

**Submission
No 76**

**INQUIRY INTO VOCATIONAL EDUCATION AND
TRAINING IN NEW SOUTH WALES**

Organisation: Consumer Action Law Centre

Date received: 20/07/2015

Dear Committee Members,

The Consumer Action Law Centre (Consumer Action) welcomes the opportunity to provide a submission to the Inquiry into Vocational Education and Training (VET) in New South Wales.

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.

Since 2009, we have received an increasing number of complaints regarding private VET providers, and have been actively pursuing reform in this sector. We have made a number of recommendations in submissions to Federal and Victorian inquiries that may benefit New South Wales students, which we attach for your consideration.

In particular, we have recommended that recent reforms to the VET FEE-HELP scheme need to be rigorously enforced and extended to all VET courses to ensure that students have appropriate consumer protections regardless of how they choose to pay for their study. We also flag that the financial burden of poor sales and enrolment practices needs to shift from students and taxpayers to the offending training providers. Finally, we make the case for the establishment of a free and effective national industry ombudsman scheme, and an appropriate remediation framework.

If you have any queries in relation to these submissions, please do not hesitate to contact Katherine Temple on [redacted] or at [redacted].

30 April 2015

VET Funding Review

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 NCVET (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 _____ or at _____ if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE

Gerard Brody
Chief Executive Officer

Katherine Temple
Senior Policy Officer

20 July 2015

Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members,

Supplementary submission on private VET providers

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide a supplementary submission on the operation, regulation and funding of private vocational education and training (**VET**) providers in Australia.

Since our initial submission to the Committee on 12 February 2015, a number of reforms have been introduced by the Federal Government to protect students with VET FEE-HELP loans. These reforms will help to stamp out some of the most unscrupulous practices that have resulted in complaints to our centre.

However, it is important that these reforms are rigorously enforced and extended to all VET courses to ensure that students have appropriate consumer protections regardless of how they choose to pay for their study. It is also critical that the financial burden of poor sales and enrolment practices is shifted from students and taxpayers to the offending training providers. The establishment of a free and effective external dispute resolution scheme, and an appropriate remediation framework, will help to achieve this goal.

Our comments are detailed more fully below.

1. 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.

Consumer Action Law Centre

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2. Summary of recommendations

1. Extend recent reforms to the VET FEE-HELP scheme to all VET courses, including those provided by third parties.
2. Improve the way VET regulators report on their enforcement work to the community.
3. Improve VET regulators' use of the media to increase the deterrence value of their enforcement actions and to gain maximum educative value from enforcement outcomes.
4. Ensure the effectiveness of the regulatory framework, including regulators themselves, is regularly reviewed.
5. Ensure that VET regulators are provided with appropriate resources and powers, including providing responsibility for the regulation of the VET FEE-HELP scheme to the Australian Skills Quality Authority as the national VET regulator.
6. The National Training Complaints Hotline inform complainants about how to resolve individual complaints.
7. The Federal Government increase awareness of the National Training Complaints Hotline, perhaps by requiring training providers to notify students of its availability.
8. Regulators and other relevant departments work more closely together to improve compliance and enforcement outcomes, and reduce the complexity of the complaints process.
9. Student remediation be retrospective, and the Federal Government ensure that the process for seeking VET FEE-HELP debt refunds is simple and effective.
10. Training providers be required to notify students of their right to seek VET FEE-HELP loan refunds and the process for doing so.
11. Students who incur a VET FEE-HELP debt but do not start their course (or failed to participate) be prima facie entitled to a refund.
12. The student remediation framework include compensation by training providers for consequential losses following enforcement action.
13. Establish a national industry ombudsman to resolve disputes between domestic students and training providers.

3. Recent VET FEE-HELP reforms

The Federal Government has introduced a range of reforms to the VET FEE-HELP student loan scheme, with the first tranche of reforms coming into effect on 1 April 2015. We have welcomed these reforms,¹ which are intended to improve the quality of VET and to protect vulnerable students and taxpayers.²

The reforms address some of the most predatory practices we have seen in our casework, particularly measures to:

- ban inducements to students;
- remove withdrawal fees and other administrative barriers to withdrawal;
- ban the marketing of VET FEE-HELP-supported training as 'free' or 'government-funded';
- prohibit acceptance of VET FEE-HELP applications until two business days after enrolment to restrict quick or pressure selling; and
- ensure students no longer incur a VET FEE-HELP debt for a whole course upfront.

In our view, these important reforms should be extended to all VET courses to ensure that students have the same protections regardless of how they choose to pay for their course. It is also critical that these new regulations are actively and publicly enforced by relevant regulators.

Extending reforms to other VET courses

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

Of particular concern are courses, including those comprising multiple years of study, where students are liable for the full cost of a course upfront, even if they never attend a class. This is in stark contrast to university, where you incur liabilities incrementally. From 1 January 2016, tuition fees for VET FEE-HELP courses will also have to be spread evenly over four periods for each course. Students will receive invoices two weeks before each census date. The Federal Government said this is 'effectively banning the practice of the VET FEE-HELP loan debt for the whole qualification being levied on a student in one hit upfront.'³

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

¹ Consumer Action Law Centre, 'New protections for VET students welcomed', 1 July 2015, available at: <http://consumeraction.org.au/new-protections-for-vet-students-welcomed>.

