

Chapter 2

Key issues

2.1 Submitters and witnesses to the private education inquiry broadly supported regulation in the school, higher education and vocational education and training (VET) sectors.¹ However, they argued that having the right amount of good regulation is critical and that, at present, each sector is unnecessarily burdened by complex, redundant or duplicative regulation and red tape.

2.2 This chapter discusses some of the issues raised in relation to:

- the volume and impact of regulation;
- duplication and coordination;
- regulators' performance; and
- differences in regulation.

Volume and impact of regulation

2.3 Submitters and witnesses commented on the volume of regulation affecting the private education sector, as well as its effect on and cost to providers.

Volume of regulation

2.4 Submitters argued that private education providers are affected by high levels of regulation. The Independent Schools Council of Australia (ISCA) submitted, for example, that one state has more than 55 relevant statutes which create a diverse range of regulatory requirements for independent schools.²

2.5 The Catholic Education Commission of Victoria (CECV) stated that, to its knowledge, 'no government agency has ever reviewed the sheer breadth of regulations impacting Catholic schools (or the school sector more generally) and explored [rationalisation opportunities]'.³

2.6 Speaking on behalf of the higher education sector, the Council of Private Higher Education (COPHE) described a high regulatory burden and red tape as 'the new reality'. Although identified as an issue in 2013,⁴ COPHE contended that the situation has deteriorated further: 'for the private higher education sector, the burden

1 For example: David Wilkes, Chief Financial Officer, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 2; Peter Roberts, Director, School Services, Independent Schools Victoria, *Committee Hansard*, 9 October 2018, p. 20.

2 Independent Schools Council of Australia, *Submission 6*, p. 3. Also see: Independent Schools Victoria, *Submission 8*, pp. [3–4]; Catholic Education Commission of Victoria, *Submission 11*, Appendix B.

3 Catholic Education Commission of Victoria, *Submission 11*, p. 7.

4 Dow, K. L. and Braithwaite, V., *Review of Higher Education Regulation Report*, 2013, <https://docs.education.gov.au/node/33587> (accessed 28 November 2018).

of over-regulation remains'.⁵ Chief Executive Officer, Simon Finn, suggested that it would be 'valid' to review outstanding recommendations from the *Review of Higher Education Regulation Report* prepared by Professor Kwong Lee Dow AO and Professor Valerie Braithwaite (Dow and Braithwaite review).⁶

2.7 The Australian Council for Private Education and Training (ACPET) expressed similar views on the volume of regulation.⁷ Its Chairman, Bruce Callaghan, said that regulatory measures are 'crushing' private providers in the higher education and VET sectors, and, in the latter sector, creating 'a pressure towards the higher ed sector, the university sector, which is less regulated'.⁸

2.8 Open Colleges agreed that there has recently been an 'upsurge' in red tape with consequent impacts on private VET providers. Its submission described the amount of regulation in 2007, compared to 2018:

In 2007 the regulatory framework for Registered Training Organisations (RTOs) was articulated in the *Australian Quality Training Framework (AQTF)* via the *Essential Standards for Registration*. This suite of standards encompassed three Standards, 14 Elements and supported by nine Conditions of Registration, all packaged in a 12-page document (including covers, definitions, introduction and an appendix). The nuts and bolts of the regulatory obligations for registration were explained in plain English over five pages.

