

CHAPTER 2

Introduction

2.1 The key purpose of the bill is to strengthen the administration of the VET FEE-HELP loan scheme, improve the quality of outcomes for students, and protect students, public money, and the reputation of the broader vocational education and training (VET) sector.

2.2 There was broad support for all the provisions in the bill from public and private VET providers, universities, and the unions.¹ Indeed, some submitters acknowledged that while the reforms would add an additional administrative burden on VET providers, 'the ultimate aim of protecting students from unscrupulous operators has to be paramount'.²

2.3 However, some submitters argued that the problem is not with the VET FEE-HELP scheme as such, but rather the unethical practices of certain for-profit registered training organisations (RTOs). In this regard, the Batchelor Institute of Indigenous Tertiary Education (The Batchelor Institute) argued that the VET FEE-HELP scheme was over-regulated, while the initial and ongoing registration of VET FEE-HELP providers required stronger regulation through the Australian Skills Quality Authority (ASQA) compliance and auditing system.³

2.4 Some submitters, while supporting the measures in the bill, argued that the reforms needed to go much further and called for a fundamental change to the architecture of the VET sector and the regulation and funding arrangements for VET FEE-HELP.⁴

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- 1 National Tertiary Education Union, *Submission 1*, p. 6; La Trobe University, *Submission 2*, p. 1; Evocca College, *Submission 3*, p. 1; Charles Darwin University, *Submission 4*, p. 2; TAFE Directors Australia, *Submission 6*, p. 1; Charles Sturt University, *Submission 7*, p. 2; Open Universities Australia, *Submission 8*, p. 2; Australian Council for Private Education and Training, *Submission 9*, p. 2; Australasian Council of Deans of Arts, Social Sciences and Humanities, *Submission 10*, p. 1; Community Colleges Australia, *Submission 11*, p. 1; Council of Australian Postgraduate Associations, *Submission 14*, p. 1; TAFE Community Alliance, *Submission 15*, p. 1; Australian Education Union, *Submission 16*, p.16; Women in Adult and Vocational Education, *Submission 17*, pp 2–3; Australian Council of Trade Unions, *Submission 18*, p. 2; Australian Catholic University, *Submission 19*, p. 3; Swinburne University of Technology, *Submission 20*, pp 1–2; Navitas, *Submission 21*, p.1; RMIT University, *Submission 22*, p.1; Australian Chamber of Commerce and Industry, *Submission 23*, p. 2.
 - 2 Open Universities Australia, *Submission 8*, p. 5; see also Australian Council for Private Education and Training, *Submission 9*, p. 5.
 - 3 The Batchelor Institute, *Submission 13*, p. 1.
 - 4 National Tertiary Education Union, *Submission 1*, pp 6–9; Australian Education Union, *Submission 16*; TAFE Community Alliance, *Submission 15*; Australian Council of Trade Unions, *Submission 18*; see also TAFE Directors Australia, *Submission 6*.

2.5 The key issues raised by submitters in relation to the provisions in the bill are discussed in greater detail below.

Key issues

Appropriate student entry procedure requirements

2.6 There was strong support from several submitters for the proposed requirement for VET FEE-HELP approved training providers to develop and apply appropriate student entry procedure requirements.⁵

2.7 Charles Sturt University stated it had a strong track record of successfully transitioning graduates of the VET sector into the University sector. Charles Sturt University observed that unrealistic entry requirements not only cause student failure and long-term disengagement from further education, but also impact the future workforce and sustainability of regional Australia. Charles Sturt University therefore strongly supported this measure.⁶

2.8 The Council of Australian Postgraduate Associations (CAPA) is the national peak body representing postgraduate students. CAPA was of the view that the appropriate student entry procedure requirements could be expanded to include those full-fee paying students not accessing VET FEE-HELP.⁷

2.9 CAPA raised two matters regarding section 12, clause 45B of the amendment. First, CAPA was concerned that an unethical provider could circumvent the new provisions by setting 'low course entry requirements that do not match the academic needs of the course'.⁸ Second, CAPA was concerned that the requirements may not cover bridging courses:

The current amendments do not seem to prevent the provider from advertising a 'bridging course' that is paid for by the student so that they are able to achieve the 'academic requirements' needed to enter a course. For example an advert from a provider could inform potential students that if they take this six week bridging course they will be eligible for the VET FEE-HELP loan regardless of the results of this bridging course.⁹

2.10 Other submitters were concerned that any additional requirement, particularly for compliant RTOs, was unnecessary, would increase the administrative burden, and might be detrimental for students.

