

The Senate

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Education and Employment  
Legislation Committee

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Higher Education Support Amendment (VET  
FEE-HELP Reform) Bill 2015 [Provisions]

November 2015

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# **RECOMMENDATIONS**

## **Recommendation 1**

**2.55 The committee recommends that the Senate pass the bill.**





# CHAPTER 1

## Reference

1.1 On 15 October 2015, the Hon Luke Hartsuyker MP introduced the Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015 (the bill) in the House of Representatives.<sup>1</sup>

1.2 On 12 November 2015, the Senate referred the provisions of the bill to the Education and Employment Legislation Committee for inquiry and report by 30 November 2015.<sup>2</sup>

## Conduct of the inquiry

1.3 Details of the inquiry were made available on the committee's website.<sup>3</sup> The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 24 organisation, as detailed in Appendix 1.

## Background

1.4 In 2008, the Labor government introduced the VET FEE-HELP scheme to the vocational and educational training (VET) sector. VET FEE-HELP is a demand-driven scheme that provides eligible full fee paying students income contingent loans for undertaking higher level VET qualifications (a diploma, advanced diploma, graduate certificate or graduate diploma course).<sup>4</sup>

1.5 VET FEE-HELP is part of the Higher Education Loan Program (HELP) and is enabled by the *Higher Education Support Act 2003* and administered by the Department of Education and Training (the department).<sup>5</sup>

1.6 The VET FEE-HELP scheme was extended to state subsidised students in jurisdictions that agreed to skills reforms to their VET sector (Victoria agreed in 2009). In 2012, other states joined under the Council of Australian Governments

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1 The Hon Luke Hartsuyker MP, Minister for Vocational Education and Skills and Deputy Leader of the House, *House of Representatives Hansard*, 15 October 2015, pp 11313–11316.

2 *Journals of the Senate*, No. 126, p. 3373.

3 Senate Standing Committee on Education and Employment, Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/VET\\_FEE\\_HELP\\_Reform](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/VET_FEE_HELP_Reform) (accessed 23 November 2015).

4 Australian Government Department of Education and Training, Changes to the VET FEE-HELP Scheme, *Regulation Impact Statement*, August 2015, pp 5–8.

5 Australian Government Department of Education and Training, Changes to the VET FEE-HELP Scheme, *Regulation Impact Statement*, August 2015, p. 8.

National Partnership Agreement on Skills Reform (NPA). The NPA also extended the scheme to state and territory government subsidised students undertaking a limited range of Certificate IV courses on a limited trial basis (the Trial). The Trial will run until the end of 2016.<sup>6</sup>

1.7 In this regard, therefore, reforms to enact greater competition, contestability, and student and employer choice in the VET sector have enjoyed bipartisan political support.

1.8 There has been strong growth in provider and student participation in the VET FEE-HELP scheme. Between 2009 and 2014:

- the number of VET providers approved to participate in the VET FEE-HELP scheme increased from 39 to 224;
- the number of students accessing VET FEE-HELP loans increased from 5 262 to 202 766; and
- the total annual value of VET FEE-HELP loans provided to students increased from \$25.6 million to \$1.76 billion.<sup>7</sup>

1.9 A consequence of the expansion of the VET FEE-HELP scheme and an inadequate regulatory regime has been a surge in enrolments driven by opportunistic and unscrupulous VET FEE-HELP providers.<sup>8</sup>

1.10 The characteristics of this pattern of unscrupulous behaviour are aggressive marketing, inappropriate targeting of vulnerable people, and widespread use of inducements.<sup>9</sup>

1.11 The 2015 report into the operation, regulation and funding of private VET providers in Australia by the Senate Education and Employment References Committee documented much of this unscrupulous behaviour and made several recommendations for reform.<sup>10</sup>

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6 Australian Government Department of Education and Training, Changes to the VET FEE-HELP Scheme, *Regulation Impact Statement*, August 2015, p. 8.

7 Australian Government Department of Education and Training, Changes to the VET FEE-HELP Scheme, *Regulation Impact Statement*, August 2015, p. 5.

8 The Hon Luke Hartsuyker MP, Minister for Vocational Education and Skills and Deputy Leader of the House, *House of Representatives Hansard*, 15 October 2015, p. 11313; Australian Government Department of Education and Training, Changes to the VET FEE-HELP Scheme, *Regulation Impact Statement*, August 2015, p. 5.

9 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, *Explanatory Memorandum*, p. 1.

10 Senate Education and Employment References Committee, *Getting our money's worth: the operation, regulation and funding of private vocational education and training (VET) providers in Australia*, October 2015.