In comparison, the *Standards for Registered Training Organisations (RTOs) 2015* consists of 8 Standards, 59 Clauses, over 100 sub-clauses and six Schedules, packaged in a 33-page legislative instrument. Statistics published by the Australian Skills Quality Authority (ASQA) confirm that many ASQA RTOs struggle to maintain compliance with the current and recent (2011/12) Standards.⁹

2.9 Open Colleges considered that there is scope to reduce the red tape burden for VET providers.¹⁰ While the Australian Government has a role—to ensure a nationally portable system of VET—Open Colleges' representative, Alexis Watt, argued that the regulation should be more risk-based:

All providers are being treated the same in the current regulatory climate, a post-VET FEE-HELP environment. Open Colleges does not take state or

5 Council of Private Higher Education, *Submission 14*, pp. 1–2 and 4.

6 Simon Finn, Chief Executive Officer, Council of Private Higher Education, *Committee Hansard*, 9 October 2018, p. 27.

7 Australian Council for Private Education and Training, *Submission 3*, p. 2.

8 Bruce Callaghan, Chairman, Australian Council for Private Education and Training, *Committee Hansard*, 9 October 2018, pp. 11 and 17. Mr Callaghan considered that there has been no red tape reduction in the VET sector under the Deregulation Agenda.

9 Open Colleges, *Submission 12*, p. 5. Also see: pp. 4 and 6–7. Open Colleges submitted that this amount of regulation creates complexity and confusion that contributes to non-compliance.

10 Open Colleges, *Submission 12*, p. 8.

Commonwealth funding for its services yet is classified within the same risk framework as prior examples of shockingly poor behaviour by providers and attempts to further protect students and industry, and taxpayers by extension, through reforms to the VET FEE-HELP and conversion to the VET Student Loans.¹¹

2.10 COPHE, ACPET and Open Colleges all attributed over-regulation in the VET sector to the recent VET FEE-HELP scandal. COPHE submitted, for example, that 'the unscrupulous behaviour of some in the VET sector...[has] hardened the regulatory attitude towards all private providers where 'red-tape' is an unfortunate consequence of this legacy'.¹²

Department response to concerns about regulation in the VET sector

2.11 A representative from the Department of Education and Training (Department) did not consider the legislative response to the VET FEE-HELP scandal an overreaction, stating 'providers that are operating with integrity will find little impact on their operations'.¹³ The officer said that the Department will be closely monitoring the new VET Student Loans program to identify opportunities for red tape reductions.¹⁴

2.12 The same officer affirmed the Australian Government's role in supporting nationally portable VET qualifications, the delivery of which contributes to Australia's reputation 'as a world-class training system'. The officer noted the 2017–2018 *Review of the National Vocational Education and Training Regulator Act 2011* (Cth) (Braithwaite review), in which stakeholders favourably commented on the regulator—ASQA—and its performance.¹⁵

11 Alexis Watt, Chief Executive Officer, Open Colleges' School of Health, and Member, Executive Team, Open Colleges, *Committee Hansard*, 9 October 2018, pp. 12–13. Also see: Department of Education and Training, 'VET Student Loans', <https://www.education.gov.au/vet-student-loans> (accessed 28 November 2018). Mr Watt noted that only one registered training organisation in the Open Colleges Group participates in the VET Student Loans program.

12 Council of Private Higher Education, *Submission 14*, p. 2. Also see: Australian Council for Private Education and Training, *Submission 3*, p. 2; Open Colleges, *Submission 12*, p. 3.

13 Richard Buker, Director, HELP Integrity and Superannuation Team, HELP and Provider Integrity Branch, Higher Education Group, Department of Education and Training, *Committee Hansard*, 9 October 2018, p. 40. Also see: p. 39.

14 Susan Hewlett, Group Manager, Industry Skills and Quality, Skills and Training, Department of Education and Training, *Committee Hansard*, 9 October 2018, p. 40.

15 Susan Hewlett, Group Manager, Industry Skills and Quality, Skills and Training, Department of Education and Training, *Committee Hansard*, 9 October 2018, p. 42. Also see: Braithwaite, V., *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011 report*, January 2018, p. 7, <https://www.education.gov.au/nvetr-act-review> (accessed 28 November 2018).

Cost of regulation and its effect on private education providers

2.13 Submitters and witnesses expressed concerns about the cost of regulation and its effect on private education providers in terms of human resources.