5 Charles Sturt University, *Submission 7*, p. 2; see also Swinburne University of Technology, *Submission 20*, p. 2; Women in Adult and Vocational Education, *Submission 17*, p. 3; Australian Chamber of Commerce and Industry, *Submission 23*, p. 2.

6 Charles Sturt University, *Submission 7*, p. 2.

7 Council of Australian Postgraduate Associations, *Submission 14*, p. 1

8 Council of Australian Postgraduate Associations, *Submission 14*, pp 2-3.

9 Council of Australian Postgraduate Associations, *Submission 14*, p.3.

2.11 Open Universities Australia (OUA) is owned by seven Australian universities. In 2013, OUA launched a wholly-owned subsidiary RTO, Open Training Institute, which offers online access to VET courses. While generally supportive of minimum entry requirements, OUA had concerns that the changes could disadvantage students without formal academic qualifications:

We do have concerns, however, as to whether mandating minimum academic entry standards such as year 12 or equivalent may actually disadvantage particular students and prevent them from further post-secondary studies or following their desired career pathway. There are many students without formal academic qualifications that can meet minimum requirements through completion of Learning, Literacy and Numeracy provisions already mandated to RTOs. In addition, people with work experience but no formal academic qualification could be disadvantaged if only academic qualifications are taken into account.¹⁰

2.12 The Batchelor Institute is the only Aboriginal and Torres Strait islander dual sector tertiary education provider with delivery to remote and very remote students and communities. The Batchelor Institute was of the view that the introduction of mandated entry requirements through national testing was over-regulation that would 'create yet another barrier to students who do not fit the 'mainstream' profile'.¹¹

2.13 Both the Batchelor Institute and Charles Darwin University suggested the ASQA compliance audit of an RTO's processes and the ASQA standards for student selection and enrolment were the appropriate way to regulate these matters.¹²

2.14 The Canberra Institute of Technology (CIT), the sole public provider in the Australian Capital Territory, supported 'measures that encourage RTOs to check on the likelihood of success of potential students' and to 'direct applicants to qualifications most likely to offer success'. However, CIT argued that the addition of Year 12 to the entry requirements was counter to the Standards for RTOs 2015 and the Training Package policy, and that:

It is preferable to identify a lower level qualification or specific literacy or numeracy requirements rather than a Year 12 which does not guarantee either literacy or numeracy skills of the required standard nor provide knowledge, skills or experience to adequately prepare students to meet Training Package qualifications for entry into Diploma qualifications which at this level are specialised, technical and industry focused.¹³

2.15 Similarly, the Australian Council for Private Education and Training (ACPET) noted that certain student entry requirements may go beyond that currently required under the Standards for RTOs 2015. ACPET therefore requested that

10 Open Universities Australia, *Submission 8*, p. 3.

11 The Batchelor Institute, *Submission 13*, p. 3.

12 The Batchelor Institute, *Submission 13*, p. 3; Charles Darwin University, *Submission 4*, p. 2.

13 Canberra Institute of Technology, *Submission 12*, pp 2 and 3.

'unnecessary duplication' be avoided and proposed that the standards and evidentiary requirements for VET FEE-HELP and other students be the same.¹⁴

2.16 La Trobe University expressed concern that the definition of inappropriate inducements in the bill might impair some collaborative activity between universities and VET FEE-HELP providers, in particular, access to library services, internet, and mentoring programs:

The bill defines benefits accessed within the unit or course of study, and necessary for completion of unit or course learning outcome as an appropriate inducement. Benefits defined as inappropriate inducements include access to the internet or software. As currently defined, the Bill may make it harder for VET FEE HELP eligible providers and universities to collaborate on activities such as pathways. For example, a student who has a conditional offer to a joint VET / HE program, who is not yet enrolled, could be perceived to be receiving an inappropriate inducement if accessing library facilities prior to enrolment.