² Department of Education and Training, 'VET FEE-HELP Reform', undated, available at:

https://docs.education.gov.au/system/files/doc/other/ed15-0168_vet_fee_help_reforms_factsheet_update_05_acc.pdf

³ Ibid.

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 interview her briefly over the phone. Brenda was told that it would be a difficult course to complete, the salesman said 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.

We have also seen non-VET FEE-HELP training providers offer inducements to students, and placing administrative barriers to withdrawal from courses. While these practices are now banned for VET FEE-HELP courses, training providers offering non-VET FEE-HELP courses are free to continue these practices.

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.

It is imperative that the recent Federal Government reforms are extended to non-VET FEE-HELP courses, so that students who choose to pay without student loans are not disadvantaged. We note that some VET courses are delivered by organisations that are not registered with ASQA. Some registered training organisations (**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.⁴

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.⁵ 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 recommend that in extending recent reforms to all VET courses, the obligations and liability of third party providers be clarified.

Recommendation 1: Extend recent reforms to the VET FEE-HELP scheme to all VET courses.

Enforcement

It is also critical that the recent Federal Government reforms are actively and publicly enforced by relevant regulators. In 2013, Consumer Action published a report titled *Regulator Watch*,⁶ 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.

Unfortunately, we have already seen breaches of the new VET FEE-HELP reforms, which has highlighted the need for prompt and effective enforcement action.

Jennifer's story

Jennifer says that she received a unsolicited phone call in April 2015 on her landline from a person who claimed to represent 'Australian Vocational Training'. The caller offered Jennifer a laptop if she enrolled in one of their courses. Jennifer says that she is registered on the Do Not

⁴ National Training Services, accessed 17 July 2015, available at: <http://www.nationaltrainingservices.edu.au/>.

⁵ For example, see: <http://melbournefashioninstitute.com.au/>.

⁶ 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>.

Call register. Jennifer was aware of the ban on offering inducements for enrolments, and says that she did not enrol in the course.

Lesley's story

We have received reports of door-to-door salesmen in a rural township offering inducements for enrolments in VET FEE-HELP courses from Lesley, a community worker. Lesley says that in one case she was called by her clients, who both have intellectual disabilities, while a salesman was in their home as her clients were wondering whether they should enrol in the course. Lesley says that she spoke to the salesman and explained that neither of her clients would be able to complete the course due to their disabilities, but was told by the salesman that it was their decision and hung up on her. Lesley says that the salesmen were targeting public housing areas in the town.

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.

In this regard, it seems counter-intuitive that the regulator for the VET FEE-HELP scheme is the Federal Department of Education and Training,⁷ rather than the Australian Skills Quality Authority (**ASQA**). The Department of Education and Training may be able to revoke VET FEE-HELP registration,⁸ but it appears ill equipped to undertake broader enforcement action and investigations. In contrast, under the *National Vocational Education and Training Regulator Act 2011* (Cth), ASQA can seek criminal and civil penalties, issue infringement notices and accept enforceable undertakings, among other things.⁹ In our view, as the national VET regulator, ASQA should be responsible for the regulation of the VET FEE-HELP scheme. At the very least, we recommend the Department of Education and Training improve its reporting on VET FEE-HELP compliance activities.

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 2: Improve the way VET regulators report on their enforcement work to the community.

Recommendation 3: Improve VET regulators' use of the media to increase the deterrence value of their enforcement actions and to gain maximum educative value from enforcement outcomes.

⁷ The VET FEE-HELP scheme is largely governed by the *Higher Education Support Act 2003* (Cth) and *VET Guidelines 2015* (Cth).

⁸ Division 5 of the *Higher Education Support Act 2003* (Cth).

⁹ *National Vocational Education and Training Regulator Act 2011* (Cth).

Recommendation 4: Ensure the effectiveness of the regulatory framework, including the regulator itself, is regularly reviewed.

Recommendation 5: Ensure that VET regulators are provided with appropriate resources and powers, including providing responsibility for the regulation of the VET FEE-HELP scheme to the Australian Skills Quality Authority as the national VET regulator.

4. Complexity of the regulatory framework

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. In Victoria, contraventions of the Australian Consumer Law are handled by the Australian Competition and Consumer Commission (**ACCC**) and Consumer Affairs Victoria. Victorian Government-funded course providers are regulated by the Victorian Department of Education & Training, while VET FEE-HELP is regulated by the Federal Department of Education & Training. Overseas students also have access to the Overseas Student Ombudsman. This complex regulatory regime makes it understandably difficult for students to know where to turn if they have a problem.