Human resources

2.14 Stakeholders argued that private providers and their staff are adversely affected by high levels of Commonwealth regulation. CECV, for example, submitted that 'schools are caught in a massive web of regulatory requirements that burden principals and staff with administrative tasks'.¹⁶ Some submitters highlighted that this burden comes at the direct expense of educating students, enriching students' school experience or having the capacity to pursue improvements that better support quality outcomes.¹⁷

2.15 Independent Education Union of Australia (IEUA) emphasised that its members are 'reeling under the burden of red tape and administrative demands'. Its submission illustrated changes in schools' administrative workloads over the past 10 years:

ABS data (4221.0 – Schools, Australia 2017) shows that in the ten years to 2017 school staff working in administrative and clerical positions increased by just over 70,000 fte or close to 71% (at the same time the number of teachers increased by only 37,600 or 15%). These figures illustrate the recognition of the need to meet the increasing administrative burden, arguably at the expense of increasing teacher resourcing.¹⁸

2.16 Federal Secretary, Chris Watt, noted that the administrative burden is not necessarily borne by the employment of additional staff but by greater imposition on existing staff. With reference to a survey conducted by the IEUA, Mr Watt noted:

When I started going through the comments and looking at what [union members] were saying, what then struck me is that I started looking at the column on the right-hand side, which actually had the time at which people were filling this in, and it was 8.30 at night, 10 o'clock at night, 11 o'clock at night, 2.30 in the morning, or 4.30 in the morning. Hopefully, those 2.30s or 4.30s were from people with newborn babies, and that's why they were up at that time. But it beggared belief in my head...That's when teachers felt they had the time to be able to respond.¹⁹

16 Catholic Education Commission of Victoria, *Submission 11*, p. 7.

17 For example: Australian Council for Private Education and Training, *Submission 3*, p. 5; Association of Independent Schools (NSW), *Submission 7*, p. 2; Independent Schools Victoria, *Submission 8*, p. [4]; Chris Watt, Federal Secretary, Independent Education Union of Australia, *Committee Hansard*, 9 October 2018, pp. 33 and 36.

18 Independent Education Union of Australia, *Submission 15*, p. 2. Also see: Independent Schools Council of Australia, *Submission 6*, p. 5; Independent Schools Victoria, *Submission 8*, pp. [3 and 5].

19 Chris Watt, Federal Secretary, Independent Education Union of Australia, *Committee Hansard*, 9 October 2018, p. 36.

2.17 Several witnesses observed that smaller providers have more limited capacity to manage regulatory compliance. For example, the majority of Catholic schools in Victoria are primary schools where compliance is undertaken by a principal and an administration officer.²⁰ Mr Finn from COPHE similarly said 'there is...a significant regulatory burden on smaller providers or those providers that don't attract significant Commonwealth subsidy or support' and who have to bear their own administrative expenses.²¹

Innovation

2.18 Submitters and witnesses stated that high levels of regulation and red tape are impeding innovation in the higher education and VET sectors. ACPET's Mr Callaghan said the private sector is so regulated that 'creativity and constructive attitudes to developing the future of this Australian asset (VET) are being repressed and pushed aside'.²² ACPET's submission explained:

The prescriptive nature of much of the recent regulatory 'reforms' means that quality providers are not empowered to look at ways to better respond to the needs of their students, to innovate their programs. Consultations with members indicate the need to adopt a 'small target' approach - to stick with the approved processes and limit any innovation or reform, lest it draw the attention of the regulators.²³

2.19 To illustrate the current regulatory environment, Mr Callaghan referred to the current VET standards that he argued are not related to educational outcomes. Mr Callaghan said that 'it's almost impossible to get a perfect tick on all of those', as even small things are treated as having much more significance.²⁴ Mr Watt from Open Colleges provided an example:

If a training provider is audited by the regulator and if it's found that perhaps there's a signature missing on one document in the record of a student's assessment, the provider is classified as noncompliant against the standards, regardless of whether the student has achieved the outcome in the training, whether they've gone on to gain employment or whether they've done their education through public funding or their own resources.