La Trobe University's highly successful Aspire Program, which provides conditional offers to students on the basis of community service, and access to services such as mentoring and library services could be depicted as an inappropriate inducement if the offer were in a joint VET / HE qualification.¹⁵

2.17 La Trobe University proposed that this issue could be resolved by the addition of a sub-clause to 39DD (1) (d) (iv) to include: 'the use of such a thing forms part of a vocational higher education pathways partnership supported by formal agreements consistent with VET Guidelines and Higher Education Standards'.¹⁶

Two day cooling off period

2.18 The OUA supported the two business day period between course enrolment and application for a VET FEE-HELP loan on the basis that giving a student two days to consider their enrolment before completing the VET FEE-HELP form will ensure students are not pushed into a course or funding they do not want.¹⁷

2.19 While similarly supportive, ACPET observed that the two day requirement may add 'additional complexity and inconvenience for students'. ACPET therefore proposed a risk management approach that targeted identified high-risk providers.¹⁸

2.20 Community Colleges Australia noted that although community colleges make up only a small fraction of VET FEE-HELP providers, they make a significant

14 Australian Council for Private Education and Training, *Submission 9*, p. 3.

15 La Trobe University, *Submission 2*, p. 2.

16 La Trobe University, *Submission 2*, p. 2.

17 Open Universities Australia, *Submission 8*, pp 2–3.

18 Australian Council for Private Education and Training, *Submission 9*, p. 3.

contribution in rural and regional areas. While highly supportive of measures to support the decision-making process for students and minimise risk, Community Colleges Australia criticised the cooling off period as excessive, administratively burdensome, and inconvenient for students:

It requires students to come back to the college or remember to put documents in the post, both of which are not always easy in rural environments. If the student is late or forgets, they run the risk of not being able to access, or be delayed in starting their training. While we are wholly supportive of stopping the exploitative practices that seem to be occurring in the VET FEE-HELP space, we do not want to see students missing out due to excessive 'red tape'.¹⁹

2.21 Community Colleges Australia suggested that the benefits of a cooling off period could be retained and any complexity and inconvenience avoided by allowing the provider to receive an application for VET FEE-HELP, but providing a two business period during which the student could withdraw the application.²⁰

2.22 The Batchelor Institute was of the view that the two day cooling off period put students in rural, remote and very remote communities at a significant disadvantage because having to submit two forms three days apart would mean in practice 'that a student needs to travel twice to an RTO, or has to fax two forms on separate days'.²¹

Requirement for students under 18 to seek parental approval for VET FEE-HELP loan

2.23 Charles Sturt University noted that people under 18 years of age are 'particularly influenced by both strong marketing strategies and peer pressure'. Charles Sturt University and OUA strongly supported the inclusion of a parental check to ensure that prospective students under 18 years of age fully understand the implications and details of their chosen qualification approval before requesting a VET FEE-HELP loan.²²

Broadening the circumstances for seeking a re-credit of a VET FEE-HELP loan

2.24 Charles Sturt University noted that, in its experience, 'life circumstances outside of the student's control that can impact on study and employment'. Charles Sturt University therefore strongly supported the proposed broadening of the circumstances in which a student can seek a re-credit of their VET FEE-HELP loan

19 Community Colleges Australia, *Submission 11*, p. 1.

20 Community Colleges Australia, *Submission 11*, p. 1.

21 The Batchelor Institute, *Submission 13*, p. 2.

22 Charles Sturt University, *Submission 7*, p. 2; see also Open Universities Australia, *Submission 8*, p. 3.

debt balance and remission of a debt as a measure that would increase flexibility and 'allow individual cases to be judged on merit and need'.²³