1.12 During 2015, the Coalition government introduced a series of reforms to address unscrupulous behaviour and to protect students, taxpayers and the reputation of Australia's VET sector. The reforms covered marketing and inducements, consumer information, debt processes and VET provider standards. The 2015-16 budget included \$18.2 million for measures around stronger compliance costs.<sup>11</sup>

1.13 From 1 April 2015, the government banned VET providers and their agents from offering inducements such as free laptops, cash, and vouchers.<sup>12</sup>

1.14 From 1 July 2015, the government banned VET providers from charging a withdrawal fee. Additionally, VET providers and their agents could no longer market VET FEE-HELP supported training as 'free' or 'government funded', and were no longer allowed to mislead students in any way into believing that VET FEE-HELP is not a loan that is expected to be paid back.<sup>13</sup>

1.15 Furthermore, VET providers must now publish on their websites which agents and brokers they use, and as of 1 July 2015 became responsible for the conduct of their agent or broker. Agents must now disclose to the student the name of the VET provider and the course they are marketing, and must also disclose that they will receive a commission for any referred student enrolment.<sup>14</sup>

1.16 In addition, the government announced that from 1 January 2016, VET providers cannot levy the full debt load up-front and in one go. Instead, students will have a number of opportunities during the course to confirm if they wish to continue to be enrolled, and their debt will be levied accordingly.<sup>15</sup>

1.17 As set out in the following sections, the bill implements the remainder of the government's announced reforms.

## **Purpose of the bill**

1.18 The purpose of the bill is to amend the *Higher Education Support Act 2003* (the Act) to:

- give effect to the government's decision to strengthen the administration of the VET FEE-HELP loan scheme;

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11 The Hon Luke Hartsuyker MP, Minister for Vocational Education and Skills and Deputy Leader of the House, *House of Representatives Hansard*, 15 October 2015, p. 11314.

12 The Hon Luke Hartsuyker MP, Minister for Vocational Education and Skills and Deputy Leader of the House, *House of Representatives Hansard*, 15 October 2015, p. 11314.

13 The Hon Luke Hartsuyker MP, Minister for Vocational Education and Skills and Deputy Leader of the House, *House of Representatives Hansard*, 15 October 2015, p. 11314.

14 The Hon Luke Hartsuyker MP, Minister for Vocational Education and Skills and Deputy Leader of the House, *House of Representatives Hansard*, 15 October 2015, p. 11314.

15 The Hon Luke Hartsuyker MP, Minister for Vocational Education and Skills and Deputy Leader of the House, *House of Representatives Hansard*, 15 October 2015, p. 11314.

- respond to inappropriate market practices;
- introduce complementary actions to improve the quality of outcomes for students; and
- protect students, public monies and the reputation of the broader (VET) sector.<sup>16</sup>

## Overview and key provisions of the bill

### 1.19 The bill:

- introduces new requirements for VET FEE-HELP approved VET providers to establish minimum prerequisites, including minimum numeracy, language, and literacy skills, before allowing student to enrol in a VET course for which they are entitled to receive a VET FEE-HELP loan;
- requires a two business day period between course enrolment and application for a VET FEE-HELP loan to enable students to consider their payment options;
- requires a parent's approval before any student under the age of 18 can request a VET FEE-HELP loan;
- broadens the circumstances in which a student can seek a re-credit of their VET FEE-HELP loan debt balance and remission of a debt where it is proven that, as a result of unacceptable behaviour by the VET provider (or their agent), the student enrolled with the VET provider and subsequently received a VET FEE-HELP loan;
- introduces a minimum registration and trading history requirement as additional eligibility criteria for admitting new VET providers to the VET FEE-HELP loan scheme. This will enhance the integrity of the scheme by ensuring all VET providers are suitably experienced and have had the chance to demonstrate they are quality education and training operators;
- introduces an infringement notice scheme aimed at VET providers who engage in inappropriate marketing and administrative practices found to contravene the civil penalty provisions in Schedule 1A to the Act. Introducing an infringement and civil penalty regime engages Parts 2 to 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act); and
- will extend the Commonwealth and the National VET Regulator's powers with respect to monitoring and investigation. The bill does this by making the civil penalty provisions and relevant information subject to monitoring by the department and the National VET Regulator under Part 2 (Monitoring) of the Regulatory Powers Act. Similarly, the civil penalty provisions are also made

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16 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, *Explanatory Memorandum*, p. 2.

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subject to investigation under Part 3 (Investigation) of the Regulatory Powers Act by the department and the National VET Regulator.<sup>17</sup>

- provides that each of the civil penalty provisions is enforceable by the department under Part 4 of the Regulatory Powers Act.<sup>18</sup>

1.20 Finally, the bill provides for minor technical amendments to be made which are intended to improve the clarity of some requirements of VET providers.<sup>19</sup>

### **Human rights implications**

1.21 The provisions in the bill engage the right to education, the right to privacy, the right to a fair and public hearing, and the rights of the child.<sup>20</sup>

1.22 The bill's statement of compatibility states that the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>21</sup>

### **Financial impact statement**

1.23 The explanatory memorandum states that the bill would have budgetary implications. The 2015-2016 Budget committed \$18.2 million in departmental funds, including \$3.6 million in capital expenditure, for an increased compliance monitoring regime associated with the reform measures. The introduction of the infringement notice scheme may also result in positive financial impacts on the Commonwealth, depending on the operational impact of the amendments.<sup>22</sup>

1.24 The total savings of the VET FEE-HELP reform measures is estimated at \$350.9 million in fiscal balance terms over the forward estimates period 2015-16 to 2018-19.<sup>23</sup>

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17 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, *Explanatory Memorandum*, pp 2– 4.

