

Redfern Legal Centre



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Committee Secretary
Senate Education and Employment Committees
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Canberra ACT 2600

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Dear Committee Members

Thank you for the opportunity to contribute to the inquiry into the operation, regulation and funding of private vocational education and training (VET) providers in Australia.

Redfern Legal Centre ('RLC') welcomes the inquiry into VET providers in Australia. RLC has particular concerns about the impact of misleading marketing practices upon vulnerable and marginalized consumers. Our submissions will focus upon part (vi) of the terms of reference.

RLC's casework experience illustrates the way in misleading and deceptive marketing practices target, and adversely impact, marginalized and disadvantaged consumers. Our submission considers a number of measures, which we believe will reduce the incidence of misleading marketing associated with VET courses and VET-FEE-HELP loans.

We would welcome the opportunity to appear before the inquiry panel or to meet with you to discuss our submission further.

Yours faithfully,
Redfern Legal Centre

Joanna Shulman
Chief Executive Officer

Executive Summary

- RLC has encountered a number of cases involving marginalized and vulnerable consumers who have been duped into incurring significant VET-FEE-HELP debts, through misleading and deceptive marketing practices.
- RLC's casework experience recounts misleading and deceptive behaviour by marketing agents such as door-knocking in public housing blocks, spruiking outside Centrelink offices and offering inducements in the form of laptops and iPads to lure consumers to sign up for VET-FEE-HELP loans.
- RLC is also concerned with marketing and promotional practices, which misrepresent the nature of VET-FEE-HELP liabilities, offer guaranteed, pass rates and claim unsubstantiated job outcomes.
- The majority of RLC clients who have been signed up by marketing agents never attend the course, or fail to withdraw before the census date. They end up without any qualifications, despite incurring significant liabilities.
- There is considerable disparity in regulations governing the behaviour of RTOs, and their non-RTO marketing agents.
- The regulatory powers under the *National Vocational Education and Training Regulator Act 2011* and *ASQA Standards for NVR Registered Training Organisations 2012* have little to no deterrent effect upon the behaviour of marketing agents.
- There is significant difficulty in enforcing Australian Consumer Law against non-RTO marketing agents.
- There is a significant lack of transparency, about agency relationships and commission-based sales agreements, between RTOs and their marketing agents. The consumer is unable to distinguish between a genuine representative of an RTO and their marketing agents.
- We recommend the mandatory provision of a simple two page 'critical information summary' (similar to those required by Telecommunications providers), as part of the application process for VET courses and VET FEE HELP loans.
- Critical information summaries can inform decisions about incurring VET-FEE-HELP liability. They can clearly and simply outline crucial terms around cooling-off and refund rights, actual census dates for withdrawal from the course and proper disclosures about VET-FEE-HELP loans and the nature of the liability.

Introduction: Redfern Legal Centre

Redfern Legal Centre ('RLC') is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

RLC's work in Credit & Debt

RLC recognises that the protection of financial and consumer rights is central to securing other rights and freedoms such as secure housing, effective education and social and economic participation. Since 1977, RLC has run a specialist credit and consumer law practice and targets our work towards vulnerable and disadvantaged consumers.

Overview

The inquiry into the operation, regulation and funding of private vocational education and training (VET) providers in Australia (the 'Inquiry') presents a genuine opportunity to address broad concerns about the operation of private vocational education and training providers in Australia and their access to the VET-FEE-HELP scheme. RLC's submission will focus upon impact of unscrupulous marketing and promotional practices upon vulnerable and disadvantaged consumers.

The findings of the recent *Australian Skills Quality Authority: Report into the marketing and advertising practices of Australia's registered training organisations* ('ASQA Report')¹ raises serious concerns about endemic misleading and deceptive conduct in this area. The ASQA Report found that nearly half of all registered training organisations ('RTOs') used misleading information to promote themselves. The report stated that:

"Up to 45% of the registered training organisations were marketing and advertising misleading information...organisations that are non registered training organisations are acting as brokers for those that are, which in many cases is misleading consumers; and consumers, including students and employers, are often provided with ambiguous and/or insufficient information to make informed training choices."²

RLC's credit and debt practice has assisted a number of clients with serious complaints about the misleading and deceptive practices of some RTOs and non-RTO marketing agents and brokers acting on behalf of RTOs ('Marketing Agents'). We have seen vulnerable consumers incur considerable VET-FEE-HELP debts without deriving any tangible benefit, in terms of qualifications or employment outcomes.