2.25 Swinburne University of Technology also welcomed this provision, stating that 'ensuring vulnerable students are afforded adequate protection and recourse to questionable provider behaviour is vital to the credibility of the Australian VET system'.²⁴

2.26 Similarly, the Australian Chamber of Commerce and Industry (ACCI) argued that allowing students to recover their money if they receive a sub-standard product would 'increase consumer confidence in the system'. ACCI also declared that 'in these instances, where there is clear evidence of a breach of regulations or unconscionable behaviour by the provider or their agent', ACCI would 'support ASQA or the Department of Education and Training (the department) in recovering from the provider the VET FEE-HELP amount paid to the RTO'.²⁵

2.27 The Consumer Action Law Centre noted a lack of clarity about the precise basis on which a re-credit of a VET FEE-HELP loan debt balance and remission of a debt would be granted:

It remains unclear exactly how a student is to access these new measures. It also appears from the Bill (specifically item 14, proposed section 46A) that the bases upon which an individual can seek remission is limited. While we note that the VET Guidelines, yet to be developed, will provide further details about the types of unacceptable conduct that might give rise to a remission of debt, we are concerned that this process will not consider broader consumer law rights, particularly rights pursuant to the Australian Consumer Law.²⁶

2.28 The Consumer Action Law Centre was concerned that if the department was solely responsible for administering applications for re-crediting VET FEE-HELP loans, then students would 'face accessibility barriers and their full suite of consumer rights will not be considered'.²⁷

2.29 The Consumer Action Law Centre therefore proposed that the best way to resolve applications for the re-credit of a VET FEE-HELP debt would be an ombudsman.²⁸ In their view, the advantage of using an ombudsman was the ability to

23 Charles Sturt University, *Submission 7*, p. 2.

24 Swinburne University of Technology, *Submission 20*, p. 2.

25 Australian Chamber of Commerce and Industry, *Submission 23*, p. 3.

26 Consumer Action Law Centre, *Submission 24*, p. 2.

27 Consumer Action Law Centre, *Submission 24*, p. 2.

28 Further discussion of an ombudsman occurs in the 'Industry ombudsman' section.

resolve disputes flexibly based upon agreed standards as well as consider a consumer's broad legal rights and not just those based in VET Guidelines.²⁹

2.30 The Consumer Action Law Centre recognised that the reforms implemented by the government in 2015 had diminished some of the worst misconduct in the sector. However, the Consumer Action Law Centre was critical of the prospective nature of the measure and recommended instead that it operate retrospectively such that individuals who have accumulated debt on the basis of unscrupulous conduct prior to the passage of the bill should be able to seek a re-credit of their VET FEE-HELP loan debt balance and remission of their debt.³⁰

Eligibility criteria for admitting new VET providers to the VET FEE-HELP scheme

2.31 Charles Darwin University, the Australian Catholic University, and Charles Sturt University expressed strong support for the strengthened eligibility criteria and evidence of quality of training provision and student outcomes for new VET providers to the VET FEE-HELP scheme.³¹

2.32 OUA supported the notion of close scrutiny of VET providers to ensure adherence to minimum standards. However, OUA was concerned that the requirement for a VET provider to have been practising for a minimum length of time should take the track record of the parent entity into account so that it did not unfairly discriminate against reputable providers seeking to enter the VET FEE-HELP scheme:

We believe that restricting the ability for a new provider to apply for VET FEE-HELP is a significant barrier. Whilst minimum standards must be adhered to and the entity applying for VET FEE-HELP needs to be scrutinised closely, the department should also consider the reputation of a parent company when deciding whether to grant an application. Requiring the entity to be practising for a minimum length of time before application only makes sense if the parent entity's tenure in education (whether or not the parent is an RTO) is taken into account. If the parent currently offers HECS help or FEE-HELP and there have been no significant issues encountered, this should be given a considerable amount of weight when deciding the suitability of its subsidiary when applying for VET FEE HELP status.³²

Civil penalty regime and extension of the national VET Regulator's powers

2.33 Charles Sturt University, ACCI, and Community Colleges Australia all strongly supported the proposed penalties for VET providers who engage in

29 Consumer Action Law Centre, *Submission 24*, p. 2.

30 Consumer Action Law Centre, *Submission 24*, p. 3.

31 Charles Darwin University, *Submission 4*, p. 2; Charles Sturt University, *Submission 7*, p. 2; Australian Catholic University, *Submission 19*, p. 8.