18 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, *Explanatory Memorandum*, p. 4.

19 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, *Explanatory Memorandum*, p. 4.

20 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, Statement of Compatibility with Human Rights, *Explanatory Memorandum*, pp 8-11.

21 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, Statement of Compatibility with Human Rights, *Explanatory Memorandum*, p. 8.

22 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, *Explanatory Memorandum*, p. 5.

23 Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015, *Explanatory Memorandum*, p. 5.

**Acknowledgement**

The committee thanks those organisations who contributed to the inquiry by preparing written submissions.

# 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.<sup>1</sup> 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'.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

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'.<sup>8</sup> 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.<sup>9</sup>

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.

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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.<sup>10</sup>

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'.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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

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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.<sup>14</sup>

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.<sup>15</sup>

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'.<sup>16</sup>

### ***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.<sup>17</sup>

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.<sup>18</sup>

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

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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'.<sup>19</sup>

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.<sup>20</sup>

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'.<sup>21</sup>

### ***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.<sup>22</sup>

### ***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

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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'.<sup>23</sup>

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'.<sup>24</sup>

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'.<sup>25</sup>

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.<sup>26</sup>

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'.<sup>27</sup>

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.<sup>28</sup> In their view, the advantage of using an ombudsman was the ability to

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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.

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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.<sup>29</sup>

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.<sup>30</sup>

### ***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.<sup>31</sup>

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.<sup>32</sup>

### ***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

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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.<sup>33</sup>

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'.<sup>34</sup>

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.<sup>35</sup>

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'.<sup>36</sup>

### *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.<sup>37</sup>

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'.<sup>38</sup>

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

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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'.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

### ***Industry ombudsman***

2.42 Several submitters supported the establishment of an ombudsman for the VET sector.<sup>42</sup> 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'.<sup>43</sup>

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.<sup>44</sup>

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-

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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'.<sup>45</sup>

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.<sup>46</sup>

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.<sup>47</sup>

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.<sup>48</sup>

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.<sup>49</sup>

## **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

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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.



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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**



# LABOR SENATORS' ADDITIONAL COMMENTS

## Key Issues

1.1 The Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015 seeks to play catch-up in terms of regulating the operation of VET FEE-HELP and providing some measure of redress for the victims of the shonks and shysters who have been perpetuating a scam on students and the Australian people.

1.2 This Bill is expressly inadequate. It continues this Government's practice of addressing the symptoms, but not fixing the underlying problems, that plague the VET FEE-HELP system and vocational education across the country.

1.3 The Bill is a missed opportunity. The Government has failed to take the opportunity to give the Commonwealth and the national regulator sufficient powers to act decisively against providers who are suspected of misusing the VET FEE-HELP scheme and exploiting Australians — young and old — who are the victims of this provider and broker-led feeding frenzy.

1.4 Labor Senators agree with the Member for Calare, Mr John Cobb:

The good providers who are doing the right thing are victims because it sullies the good name of everybody when providers take advantage of young people and of a government system that allows those people to borrow money from the Commonwealth. Obviously, the students themselves are victims if they are encouraged to get involved in a course that either is no good to them or does not leave them with anything substantive at the end of the day.<sup>1</sup>

## Recent History of VET FEE-HELP

1.5 In his second reading speech, the Government Minister has sought to play partisan politics with this Bill, pinning the blame for this scheme on the former government.

1.6 Unfortunately for the Government the facts do not bear out its divisive politics. In 2012, the last year of published figures before the current Government was elected there were 55,115 VET FEE-HELP assisted students. VET FEE-HELP loans totalled \$235 million in that year, and the average loan amount was \$5,890.

1.7 In 2014 there were 202,776 students – an increase of 367 per cent. VET FEE-HELP loans totalled \$1.757 billion, up by 747 per cent. And fees have shot up to \$8,666 per student, an increase of 147 per cent.

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1 Mr John Cobb MP, House of Representatives Hansard, 9 November 2015, pp 65–67.

1.8 Under this Government there have been three Ministers to date. Minister MacFarlane and Birmingham both talked tough but on outcomes have demonstratively failed.

1.9 Even Minister Birmingham's cherished initiative of a transfer of VET powers from States and Territories to the Commonwealth appears to have failed, largely because State and Territory Ministers quite rightly doubt the capacity of the Commonwealth Department of Education and Training to manage a national VET system given its incompetent administration of VET FEE-HELP.

1.10 This is not the Government's first attempt to fix VET FEE-HELP. Amendments to the Act last year and new national standards which came into effect on 1 April this year have not stemmed the tide of abuse and exploitation.