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- 20 Bruce Phillips, Policy Adviser, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 1; David Wilkes, Chief Financial Officer, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 3. Also see: Peter Roberts, Director, School Services, Independent Schools Victoria, *Committee Hansard*, 9 October 2018, p. 20.
- 21 Simon Finn, Chief Executive Officer, Council of Private Higher Education, *Committee Hansard*, 9 October 2018, p. 27.
- 22 Bruce Callaghan, Chairman, Australian Council for Private Education and Training, *Committee Hansard*, 9 October 2018, p. 11.
- 23 Australian Council for Private Education and Training, *Submission 3*, p. 7. Also see: Open Colleges, *Submission 12*, p. 5.
- 24 Bruce Callaghan, Chairman, Australian Council for Private Education and Training, *Committee Hansard*, 9 October 2018, p. 12.

All of those factors are without consideration, and a finding of noncompliance is issued for the absence of a date or a signature on a piece of paper.²⁵

2.20 Open Colleges shared concerns about the effect of regulation on innovation and 'the increasing distance between the relevance and timeliness of nationally recognised training and the needs of employers and the workforce in a global economy'.²⁶ Its submission explained:

Training packages are out of date before they are released. Current arrangements take up to four years for a graduate to emerge from a new product offering...Open Colleges is strongly of the view that the current arrangements and trajectory of future policy for tertiary education in Australia is clearly failing to meet the current and future needs of employers and students. The National Training Framework is at risk of being discarded by its core stakeholders in favour of more innovative, responsive and flexible options offered by education providers operating outside the national framework.²⁷

2.21 Mr Watt added:

If large national or multinational companies can build a more compelling offering and attract people to spend their own money...that should be a very strong call to review and reconsider the way the national training system is designed, and the way the programs are built and brought to market. I sit on an industry reference committee which manages two training packages. Preliminary modelling said it was six years from industry saying we require a new set of skills to a graduate being available holding that information—six years. That's simply not sustainable. It just isn't. I'm not observing, in our space, a lot of people leaving VET, but I'm certainly observing fewer people looking to join.²⁸

Cost

2.22 Submitters and witnesses raised regulatory costs as an issue for private providers across education sectors. In the higher education sector, for example, Michael Wells from private consultancy firm Wells Advisory estimated that seven to 10 per cent of a regulated entity's turnover would commonly be spent on

25 Alexis Watt, Chief Executive Officer, Open Colleges' School of Health, and Member, Executive Team, Open Colleges, *Committee Hansard*, 9 October 2018, p. 12. Also see: Bruce Callaghan, Chairman, Australian Council for Private Education and Training, *Committee Hansard*, 9 October 2018, p. 12, for further examples.

26 Alexis Watt, Chief Executive Officer, Open Colleges' School of Health, and Member, Executive Team, Open Colleges, *Committee Hansard*, 9 October 2018, p. 11. Also see: Council of Private Higher Education, *Submission 14*, p. 6; Michael Wells, Director, Wells Advisory, *Committee Hansard*, 9 October 2018, pp. 30–31, who questioned regulatory timeframes in the private higher education sector.

27 Open Colleges, *Submission 12*, pp. 5–6.

28 Alexis Watt, Chief Executive Officer, Open Colleges' School of Health, and Member, Executive Team, Open Colleges, *Committee Hansard*, 9 October 2018, p. 17.

education-specific regulation.²⁹ ACPET agreed that regulatory costs were part of a 'major resource imposition' for its members,³⁰ with Open Colleges estimating its compliance costs at about \$5–\$7 million from 2012 to 2018 (plus associated legal expenses).³¹

Department response to concerns about the cost and effect of red tape

2.23 The Department shared concerns regarding the amount of time it is currently taking to deliver new training packages (two to six years). An officer partly attributed this timeframe to extensive consultation processes and advised that the matter is currently being progressed through the Council of Australian Governments. The officer did not agree that innovation has stagnated in the VET sector, specifically describing efforts to address the impact of technology on industry.³²

Committee view

2.24 Representatives from the private education sector unanimously described high levels of regulation that are negatively affecting providers, students, industry and the Australian economy. The committee is concerned that, despite opportunities presented over the past five years, stakeholders cannot discern any significant regulation or red tape reductions.