Redfern Legal Centre clients are often very marginalized by historic disadvantage to their families, by life events they have experienced or by disability. Many are required to undertake training courses as part of their compliance with Centrelink eligibility supposedly to get them into jobs that will frequently not be realistically available to them on graduation. Others take courses at

¹ At http://www.asqa.gov.au/verve/_resources/Strategic_Reviews_2013_Marketing_and_Advertising_Report.pdf

² Australian Skills Quality Authority, 'Report – Marketing and advertising practices of Australia's registered training organisations', September 2013.

TAFE as a way of improving their overall well being, building life skills and fostering resilience so they can engage with and function in the community even if it may not lead to actual employment. While it has been noted that for these people VET-FEE-HELP debt is not a concern, because they will never reach the income contingent threshold for repayment, the weight of the debt remains a disincentive to participate. That burden can so impact on the state of mind of the student such that it is counterproductive of the social good of the course participation in the first place. In addition, VET-FEE-HELP loans continue to accrue indexed inflation and the obligation to repay FEE-HELP debts remains after someone has died³. We think there is a real risk that the diminutive estates of many low-income earners will be taken by the ATO to satisfy VET-FEE-HELP debts.

RLC has assisted a number of clients who, after being induced to sign up to a VET-FEE-HELP loan, did not complete the course, did not know about census dates, did not withdraw from the course before the census date or never attended the course at all. We see vulnerable consumers who do not become aware of their VET-FEE-HELP liability until a significant length of time has elapsed. Cancelling VET-FEE-HELP loans becomes exceedingly difficult after the census date has elapsed. Many vulnerable consumers are left with significant VET-FEE-HELP debts and nothing in return. This is an inefficient use of public resources.

RLC is concerned that many vulnerable and disadvantaged consumers are targeted, and signed up to inappropriate courses on the strength of misleading and deceptive marketing claims. Marketing tactics include assertions that VET courses involve 'no upfront fees' or are 'government funded'. Others make illusory claims about guaranteed pass rates or guaranteed job outcomes. This is compounded by the offer of inducements such as free laptops or iPads to sign up for VET-FEE-HELP loans. RLC has also heard anecdotal reports of marketing agents spruiking directly outside Centrelink offices and conducting unsolicited door-to-door marketing in high-density public housing blocks. We note that there are a number of reports in the media, which highlight the systemic targeting of vulnerable consumers⁴.

³ See Study Assist FAQs at <http://studyassist.gov.au/sites/studyassist/payingbackmyloan/loan-repayment/pages/loan-repayment#WhatHappensToDebtIfIDie>

⁴ See ABC News, 'Private training college watchdog urged to crack down on 'spruikers' misleading potential students', 19/10/2014, at <http://www.abc.net.au/news/2014-10-19/training-college-watchdog-urged-to-stamp-out-spruikers/5823072> and 'Unregistered training colleges target disadvantaged, sign them up to expensive government loans', 10/10/2014, at <http://www.abc.net.au/news/2014-10-06/unregistered-training-colleges-target-low-income-earners/5793246> and The Age, 'Concern as online VET course completion drops, enrolments rise' 16/01/2015 at <http://www.theage.com.au/victoria/concern-as-online-vet-course-completion-drops-enrolments-rise-20150116-12r4tx.html>

Specific Issues and recommendations

- I. Marketing and promotional practices, which are misleading and deceptive, offer false inducements and target vulnerable and disadvantage people and people from non-English speaking backgrounds.

In our casework experience, RLC has seen a particular group of people targeted by Marketing Agents. These include people living in public housing, people solely dependent on Centrelink income, people with cognitive dysfunction or mental illness, elderly people and people from culturally and linguistically diverse backgrounds. Many people in these circumstances cannot provide genuine and informed consent to incur such a liability.

The common denominator is that consumers do not understand what they are signing up for and are routinely unaware that they have in effect taken out a loan for tens of thousands of dollars. The process for obtaining consent and VET-FEE-HELP loans is in stark contrast to the stringent framework of responsible lending obligations incumbent upon commercial creditors.

RLC has encountered clients who have fallen foul of marketing practices which:

- Target vulnerable or disadvantaged consumers, such as through direct door-to-door marketing in high density public housing, and by spruiking directly outside of Centrelink offices;
- Offer inducements in the form of laptops or iPads, which often do not materialize;
- Fail to disclose about the real nature of a VET-FEE-HELP loan, including income contingent repayment liability and the indexed rate of interest; and
- Involve pressure, inducement and misrepresentation particularly in relation to liability for fees, guaranteed pass rates and unsubstantiated job outcomes.

