP Bill. As such, we encourage the committee to support the banning of commission-based sales to better align the interests of students and VET providers.

Unsolicited sales

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. High-pressure sales techniques are often used to convince students to enrol.

We have also received reports of salespeople refusing to disclose the name of the broker or private training provider they represent, which makes it difficult for people to make effective complaints to relevant regulators.

We recommend banning cold calling and door-to-door sales of VET courses, given the shocking conduct of some colleges and brokers using these recruitment methods. Prospective students should be supported to make their own educational choices, free from pressure techniques inherent in unsolicited advances.

Please contact Denise Boyd, Director of Policy and Campaigns on 03 9670 5088 or at DeniseB@consumeraction.org.au if you would like to discuss these matters further.

Yours faithfully

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

ⁱ Senate Standing Committee on Education and Employment, *The operation, regulation and funding of private vocational education and training providers in Australia*, October 2015, recommendation 16, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/vocational/Final%20Report/b01; Department of Education and Training, *Review of Quality Assurance in Victoria's VET System*, May 2015, recommendation 18, <http://www.education.vic.gov.au/Documents/training/learners/vet/reviewQAreport.pdf>.

ⁱⁱ Treasury, *Benchmarks for Industry-based Customer Dispute Resolution*, March 2015, <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/benchmarks-ind-cust-dispute-reso>.

ⁱⁱⁱ ACCC, *Media Release: ACCC takes action against Phoenix following joint investigation with NSW Fair Trading*, 24 November 2015 <http://acc.gov.au/media-release/accc-takes-action-against-phoenix-following-joint-investigation-with-nsw-fair-trading>; ACCC, *Media Release: ACCC takes action against Unique International College following joint investigation with NSW Fair Trading*, 27 October 2015 <https://www.accc.gov.au/media-release/accc-takes-action-against-unique-international-college-following-joint-investigation-with-nsw-fair-trading>.