2.25 The committee considers that it would be beneficial for federal and state governments to determine the volume and quality of regulation currently affecting the private education sector, to identify opportunities for deregulation and red tape reduction.

2.26 The committee is concerned that unless this occurs, the private education sector will be unable to achieve its potential as a contributor to the economy through education and that the burden will unnecessarily fall on taxpayers via public education.

Recommendation 1

2.27 The committee recommends that the Australian Government, through the Council of Australian Governments, initiate a review of Commonwealth and state-based regulation affecting the private education sector, to identify opportunities for regulation and red tape reductions.

29 Michael Wells, Director, Wells Advisory, *Committee Hansard*, 9 October 2018, p. 32.

30 Australian Council for Private Education and Training, *Submission 3*, p. 7.

31 Open Colleges, *Submission 12*, p. 8. The submission stated that regulatory compliance costs are factored into pricing structures and are borne by students, who receive no educational benefit from the expense.

32 Susan Hewlett, Group Manager, Industry Skills and Quality, Skills and Training, Department of Education and Training, *Committee Hansard*, 9 October 2018, pp. 43–44.

Recommendation 2

2.28 In conjunction with Recommendation 1, the committee recommends that the Department of Education and Training review the findings and recommendations of the 2013 *Review of Higher Education Regulation Report*, to assist in the identification of deregulation opportunities for the higher education sector.

2.29 A recurring theme in the committee's interim inquiries has been the need for a risk-based approach to regulation. In the private education inquiry, submitters and witnesses reiterated calls for regulation more suited to their sector and which targets high-risk regulated entities. The committee heard that a broad or 'one-size-fits-all' approach contributes to inappropriate and burdensome over-regulation, particularly to the detriment of smaller entities which are often more innovative and responsive to market needs. Accordingly, the committee agrees that governments should consider whether a 'one-size-fits-all' approach is effective and where necessary, explore options for better risk-based regulation.

Recommendation 3

2.30 In conjunction with Recommendation 1, the committee recommends that Australian governments consider the effectiveness of a 'one-size-fits-all' approach to regulation and explore options to implement better risk-based regulation.

2.31 The committee notes that regulatory compliance costs concern private education providers, especially those which operate in more than one sector. The committee understands that Regulation Impact Statements (RIS) include a cost/benefit component which aims to quantify compliance costs for regulatory proposals³³ and notes that no submitters or witnesses raised these statements as a concern. The committee nonetheless questions whether stakeholders are sufficiently engaged and their input taken into account in the RIS process. The committee considers that the Department and the Office of Best Practice Regulation should review this matter.

Recommendation 4

2.32 The committee recommends that the Department of Education and Training, in conjunction with the Office of Best Practice Regulation, review its Regulatory Impact Statement processes, to improve identification and quantification of regulatory compliance costs in the private education sector.

33 Department of Jobs and Small Business, 'Deregulation Agenda', <https://www.jobs.gov.au/deregulation-agenda> (accessed 28 November 2018).

Duplication and coordination

2.33 Submitters and witnesses commented on certain areas of duplication within regulation of the private education sector. Submissions argued that there are specific causes of this duplication: multiple regulatory regimes; broad-ranging regulation; and regulators whose activities are not always well-coordinated or targeted.³⁴ Financial reporting and data collection were the most commonly raised concerns.