### **A system in crisis on this government's watch**

1.11 For months the Government has claimed that its previous changes, the most notable being new national standards that came into effect on 1 April 2015, would fix the problem.

1.12 The then Assistant Minister for Education and Training said in a media release on 1 April 2015:

The time is up for dodgy marketing agents offering inducements like laptops, meals, vouchers and prizes so that people sign up for VET courses they don't need and incur a debt they cannot repay.<sup>2</sup>

1.13 However it is now clear that the Government's actions have either failed or been too little, too late.

1.14 Since April reports of exploitation have continued:

- *The Saturday Age* reported on the 4 April 2015 that brokers were targeting elderly and disabled public housing tenants in the suburb of Prahran with inducements like iPads.<sup>3</sup>
- 15 private colleges were reported to be under investigation for flouting the new standards by offering inducements like 'laptop scholarships' according to *The Saturday Age* on 16 May 2015.<sup>4</sup>
- The Australian Skills and Quality Agency (ASQA) was forced to defend its conduct in June 2016.<sup>5</sup>

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2 Senator the Hon Simon Birmingham, Assistant Minister for Education and Training, Time is up for shonky VET spruikers, *Media Release*, 1 April 2015.

3 *The Saturday Age*, 4 April 2015.

4 *The Saturday Age*, 16 May 2015.

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- A Senate inquiry was told that brokers were continuing to flout the national standards by the Redfern Legal Centre in July 2015.<sup>6</sup>
  - The Australian College of Broadway was accused of enrolling a woman for a \$28,000 course after convincing her it was free *The Australian* reported on 5 August 2015.<sup>7</sup>
  - Fairfax media reported that one of the nation's biggest private colleges, Careers Australia, enrolled 2762 students using VET FEE-HELP, yet only 300 graduated. The figures were disputed by Careers Australia.<sup>8</sup>
  - A Senate hearing in Melbourne was told that a broker had targeted Vietnamese students studying English at a Yarraville Community Centre offering inducements.<sup>9</sup>
  - *The Age* investigation revealed that brokers operating for Phoenix College offered free laptops for disabled public housing tenants in rural Euroa.<sup>10</sup> Phoenix College was subsequently put under investigation by ASQA and the Department of Education and Training, and the shares of its parent company – Australian Careers Network – plunged by 12 per cent.<sup>11</sup>
  - The Australian Competition and Consumer Commission (ACCC) commenced court action against Unique College in Sydney alleging that the college sent salespeople into Aboriginal communities and handed out free laptops in return for their signatures on applications for online diplomas.<sup>12</sup>
  - *The Daily Telegraph* reports that ten colleges are being investigated for VET FEE-HELP rorts by the ACCC. ASQA admits that the number of complaints pointed to a 'potential systematic issue'.<sup>13</sup>
  - *The Australian* reports that \$1 billion in loans will be spent on students who do not complete their Diploma courses.<sup>14</sup>

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5 The Australian, Wednesday 17 June 2015, p. 31.

6 Sydney Morning Herald, Saturday 18 July, p. 13.

7 The Australian, 5 August 2015.

8 The Canberra Times, 21 August 2015, p. 6.

9 The Age, 4 September 2015, p. 18.

10 The Age, 17 September 2015, p. 1.

11 The Age, 18 September 2015; Australian Financial Review, 18 September 2015, p. 15.

12 The Age, 28 October 2015, p. 12.

13 Daily Telegraph, 29 October 2015, p. 11.

- Evocca College is facing a class action from former students who claim they were duped into enrolling into its courses.<sup>15</sup>
- Sydney man, Keith Broos, claims he was signed up to a course by a spruiker for Evocca College and incurred a VET FEE-HELP debt he was unaware of.<sup>16</sup>
- Fairfax media reports that Unique International College paid students to sign documents they could not read in order to take up loans of \$25,000.<sup>17</sup>
- *The Australian* reports that tuition fees have tripled in three years, with the private training industry calling on the government to regulate tuition fees to prevent rorting.<sup>18</sup>
- *The Australian* reports that competition rates for government funded VET FEE-HELP courses has fallen.<sup>19</sup>
- Cornerstone Investments paid \$46 million for VET FEE-HELP in 2014 for 4,000 students but only graduated five, *The Australian* reports.<sup>20</sup>
- Six of the top 10 organisations running Australian private colleges are under regulatory scrutiny *The Australian* reports.<sup>21</sup>
- *The Age* reports on the business model on vocational educational businesses, including the woes of Vocation, the troubles of Australian Careers Network, and allegations against another company Acquire Learning.<sup>22</sup>
- The ACCC to launch court action against Phoenix Institute parent company CAN tells the Australian Stock Exchange.<sup>23</sup>
- *The Age* reports that a federal government back to work scheme is supplying workers that sells expensive diplomas to the unemployed. Allegations are levelled against Go Careers about their sales tactics.<sup>24</sup>

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14 The Australian, 29 October 2015, p. 1.