Case study

John (not his real name) lives in public housing in Surry Hills. His sole source of income is the Centrelink Disability Support Pension and he is from a non-English speaking background and suffers from acute mental illness, including schizophrenia and trauma-related issues.

In early 2014 a door-to-door marketing agent, acting on behalf of a RTO, knocked on John's front door. The marketing agent was very pushy and kept telling John he would receive a free laptop and tablet – all he needed to do was sign up for this 'free government funded course'. Though John did not understand the terms and conditions he was agreeing to, he felt coerced to sign the form. He was enrolled in two different 'business management' style courses with two separate RTOs.

With the help of his social worker, John found a few months later that he would be liable for more than \$10,000 in course fees. John found it very difficult to withdraw from the courses, as the census date had already passed.

John and his social worker asked the RTO to withdraw him from his course and waive the course fees. They explained that John was tricked into enrolling in the course, and would be unable to complete the course due to his mental illness. While one RTO withdrew John immediately, the other was reluctant to do so and refused to remit John's VET-FEE-HELP liability.

Shortly afterwards, John and his social worker came to Redfern Legal Centre for help. RLC contacted the RTO and outlined our serious concerns about the practices of the RTO's marketing agent. We noted that failures to make appropriate disclosures to John, concerning his fee liability and information relating to census dates, breached the ASQA Standards for RTOs. RLC also

alleged the sales agent's conduct amounted to misleading and deceptive conduct, false and misleading representations and unconscionable conduct in breach of the Australian consumer law. We also noted that the RTO would be held vicariously liable for the conduct of its marketing agents.

Within a fortnight, the RTO informed John it had withdrawn John from his course, remitted the VET-FEE-HELP liability. They went further by dismissing their marketing agents and undertook to tighten their contractual arrangements and training for any future marketing agents they would engage.

John's story highlights the impact of misleading and deceptive marketing practices, which target and exploit vulnerable consumers. Unfortunately, John's case is far from uncommon.

2. The absence of any effective regulations, or ASQA standards, to deter misleading and deceptive behaviour by Marketing Agents.

There is a considerable gap between regulations with which RTOs must comply and the constraints upon 'non-RTO' Marketing Agent behaviour. Currently, the only restriction upon the Marketing Agent's behaviour is the Australian Consumer Law ('ACL'). Consumer recourse to the ACL is severely constrained due to the lack of transparency about RTO - Marketing Agent relationships. Consumers do not know whom Marketing Agents work for and have no way of finding out. Marketing Agents purport to directly represent RTOs when in fact they are separate entities. This lack of transparency has been highlighted in the ASQA Report, which noted that:

'...the review has found that in many circumstances in which non-RTOs are promoting nationally accredited qualifications on behalf of RTOs, there is a significant lack of transparency for consumers...Consumer protection requires transparency in terms of the agreements. Consumers do not necessarily understand that the organization marketing the nationally recognized training is not an RTO. They cannot rely on the protection offered by the standards that RTOs are required to comply with. If the non-RTO is an agent of an RTO the consumer will probably be unaware of any terms of that agency arrangement'⁵

We support the ASQA Report's recommendation to strengthen the *Standards for NVR Registered Training Organisations 2012* ('ASQA National Standards').⁶ RLC also recommends that the ASQA National Standards, Standard 24 'accuracy and integrity of marketing' in particular, become an enforceable obligation with which Marketing Agents must comply. It is important that the ASQA is empowered to deliver responsive regulations, which drive compliance and effectively deter unethical behaviour by Marketing Agents. There is currently a large disparity between the standards of conduct required for RTOs, and the Marketing Agents who represent RTOs to the public.

3. Non-RTOs are avoiding consumer protections in the Australian Consumer Law

There is no transparency for consumers about the commission-based, commercial relationships between Marketing Agents and the RTOs they purport to act for. In our anecdotal experience, RTOs shift much of the blame for misconduct to their marketing agents.

There is little to no accountability by Marketing Agents to the consumers they have deceived. Consumers have great difficulty in obtaining any information about Marketing Agents who they

⁵ Ibid

⁶ <http://www.asqa.gov.au/about-asqa/national-vet-regulation/standards-for-nvr-registered-training-organisations.html>

have dealt with. Those who are victims of misleading marketing practices then have no effective recourse as against Marketing Agents for breaches of the ACL, and can deal only with the RTO.