Financial reporting for the school sector

2.34 Section 75 of the *Australian Education Act 2013* (Cth) sets out basic funding conditions for private schools,³⁵ which are detailed further in Part 5 of the *Australian Education Regulation 2013*.³⁶ These schools must demonstrate that funds received from the Australian Government have been expended appropriately and must provide financial data to the Department (Financial Questionnaire for Non-Government Schools).³⁷

2.35 The National Catholic Education Commission (NCEC) accepted that 'all schools should transparently account for their use of government funding in support of educational outcomes'. However, NCEC argued that transparency and accountability measures should be reasonable and not create duplicative and/or excessive compliance burdens.³⁸

2.36 At present, private providers report financially to the Department and the Australian Charities and Not-for-profit Commission (ACNC, Annual Information Statement), due to schools' status as charitable or not-for-profit entities.³⁹

34 For example: Council of Private Higher Education, *Submission 14*, p. 8, which commented on duplication within Tertiary Education Quality and Standards Agency processes, including in relation to applications for course accreditation.

35 Australian Government, 'Federal Register of Legislation, *Australian Education Act 2013*', <https://www.legislation.gov.au/Details/C2018C00012> (accessed 28 November 2018).

36 Australian Government, 'Federal Register of Legislation, *Australian Education Regulation 2013*', <https://www.legislation.gov.au/Details/F2018C00529> (accessed 28 November 2018).

37 Department of Education and Training, 'Financial Questionnaire', <https://ssphelp.education.gov.au/financial-questionnaire> (accessed 28 November 2018).

38 National Catholic Education Commission, *Submission 9*, p. 1. Also see: Queensland Catholic Education Commission, *Submission 1*, p. 2; Catholic Education Western Australia, *Submission 2*, p. 1; Independent Schools Victoria, *Submission 8*, p. [4]; David Wilkes, Chief Financial Officer, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 3; Council of Private Higher Education, *Submission 14*, p. 4, which similarly commented on the burden associated with the provision of annual data sets for higher education providers.

39 Australian Charities and Not-for-profits Commission, 'Report annually', <http://www.acnc.gov.au/ACNC/Manage/Reporting/ACNC/Report/ReportInformation.aspx?hkey=1c68676b-8be6-4fe8-965f-0ba204bbc793> (accessed 28 November 2018).

2.37 NCEC supported education departments being the primary regulators for Catholic schools,⁴⁰ while CECV submitted that there is no or limited justification for any ACNC role: 'existing arrangements for Catholic schools already deliver on the three overarching objects of the ACNC...ACNC reporting and compliance requirements provide absolutely no value'.⁴¹

2.38 NCEC similarly questioned the value of the ACNC but acknowledged that the Department of Education and Training and the ACNC have instituted arrangements to reduce the compliance burden:

Arrangements were put in place whereby the financial reporting to [the Department] would then be accessed by the ACNC, following a data item mapping exercise so that the financial data could conform to the different format required by the ACNC. Accompanying financial reports have also been requested by [the Department] and are then provided to the ACNC.⁴²

2.39 Stakeholders from the school sector expressed different views on these arrangements. NCEC considered them to be complex, not ideal and fraught with ongoing IT issues, duplication and inconsistencies.⁴³ The CECV representative emphasised that the arrangements are transitional only, with schools preparing to move toward the more burdensome (and generally costlier) ACNC accrual reporting process.⁴⁴ The NCEC submitted:

It would be far better for the requirement to be that schools report financial data in one format to [the Department] and that this also satisfies the reporting obligation to the ACNC.⁴⁵

40 National Catholic Education Commission, *Submission 11*, p. [2]. Also see: Australian Charities and Not-for-profits Commission, *Submission 16*, p. 2, which agreed that it is not the 'primary' regulator for Catholic schools.

41 Catholic Education Commission Victoria, *Submission 11*, p. 6. Also see: David Wilkes, Chief Financial Officer, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 2, who said that the Australian Charities and Not-for-profit Commission is the appropriate regulator in the area of tax deductible gifts.