15 The Australian, 29 October 2015, p. 6.

16 Daily Telegraph, 20 October 2015, p. 22.

17 Sydney Morning Herald, 30 October 2015, p. 15.

18 Natasha Bitu, \$3bn blow as colleges 'profiteer', *The Australian*, 30 October 2015.

19 The Australian, 30 October 2015, p. 1.

20 The Australian, 31 October 2015, p. 4.

21 The Australian, 5 November 2015, p. 7

22 The Saturday Age, 14 November 2015.

23 The Australian, 20 November 2015, p. 5.

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- On the same day *The Age* reported that dodgy brokers were still offering free laptops for people to enrol in courses for ASCET Institute of Technology, Phoenix Institute and Sydney based AIPE.<sup>25</sup>
  - The ACCC accuses Phoenix Institute of false, misleading and unconscionable conduct and should pay back \$106 million in VET FEE-HELP funding, court documents show.<sup>26</sup>
  - ASQA reveals that it had informed two more colleges – Cornerstone Investments and the Australian Institute of Professional Education – that it intends to cancel their registration.<sup>27</sup>
  - Vocation Ltd advises the Australian Stock Exchange that it has initiated voluntary administration procedures.<sup>28</sup>

1.15 The sheer volume of these reports and the flurry of regulatory action demonstrate that despite the Government's claims that previous changes to the VET FEE-HELP program have failed to even deter the shonks and shysters.

1.16 As TAFE Directors Australia (TDA) said in their submission to the committee:

Put simply, there is a culture of private 'for-profit' providers who have exploited – and without stricter legislation will continue to exploit – any and every loop hole or weakness in the VET FEE-HELP guidelines and legislation.

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.<sup>29</sup>

1.17 In this context Labor Senators welcome the legislation, and are prepared to support its passage. However, such is the scale of the problem we are looking to the Government to enact further measures that the community and indeed the private college sector are calling for.

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24 The Age, 23 November 2015, p. 1.

25 The Age, 23 November 2015, p. 8.

26 The Age, 25 November 2015, p. 3.

27 The Australian, 26 November 2015, p. 1.

28 The Australian, 26 November 2015,  
<http://www.theaustralian.com.au/business/companies/vocation-goes-into-voluntary-administration/story-fn91v9q3-1227623506720>

29 TAFE Directors Australia, Submission 6, p. 1.

## VET FEE-HELP could overtake HECS this year

1.18 La Trobe University, in its submission to the inquiry has revealed the scale of the change where VET FEE-HELP was in 2014 more than one-third of the amount of University HELP loans:

An important issue within tertiary education policy is maintaining the sustainability of Australia's income contingent loan scheme. At this point, the bulk of loans made through the income contingent loan scheme are administered through the Higher Education Support Act (2003). Trade Support Loans are a small but significant addition to the income contingent loan policy framework (representing around 2.5% of costs of the higher education loan program for 2014-15).

The quantum of funds distributed through VET FEE HELP has increased significantly, and now makes up around a third of the funds distributed to Australian universities through the higher education loan program (Table One).<sup>30</sup>

Table One. University HELP and VET FEE HELP 2012 to 2014

	<b>2012 (\$m)</b>	<b>2013 (\$m)</b>	<b>2014 (\$m)</b>
HECS-HELP <sup>1</sup>	3,037	3,633	3,947
FEE-HELP <sup>1</sup>	593	724	796
SA-HELP <sup>1</sup>	57	86	96
<b>Total University HELP<sup>1</sup></b>	<b>3,687</b>	<b>4,443</b>	<b>4,839</b>
VET-FEE HELP <sup>2</sup>	325	669	1,757
VET-FEE HELP: University HELP Ratio	0.09	0.15	0.36

Source:

1. Department of Education and Training - Financial Reports of Higher Education Providers 2012-2014
2. Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015 Regulatory Impact Statement

1.19 The Regulation Impact Statement (RIS), Changes to the VET FEE-HELP Scheme, indicates that the rapid increase in the number of registered training organisations (RTOs) seeking approval, and being approved as VET FEE-HELP providers, means that 'there is still significant scope for further growth in VET FEE-HELP'. The RIS goes on to say:

Based on the number of providers approved in 2015, current applications undergoing assessment and pending, a potential increase during 2015 of 300 per cent over 2014 is indicated.

1.20 Based on the trend established by May this year, the total VET FEE-HELP debt for 2015 is likely to exceed \$4 billion. If left unaddressed, or not adequately

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30 La Trobe University, *Submission 2*, p. 1.



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addressed, it is possible that VET FEE-HELP could exceed HECS-HELP this year or in 2016.

### **Strengthening student protection when entering into VET FEE-HELP debts**

1.21 Currently, a person signing up for a \$1,000 credit card or phone-contract has more protection than students signing up VET FEE-HELP loans.