The establishment of the National Training Complaints Hotline (**the Hotline**)¹⁰ 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 the Federal Government increase awareness of the Hotline, perhaps by requiring training providers to notify students of its availability.¹¹

We acknowledge that the complexity of the current regulatory framework is a difficult problem to solve, but believe improvements can be made to simplify 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 also 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.

Recommendation 6: The National Training Complaints Hotline inform complainants about how to resolve individual complaints.

Recommendation 7: The Federal Government increase awareness of the National Training

¹⁰ 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>.

¹¹ 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).

Complaints Hotline, perhaps by requiring training providers to notify students of its availability.

Recommendation 8: Regulators and other relevant departments work more closely together to improve compliance and enforcement outcomes, and reduce the complexity of the complaints process.

5. Remediation

We welcomed the Federal Government's announcement that it plans to introduce legislation that from 1 January 2016 will make it easier for students to remove VET FEE-HELP debts that have been unfairly applied. The Hon Senator Simon Birmingham says that these reforms will make it easier for the Government to cancel student debts that have been generated by training providers or brokers who breach the new guidelines, and require the training provider to reimburse taxpayers for the cost.¹²

The proposed framework for remediating students should be retrospective, and ensure that the process for seeking refunds is 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 debts are appropriately incurred. Students who incur a VET FEE-HELP debt but do not start their course (or failed to participate) should be *prima facie* entitled to a refund. Based on Commonwealth Department of Education figures, the 3-year completion rate (2011-2013) for external attendance students relying on VET FEE-HELP loans was only 7%, which is simply not good enough.¹³

Complaints data analysis will be critical. The data collected through this framework must result in systemic investigations into particularly problematic providers. These investigations could result in wiping debts for other students.

The framework should also consider student outcomes following enforcement action. 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

¹² Senator the Hon Simon Birmingham, 'Media Release: Government targets VET FEE-HELP scammers', 12 March 2015, available at: <https://ministers.education.gov.au/birmingham/government-targets-vet-fee-help-scammers>; Department of Education and Training, 'VET FEE-HELP Reform', undated, available at: https://docs.education.gov.au/system/files/doc/other/ed15-0168_vet_fee_help_reforms_factsheet_update_05_acc.pdf.

¹³ Department of Education and Training, 'VET FEE-HELP statistics - Course completion tables 2013', 2014, available at: <http://www.education.gov.au/vet-fee-help-statistics>.

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. In Victoria, 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.¹⁴ We recommend that the Federal Government ensure that any student remediation framework includes compensation by training providers for these types of consequential losses should ASQA conduct similar enforcement action.¹⁵

Recommendation 9: Student remediation be retrospective, and the Federal Government ensure that the process for seeking VET FEE-HELP debt refunds is simple and effective.

Recommendation 10: Training providers be required to notify students of their right to seek VET FEE-HELP loan refunds and the process for doing so.

Recommendation 11: Students who incur a VET FEE-HELP debt but do not start their course (or failed to participate) be *prima facie* entitled to a refund.

Recommendation 12: The student remediation framework include compensation by training providers for consequential losses following enforcement action.

6. External dispute resolution

While regulators accept complaints from students about private VET providers, these regulators do not respond to or resolve individual complaints. At present, disputes between private colleges and international students can be heard by the Commonwealth's Overseas Students Ombudsman, but no such process exists for domestic students. 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. The process remains informal and avoids some of the pitfalls of face-to-face dispute resolution where a power imbalance exists

¹⁴ 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>.

¹⁵ Under section 52 of the *National Vocational Education and Training Regulator Act 2011* (Cth), ASQA can cancel the accreditation of a VET accredited course.

between the parties. An ombudsman process is more appropriate for the majority of disputes relating to private colleges.

We recommend levelling the playing field for all students studying in Australia by establishing a national industry ombudsman to resolve disputes between students and training providers.

Recommendations of other reviews

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'.¹⁶ We strongly support this recommendation. This recommendation was also supported by the Australian Council for Private Education and Training (ACPET).¹⁷

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'.¹⁸ We see no reason why our domestic students should not also have such access.

Benefits of industry ombudsmen

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 actually be anti-competitive in that it gives legally non-compliant traders an anticompetitive advantage over those that do comply.¹⁹

In our view, 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;

¹⁶ 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>.

¹⁷ 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>.

¹⁸ 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.

¹⁹ 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

- the ombudsman scheme process provides flexible solutions to disputes but also has ‘teeth’ because the ombudsmen can make findings binding upon the trader;²⁰
- 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.

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.

Features of industry ombudsmen

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	Generally, 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

²⁰ The recommendations of the Office of the Training Advocate in South Australia are not binding on providers. For more information see: <http://www.trainingadvocate.sa.gov.au/Complaints/Overview>.

Government, is independence.²¹ Any industry-based ombudsman will be expected to comply with the key practices set out in that publication.

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.

Implementation

In order to ensure all VET providers 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). 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.

Recommendation 13: Establish a national industry ombudsman to resolve disputes between domestic students and training providers.

Please contact Katherine Temple on _____ or at _____ if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE

Gerard Brody
CEO

Katherine Temple
Senior Policy Officer

²¹ 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.