32 Open Universities Australia, *Submission 8*, p. 4.

inappropriate behaviour or practice, and the proposed extension of the VET Regulator's powers with respect to monitoring and investigation.³³

2.34 ACPET welcomed the civil penalty and enforcement regime as a more timely and appropriate response to breaches of the VET Guidelines and an improvement on the current regulatory recourse that relies on 'the blunt instrument of provider deregistration which may not be in the best interests of students'.³⁴

2.35 Noting that ASQA will have powers under the Regulatory Powers Act, both Navitas, a private company and Australian global education partner, and ACCI emphasised the importance of ensuring that ASQA has the resources, systems and capabilities to fulfil its expanded regulatory role.³⁵

2.36 Furthermore, ACCI stated that, in addition to any civil penalties or other infringement notices, ACCI 'would also support placing restrictions on their registration as an RTO or on accessing government funding in the future depending on the severity of the breach'.³⁶

Use of brokers within the VET system

2.37 Several submitters stated that the use of brokers within the VET system was a serious ongoing concern. These submitters pointed out that the current safeguards were insufficient to prevent ongoing exploitation of vulnerable learners by third parties, and therefore urged the government to introduce legislative standards for third party brokers and agents.³⁷

2.38 Charles Darwin University suggested that brokers be subject to 'strict standards and control' while Evocca College recommended a 'mandatory code of conduct for brokers'.³⁸

2.39 ACPET pointed out that while it had introduced measures that govern its own members' use of agents and brokers, this did not cover all VET providers or their

33 Charles Sturt University, *Submission 7*, p. 2; Community Colleges Australia, *Submission 11*, p. 2; Australian Chamber of Commerce and Industry, *Submission 23*, p. 3; see also Women in Adult and Vocational Education, *Submission 17*, pp 2–3; Australian Catholic University, *Submission 19*, p. 8; Swinburne University of Technology, *Submission 20*, p. 1; Consumer Action Law Centre, *Submission 24*, p. 3.

34 Australian Council for Private Education and Training, *Submission 9*, p. 3; see also Navitas, *Submission 21*, p. 2.

35 Navitas, *Submission 21*, p. 2; Australian Chamber of Commerce and Industry, *Submission 23*, p. 3.

36 Australian Chamber of Commerce and Industry, *Submission 23*, p. 3.

37 Navitas, *Submission 21*, p. 3; see also Charles Darwin University, *Submission 4*, p. 2; Evocca College, *Submission 3*, p. 4; Australian Council for Private Education and Training, *Submission 9*, p. 5; Consumer Action Law Centre, *Submission 24*, pp1–2.

38 Charles Darwin University, *Submission 4*, p. 2; Evocca College, *Submission 3*, p. 4.

agents and brokers. ACPET therefore recommended the 'establishment of a limit on the proportion of VET FEE-HELP tuition fees that are payable to agents and brokers'.³⁹

2.40 TAFE Directors Australia argued that stricter legislation was needed to stamp out 'unconscionable behaviour by some providers and their brokers':

TDA cautions that current legislation and policy settings appear to be insufficient, and that far stronger control and governance of the VET FEE-HELP loan scheme is warranted in the face of incontrovertible evidence of abuse.⁴⁰

2.41 Noting that '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', the Consumer Action Law Centre recommended that commission-based sales be banned.⁴¹

Industry ombudsman

2.42 Several submitters supported the establishment of an ombudsman for the VET sector.⁴² ACPET pointed out that the National Complaints Training Hotline only received complaints but did not deal with them, and that an ombudsman would 'provide a consumer-focused complaints handling process for students and providers to complement the National Complaints Training Hotline'.⁴³