1.22 There have been extensive media reports over the past two years detailing cases where dodgy brokers and RTOs target vulnerable students, often in low socio economic areas or people with intellectual disabilities, effectively tricking them into signing up to VET FEE-HELP debts without their knowledge. In many cases, 'students' will not find out about their VET FEE-HELP debt until they file a tax return.

1.23 They offer incentives such as free laptops, meals, gift vouchers and iPads in order to get their details and a signature to sign them up for a VET FEE-HELP loan – in many cases up to \$20,000.

1.24 In other cases, students have withdrawn from courses and followed the correct procedures to later find out that they have still accrued a debt.

1.25 This is effectively fraud and must be stopped.

1.26 Labor introduced an amendment in detail in the House of Representatives requiring the Department of Education and Training write to the student with a clear statement on the amount of debt that they are about to incur and requiring the student to reply to the Department before a debt is raised. This puts the Department in as a check-point between the prospective student and the broker or RTO.

1.27 In his speech to the House of Representatives on 11 November 2015, the Minister advised that the Department of Education and Training is already working on a new electronic application system for VET FEE-HELP loans which will come into effect on 1 January 2017.

1.28 While understanding that new IT systems take some time to establish, one year is far too long given the industry is in crisis and the volume of taxpayer funds that are being funnelled through to dodgy brokers and RTOs.

1.29 Labor Senators will propose amendments in detail in the Senate to require that the Minister and the Department fast-track this system and also look at risk management options, such as recording IPS and email addresses to ensure there is no commonality and staggering the Department's replies to students so that brokers and RTOs are unable to predict the response time from the Department to the student.

## Capping runaway tuition fees

1.30 In vocational education fees for non-government subsidised courses are completely deregulated. A provider may charge whatever they want for a VET qualification and a student must therefore borrow the full cost as a VET FEE-HELP loan.

1.31 As a consequence of these deregulatory settings, tuition fees are out of control. The RIS prepared for this legislation says:

During 2014, there were almost 203,000 students (or 133,000 EFTSL) who accessed loans, with a total value of approximately \$1.76 billion, and an average loan amount of \$8,666 per student (or \$13,197 per EFTSL). Of the 133,000 EFTSL, around 113,700 were full fee paying with an average loan of \$14,500 and around 19,500 were state subsidised with an average loan of \$5,500.<sup>31</sup>

1.32 The 2014 VET FEE-HELP Statistical Report reports some more startling fee rises. In 2011 the average loan amount for a Diploma was \$4870. In 2014 it was \$12,658.<sup>32</sup>

1.33 The average cost of an information technology diploma has increased from \$2779 in 2011 to \$18,735, increasing by 84.9 per cent between 2013 and 2014. A diploma of business management which cost \$4623 in 2011 now costs \$15,493.

<i>Average annual tuition fee per EFTSL (\$)</i>					<b>Change 2013 to 2014</b>
	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	
Natural and Physical Sciences	\$3,731	\$3,955	\$5,820	\$6,241	7.2%
Information Technology	\$2,779	\$4,473	\$10,134	\$18,735	84.9%
Engineering and Related Technologies	\$2,196	\$3,046	\$8,053	\$10,296	27.9%
Architecture and Building	\$2,009	\$2,589	\$4,500	\$5,792	28.7%
Agriculture, Environmental and Related Studies	\$1,525	\$1,524	\$2,980	\$4,810	61.4%
Health	\$5,660	\$5,997	\$7,954	\$9,622	21.0%
Education	\$8,078	\$8,473	\$9,259	\$5,821	-37.1%
Management and Commerce	\$4,623	\$6,454	\$12,130	\$15,493	27.7%
Society and Culture	\$3,671	\$4,727	\$6,544	\$8,276	26.5%
Creative Arts	\$6,310	\$7,399	\$10,145	\$12,097	19.2%
Food, Hospitality and Personal Services	\$10,466	\$11,958	\$13,081	\$16,982	29.8%
Mixed field programs	\$1,038	\$1,297	\$1,769	\$2,909	64.4%
<b>Total</b>	<b>\$4,814</b>	<b>\$5,917</b>	<b>\$9,549</b>	<b>\$12,308</b>	<b>28.9%</b>

Source: Australian Government Department of Education VET FEE-HELP data collection

31 Australian Government Department of Education and Training, Regulatory Impact Statement, Changes to the VET FEE-HELP Scheme, p. 15.