RLC recommends the inquiry consider practical measures to ensure Marketing Agents have greater accountability to consumers, and ways to improve transparency for consumers about RTO - Marketing Agent relationships.

4. Critical Information Summaries

It is our position that the mandatory provision of critical information summaries is a key tool for the reduction of misinformation in relation to VET courses and VET-FEE-HELP loans. Critical information summaries have been very successful as a means of improving consumer comprehension and freedom of choice in agreements with Telecommunications providers.⁷ They are generally a maximum of 2 pages with minimum 12-point font. It is crucial that they are drafted in simple, uncomplicated language, which is easily understood by all.

Critical information summaries are a simple and effective way to convey information about critical aspects of each course. The critical information summary should be clear and coherent and convey the following information:

- a. The total cost of the course, including up front and administrative fees;
- b. The duration of each course and critical census and withdrawal dates, giving actual dates for each;
- c. Refund and cooling off rights; and,
- d. Clear information about how VET-FEE-HELP loans operate, how they are repaid and potential negative implications.
- e. Costing of the long-term implications of VET-FEE-HELP loans, such as on credit card statements, with examples of how compound indexed inflation will affect the loan over time.

We believe that the provision of critical information summaries will give consumers the opportunity to properly consider their decision to apply for VET-FEE-HELP loans and understand their rights in relation to VET courses.

Conclusion

RLC's casework experience demonstrates the way in which these misleading practices further entrench vulnerable consumers in a cycle of disadvantage and debt. The lack of accountability around VET-FEE-HELP loans is in stark contrast to other forms of credit. It is important to ensure that misleading marketing practices are stamped out. To properly engage with VET training, consumers need to be able make genuine and informed choices, free from coercive marketing. In RLC's view, regulatory and enforcement powers must be extended to Marketing Agents to reduce a systemic pattern of misrepresentation and manipulation. RLC believes that the mandatory provision of critical information summaries could also be an effective important mechanism properly inform consumers of their rights and responsibilities around VET and VET-FEE-HELP.

⁷ See Australian Communications and Media Authority, Critical Information Summaries for telecommunications consumers at <http://acma.gov.au/theACMA/critical-information-summaries-for-telecommunications-consumers> .

**Appendix A- Example of VET-FEE HELP Critical Information Summary /
Disclosure document**

Registered Training Organisation [x]

Course [x]

**IMPORTANT INFORMATION ABOUT THIS COURSE AND VET-FEE-HELP
LOANS**

IF YOU DO NOT TELL US BY [X DATE] THAT YOU DO NOT WANT TO CONTINUE WITH THE COURSE YOU WILL HAVE A DEBT FOR THE WHOLE COURSE.

IF, AFTER THE CENSUS DATE, YOU ARE SUBSEQUENTLY PREVENTED FROM CONTINUING THE COURSE FOR UNEXPECTED REASONS OF HARDSHIP BEYOND YOUR CONTROL YOU WILL NEED TO APPLY TO HAVE YOUR FEES REMITTED.

VET-FEE-HELP LOANS INCUR COMPOUND INTEREST AT THE INDEXED INFLATION RATE [CURRENTLY X% PER ANNUM].

THE FOLLOWING CALCULATION IS TO SHOW HOW A VET-FEE HELP DEBT WILL INCREASE OVER A NUMBER OF YEARS.

THE TOTAL FEE FOR COURSE [X] IS

UNDER CURRENT VET -FEE HELP RULES YOU WOULD START PAYING IT BACK TO THE GOVERNMENT WHEN YOUR INCOME REACHES [INDEXED INCOME CONTINGENT THRESHOLD] A YEAR.

FOR EXAMPLE, IF YOU DID NOT REACH THAT INCOME UNTIL 10 YEARS AFTER YOU STARTED THE COURSE, YOUR DEBT TO THE GOVERNMENT AT THAT TIME WOULD BE [X] (THE ORIGINAL COST OF THE COURSE PLUS INTEREST).

INTEREST IS ADDED FOR EACH YEAR MONEY IS OUTSTANDING. INTEREST IS CALCULATED ON THE TOTAL AMOUNT OUTSTANDING. THIS INCLUDES INTEREST INCURRED IN PREVIOUS YEARS.

THIS IS A DEBT IT MAY IMPACT ON YOUR ABILITY TO GET CREDIT.

THE GOVERNMENT CAN CONTINUE TO SEEK RECOVERY FROM YOUR ESTATE OR PROPERTY WHEN YOU DIE.