



22 January 2016

[By email: ETSBC@parliament.qld.gov.au]

Research Director
Education, Tourism and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Research Director,

Further Education and Training (Training Ombudsman) And Another Act Amendment Bill 2015

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the *Further Education and Training (Training Ombudsman) And Another Act Amendment Bill 2015* (**Bill**).

Our comments are detailed more fully below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Comment on the Bill

Consumer Action has undertaken significant work relating to Vocational Education and Training (VET) in recent years. Through our community legal and financial counselling practices we have dealt with large numbers of consumers who have been sold inappropriate courses, often through aggressive and deceptive selling tactics. Many of those consumers have been left with significant VET FEE-HELP debts. The Federal Government has recently moved to curtail the excesses of the

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VET FEE-HELP system, however the legacy of consumers with outstanding grievances is substantial.

Accordingly, there is a clear need for an ombudsman service to manage consumer complaints in the VET industry. In Consumer Action's view, a single national ombudsman is the preferred model. A national ombudsman would deliver the benefits of consistent decision making, administrative efficiency and is a practical approach when one considers that many training providers operate across state borders. The industry would benefit from a national approach to dispute resolution.

That being said, Consumer Action does welcome the recent steps towards state based ombudsmen schemes in both Victoria and Queensland. We view the establishment of state based ombudsman schemes as an important acknowledgment that a significant problem does exist in the VET, and that dispute resolution processes are currently lacking. We would encourage the committee to liaise with the Victorian Minister for Education and Training, to ensure that the respective ombudsman schemes both achieve the desired purpose of resolving consumer disputes fairly, efficiently and at no cost to the consumer.

In relation to the Training Ombudsman proposed by the current Bill, Consumer Action is concerned that the Queensland Training Ombudsman would lack the authority to make a binding decision on parties—one of the key requirements of any truly effective ombudsman scheme. In the course of our work, Consumer Action often has dealings with many industry-based ombudsman schemes, including the Financial Ombudsman Service (**FOS**), the Telecommunications Industry Ombudsman (**TIO**) and ombudsman schemes covering energy and water disputes. All industry-based ombudsman schemes have the power to make binding decisions and Consumer Action would encourage the committee to examine those schemes as models providing the ombudsman with the authority to make binding decisions. Without this authority, the proposed Training Ombudsman runs the risk of becoming a complaints referral service, mediating some aspects of a complaint while referring others. This is a complex and cumbersome approach, and does not necessarily advance the position of consumers.

As currently constructed, the Bill does not bestow the Training Ombudsman with sufficient authority to making a binding decision. The Bill provides the Training Ombudsman with the power to:

- help people in making complaints to a referral entity (s112D(b))
- refer complaints to a referral entity or otherwise deal with complaints under this Act (s112D(c))
- give information or advice to a complainant about the complainant's complaint (s112D(d))
- monitor the outcome of complaints (s112D(e))
- make recommendations to the chief executive about apprenticeships and traineeships, including the declaration of, or nominal term for, an apprenticeship or traineeship (s112D(g))
- make recommendations to the Minister (about ways to improve departmental systems; matters relating to apprenticeships and traineeships, and strategies to improve the quality of vocational education and training in Queensland)(s112D(h))
- carry out promotional and educational activities relating to vocational education and training in Queensland (s112D(i))

- undertake or promote reviews of, or research into, matters relating to the training ombudsman’s functions, including reviews or research requested by the Minister (s112D(j))
- conduct other functions conferred on them under this Act or another Act (s112D(k)).

The Federal Treasury has issued Benchmarks for Industry-based Customer Dispute Resolution which provides standards for ombudsman schemes.¹ The Benchmarks articulates the underlying principles and purposes for six benchmarks for dispute resolution services: accessibility, independence, fairness, accountability, efficiency and effectiveness. It is our view that the ombudsman created by the Bill does not adequately satisfy these Benchmarks.

The Australian and New Zealand Ombudsman Association (**ANZOA**) has similarly articulated six essential requirements of an ombudsman scheme,² and Consumer Action is advised that these were taken into account when devising the scheme proposed by the Bill.

Consumer Action is concerned, however, that the proposed Training Ombudsman fails to meet the ANZOA requirements in two key respects:

1. The Training Ombudsman should have the power to deal with systemic issues, and to commence an own motion investigation.
2. The Training Ombudsman must not be subject to direction.

Consumer Action notes s112R(1) of the Bill which states:

- (1) *The Minister may give the training ombudsman a written statement (a **statement of expectations**) stating the Minister’s expectations for the performance of the training ombudsman’s functions. “*

While framed as a “statement of expectations”, s112R(2) then states that Training Ombudsman must have regard to the statement of expectations when performing their functions or exercising their powers. This clause appears to give the Minister authority to direct the activities of the Training Ombudsman—which runs counter to the principle of independence, inherent to any ombudsman scheme.

Before advancing the Bill, we encourage parliamentarians to ensure that the Queensland Training Ombudsman complies with both the Benchmarks and the ANZOA policy statement. These benchmarks have delivered consumer confidence in external dispute resolution and an Ombudsman without adherence to them risks failing to achieve its objectives.

¹ Treasury, 2015, Benchmarks for Industry-based Customer Dispute Resolution, available at: <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/benchmarks-ind-cust-dispute-reso>

² ANZOA, 2010, Essential criteria for describing a body as an Ombudsman, available at: http://www.anzoa.com.au/assets/anzoa_media-release_essential-criteria-for-use-of-the-term-ombudsman.pdf

Please contact Zac Gillam, Senior Policy Officer on 03 9670 5088 or at zac@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

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