32 2014 VET FEE-HELP Statistical Report, Chapter 3, Table 5

1.34 Stories of price gouging are common. In the debate on this Bill in the House of Representatives, the Member for Lyne, Dr David Gillespie, cited one example:

There are two stories that I found particularly disingenuous and illustrated how crooked some of these people are. In Cairns there were two providers offering the same course. Funnily enough, they were registered at the same address. One charged \$12,750 on the VET FEE-HELP, but, for the same diploma of management from the same provider, you could get it direct if you paid up front \$3,420.<sup>33</sup>

1.35 The Australian Education Union (AEU) notes that VET FEE-HELP students often pay more than university students:

Undergraduate students who are eligible for a *CSP* generally pay much less through their *HECS HELP* loans, than either category of *FEE-HELP* student.<sup>35</sup>

1.36 Submissions have backed calls to control prices. The Australian Council for Private Education and Training (ACPET) recommended:

A review of the pricing and student contribution arrangements for VFH. ACPET considers the reforms may not give sufficient attention to the price insensitivity that has been identified with VFH.<sup>37</sup>

1.37 The National Tertiary Education Union (NTEU) calls for an end to fee inflation:

The best way to prevent fee inflation is to put a cap on how much VET-FEE HELP assisted student can be charged for a course as is currently the case under HECS.<sup>38</sup>

1.38 The Government still has a policy of deregulating university fees. The fate of VET under deregulation is surely enough of a cautionary tale to rule deregulation and \$100,000 degrees out as a serious policy option for the future.

1.39 Rather, as a number of submissions note, it is time to bring this aspect of VET FEE-HELP in line with HECS-HELP. In order to protect students and protect the Australian taxpayer it is time to put a ceiling on tuition fees able to be charged for courses paid for with VET FEE-HELP.

1.40 One other suggestion that was made to the recent Senate References Committee inquiry was to institute a lower loan limit. This suggestion has merit.

1.41 Labor Senators will propose and support an amendment in detail dealing with these issues.

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33 Dr David Gillespie MP, House of Representatives Hansard, 9 November 2015, p. 70.

35 Australian Education Union, Submission 16, p. 10.

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

38 National Tertiary Education Union, Submission 1, p. 3.

## Protecting the consumer through an industry ombudsman

1.42 Labor has proposed that an industry ombudsman be established for domestic VET students. This position has widespread support. Government actions to set up a National Training hotline are welcomed, but more can easily be done.

1.43 The Commonwealth Overseas Students Ombudsman (OSO), in its *Report on the first four years of operation*, notes the success of that scheme in acting as a vehicle for receiving/resolving complaints and as an educational resource for providers.

1.44 In the report the OSO says:

We have indicated we could take on complaints from domestic students about private education and training providers if our jurisdiction was extended and we were given funding to do so<sup>40</sup>.

1.45 Protecting the consumer through an industry ombudsman has widespread support. ACPET says:

For some 12 months ACPET has been advocating the establishment of a National Training Ombudsman. This would provide a consumer-focused complaints handling process for students and providers to complement the National Complaints Training Hotline. The Training Hotline provides a vehicle to receive complaints - not deal with them.<sup>41</sup>

1.46 The Consumer Action Law Centre says:

Complaints by domestic students in Victoria must be taken to the Victorian Civil and Administrative Tribunal (VCAT). The VCAT process involves a court-like, adversarial hearing, which is much more formal and intimidating for a consumer than an ombudsman process. An ombudsman scheme remains informal and avoids some of the pitfalls of face-to-face dispute resolution where a power imbalance exists between the parties. An ombudsman process is more appropriate for the majority of disputes relating to private colleges.<sup>42</sup>

1.47 The NTEU also supports the creation of an ombudsman:

In particular the NTEU strongly supports the ALP's recommendation to establish a student Ombudsman's office. The role of any such office however, should not be limited to VET or VET-FEE HELP, and should be extended to investigate complaints from any tertiary education domestic or overseas students whether they are enrolled in

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40 Commonwealth Overseas Student Ombudsman, *Report on the first four years of operation*, p. 27

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

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

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VET or higher education. This recommendation should be adopted independent of any other changes.<sup>43</sup>

### **Banning brokers and dodgy marketing agents**

1.48 The evidence is clear that the national standards which came into effect on 1 April 2015 have not been effective in stopping the activities of brokers or dodgy marketing agents.

1.49 The Australian Council of Private Education and Training says:

Advice from ACPET members suggests some agents and brokers are seeking more than 50% of student fees in commissions. ACPET is concerned that the rapid escalation in student fees and some unethical behaviour reflect these excessive commissions.<sup>44</sup>

1.50 The majority report makes no observations or recommendations on this matter however Labor Senators are of the view that further action is required. We call on the Government to act decisively to either ban the use of brokers, or adopt the suggestion of the Consumer Action Law Centre and ban commission-based sales.<sup>45</sup>

1.51 Alternatively, the Government could look at other options for regulation of third party agents, like caps on commissions or directly regulating third party agents such as migration agents or real estate agents.

### **Turn off the tap – further actions are needed**

1.52 Recent actions by the ACCC have raised questions as to how effective the powers that the Minister and the Department of Education and Training officials (acting as the Minister's delegate) have to stop payments to providers or third party agents who are doing the wrong thing.

1.53 The inability of the Department to stop payments to providers who are subject to legal action by the ACCC, and subject to notices of intent to deregister by ASQA, is of concern. It suggests that the current powers are inadequate.