2.43 Evocca College argued that an ombudsman for the VET sector would 'improve public perception of the industry, provide a cost effective dispute resolution option, improve communication and ensure regulators are given early warning of major issues'. Evocca College suggested that the ombudsman's remit include complaints relating to the quality of training and assessment, contractual arrangements and other complaints about both public and private providers.⁴⁴

2.44 Noting that several jurisdictions have a Training ombudsman or similar arrangements, ACPET argued that it should still 'be possible to put in place co-

39 Australian Council for Private Education and Training, *Submission 9*, p. 5.

40 TAFE Directors Australia, *Submission 6*, p. 1.

41 Consumer Action Law Centre, *Submission 24*, p. 3.

42 National Tertiary Education Union, *Submission 1*, p. 6; Evocca College, *Submission 3*, p. 3; Australian Council for Private Education and Training, *Submission 9*, p. 4; Women in Adult and Vocational Education, *Submission 17*, p. 3; Australian Council of Trade Unions, *Submission 18*, p. 2; Navitas, *Submission 21*, p. 3; Consumer Action Law Centre, *Submission 24*, pp 1-3.

43 Australian Council for Private Education and Training, *Submission 9*, p. 4.

44 Evocca College, *Submission 3*, p. 3.

operative arrangements that ensure domestic students across the country have access to a simple, cost-effective mechanism to deal with their complaints'.⁴⁵

2.45 ACPET further noted that the VET regulators have 'limited capacity to respond to complaints' because the regulators focus on complaints as a means to inform audits and strategic reviews.⁴⁶

2.46 The Consumer Action Law Centre agreed with the position of ACPET with regard to the respective roles of a regulator and an ombudsman:

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.⁴⁷

2.47 The National Tertiary Education Union supported the calls for an ombudsman but argued that they should have jurisdiction over the entire tertiary sector and should investigate complaints from domestic and overseas students.⁴⁸

2.48 TAFE Directors Australia did not support calls for an ombudsman, stating that it 'would risk adding another level of bureaucracy'. Rather, they argued that the current memorandum of understanding between ASQA and the department should be extended to allow ASQA to effectively regulate the entire VET sector including administration of Commonwealth student loans.⁴⁹

Committee view

2.49 The committee condemns the unconscionable behaviour of certain private VET providers and their agents whose unscrupulous practices have blighted the educational outcomes of affected students, unjustly saddled students with a lifetime of debt, and unfairly tarnished the reputation of the wider VET sector.

2.50 While the VET FEE-HELP scheme was well-intentioned, the committee recognises that the necessary compliance and regulatory mechanisms that should have

45 Australian Council for Private Education and Training, *Submission 9*, p. 4; see also Navitas, *Submission 21*, p. 3.

46 Australian Council for Private Education and Training, *Submission 9*, p. 4.

47 Consumer Action Law Centre, *Submission 24*, p. 2.

48 National Tertiary Education Union, *Submission 1*, p. 6.

49 TAFE Directors Australia, *Submission 6*, p. 2.

accompanied both the introduction and expansion of the scheme were never implemented by the previous government.

2.51 In recognition of the serious quality issues that it inherited, the government has therefore acted swiftly to implement a range of regulatory reforms to enhance the operation of the VET FEE-HELP scheme.

2.52 The committee commends the government for acting quickly to tighten the rules to prevent VET providers from misleading vulnerable students with unscrupulous marketing techniques to sign up for courses which they believed to be 'free' or 'government funded'. The measures in this bill will build upon these changes however the committee notes that further work still needs to be done to continue to clamp down on unethical providers.

2.53 The committee notes that, historically, greater competition and contestability in the VET sector have enjoyed bipartisan political support. It is also clear from the inquiry that the measures in the bill have widespread stakeholder support.

2.54 The committee acknowledges the strong support across the board from submitters for the measures contained in the bill. The committee therefore commends the bill as a vital reform that will improve the integrity of the VET FEE-HELP scheme and restore confidence in the VET sector.

Recommendation 1

2.55 The committee recommends that the Senate pass the bill.

Senator McKenzie

Chair