1.54 While the provisions of this Bill may go some way to improving the situation, the Government should commit to doing more.

1.55 Some submissions raised broader issues, such as questioning the validity of contestability for VET funding and the National Partnership on Skills Reform.

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

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

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

1.56 While there is a COAG review of the National Partnership scheduled, multiple reports and studies have reaffirmed the view that a strong, effective public TAFE sector is vital to underpin a vocational education system. That is why TAFE is not some sort of side issue and vocational education is not some sort of thing that you tack on. It is a fundamental, foundational responsibility of the Commonwealth to ensure that all people in Australia can gain access to vocational education and training in a way that allows them to develop their knowledge and skills and play a part in the future workforce.

1.57 Labor has announced that if elected it will develop a comprehensive National Priority Plan that defines the unique role of TAFE as our public provider and delivers on this by working with the states and territories to provide ongoing guaranteed TAFE funding, and to rebalance the contestable and non-contestable funding model to ensure it delivers the outcomes that are intended.

### **Recommendation 1**

**1.58 Labor Senators recommend that the Senate amend the Bill to deal with issues identified, namely tuition fees, loan limits and changes to strengthen student protection when entering into debt.**

**Senator Sue Lines**

**Deputy Chair**

# AUSTRALIAN GREENS' ADDITIONAL COMMENTS

1.1 The Australian Greens support all of the reforms contained in this Bill. Many of these reforms, especially the increased penalties for VET providers who engage in inappropriate behaviour and the broadening of the ability for students to seek re-credits, are long overdue.

1.2 However the Australian Greens also believe that there are serious limitations to the current reform agenda. Of the recommendations that came out of the Education and Employment Senate References Committee inquiry into the for-profit VET sector,<sup>1</sup> the Government has taken the absolutely lightest touch. The Government is proceeding with only a few, including:

- minimum entry standards in terms of both previous academic achievements and literacy and numeracy; and
- a moderate increase in the civil penalties for providers engaging in inappropriate behaviour

1.3 But the majority report from the Senate inquiry also recommended the investigation of a variety of other substantial changes in the legislation, including:

- a lower loan limit or cap on VET FEE-HELP loan amounts;
- the introduction of a student ombudsman; and
- increased powers for ASQA to regulate brokers and the introduction of a brokerage fee cap.

1.4 The decision to not proceed with some of the above recommendations has been criticised in many of the submissions, including those by the Consumer Action Law Centre<sup>2</sup> and the National Tertiary Education Union<sup>3</sup>. Even submissions by the industry itself, including those by the Australian Council for Private Education and Training<sup>4</sup> and Evocca College<sup>5</sup>, have supported calls for an industry ombudsman.

1.5 However the Greens ultimately believe that a regulatory solution to the rorting of VET FEE-HELP by for-profit providers is impossible. As Senator Rhiannon identified in the Senate Inquiry into for-profit VET providers, the incentives of the

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1 Senate Education and Employment Legislation Committee, *Getting our money's worth: the operation, regulation and funding of the private vocational education and training (VET) providers in Australia*, October 2015, Canberra.

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

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

4 Australian Council for Private Education and Training, *Submission 9*, pp 4-5.

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

VET-FEE HELP scheme do not align with the principles of quality education and training and meeting the skill needs of their students. The negative outcomes in the sector are not the result purely of a few bad apples, but a deeply flawed structure where a demand-driven entitlement is combined with a profit incentive.

1.6 Although the changes in this bill would marginally improve the sector, and the inclusion of the measures from the majority report of the VET inquiry would improve it further, the ultimate way to close the loop is to remove the ability of for-profit RTOs to access VET FEE-HELP entitlements. Only then will the integrity of the system be returned.

### **Recommendation 1**

**1.7 That the government remove the ability of for-profit providers to access VET FEE-HELP funding and return any extra funding to the public TAFE sector.**

**Senator Robert Simms**

**Australian Greens**



# **APPENDIX 1**

## **Submissions received by the Committee**

- 1 National Tertiary Education Union (NTEU)
- 2 La Trobe University
- 3 Evocca College
- 4 Charles Darwin University
- 5 Abbey College Australia
- 6 TAFE Directors Australia
- 7 Charles Sturt University
- 8 Open Universities Australia
- 9 Australian Council for Private Education and Training
- 10 Australasian Council of Deans of Arts, Social Sciences and  
11 Humanities
- 12 Community Colleges Australia
- 13 Canberra Institute of Technology
- 14 Batchelor Institute
- 15 Council of Australian Postgraduate Associations (CAPA)
- 16 TAFE Community Alliance
- 17 Australian Education Union (AEU)
- 18 Women in Adult Education (WAVE)
- 19 ACTU
- 20 Australian Catholic University
- 21 Swinburne University of Technology
- 22 Navitas Ltd
- 23 RMIT University

24 Australian Chamber of Commerce and Industry

25 Consumer Action Law Centre