42 National Catholic Education Commission, *Submission 9*, p. 2. Also see: Australian Charities and Not-for-profits Commission, *Submission 16*, p. 3, which submitted that private schools had agreed to this arrangement.

43 National Catholic Education Commission, *Submission 9*, p. 2.

44 David Wilkes, Chief Financial Officer, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 2, who said that this process will be based on accrual accounting, which is not how most schools currently report.

45 National Catholic Education Commission, *Submission 9*, pp. 2–3. Also see: David Wilkes, Chief Financial Officer, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 2, who said that the ACNC reporting requirement will be based on accrual accounting which is a huge burden for most Catholic schools in Victoria.

2.40 In contrast, ISCA credited the ACNC with working toward the reduction of overlapping reporting requirements, consistent with its statutory object 'to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector'.⁴⁶ Its representative suggested that current frustrations with financial reporting requirements might be due to reporting processes not having been finalised.⁴⁷

2.41 In its submission, the ACNC stated that its financial reporting requirements inform the online public register of charities (Charity Register) to provide 'greater transparency and accountability to parents, donors, funders and the wider community to give a more comprehensive financial picture of schools'. Further:

The ACNC has dedicated significant resources to minimise duplicate reporting for non-government schools that are required to report to both the [Department] and the ACNC.⁴⁸

2.42 ACNC confirmed that the transitional arrangements will end in 2019, when private schools will be required to adopt accrual accounting. ACNC emphasised that the timeframes have been instituted at the request and for the benefit of the schools:

Working group members have previously advised the ACNC that they needed until 2020 to adopt accrual accounting, and at the most recent working group meeting in October 2018, we confirmed to all working group members that all accounting standards (including accrual accounting) will be a requirement from the 2020 period (as the transitional arrangements will have ceased).⁴⁹

Data collection for the school sector

2.43 As an ongoing funding condition, private schools must annually provide the Department with information relating to students (Non-Government Schools Census),⁵⁰ including students with disability (Nationally Consistent Collection of Data on School Students with Disability, NCCD).⁵¹ The NCCD is used by the Australian Government to calculate the students with disability loading in recurrent funding for states and territories.

46 Independent Schools Council of Australia, *Submission 6*, p. 10. Also see: Nigel Bartlett, Manager, Funding and Accountability, Independent Schools Victoria, *Committee Hansard*, 9 October 2018, p. 22; paragraph 15–5(1)(c) of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

47 Nigel Bartlett, Manager, Funding and Accountability, Independent Schools Victoria, *Committee Hansard*, 9 October 2018, p. 21. Also see: Peter Roberts, Director, School Services, Independent Schools Victoria, *Committee Hansard*, 9 October 2018, p. 24, where he identified other areas in which further collaborations could reduce duplication in regulation.

48 Australian Charities and Not-for-profits Commission, *Submission 16*, p. 2. Also see: p. 3.

49 Australian Charities and Not-for-profits Commission, *Submission 16*, p. 4.

50 Subdivision F of the Australia Education Regulation 2013 (Cth); Department of Education and Training, 'Census 2018', <https://ssphelp.education.gov.au/census> (accessed 28 November 2018).

51 Department of Education and Training, 'Nationally Consistent Collection of Data on School Students with Disability 2018', <https://docs.education.gov.au/documents/guidelines-nationally-consistent-collection-data-school-students-disability-2018> (accessed 28 November 2018).

2.44 Some submitters commented on duplication in data collection for the Non-Government Schools Census and for state government purposes.⁵² However, other submitters and witnesses focussed on the NCCD, where they primarily identified the means of data collection as particularly burdensome.

2.45 From January 2018, teachers use their professional judgement to determine and report which students are being provided with reasonable adjustments to access education, as required under Commonwealth law.⁵³

2.46 CECV contended that the new approach has placed 'an enormous administrative burden on school and system staff', with an estimated annual cost of about \$28.51 million. Its submission questioned the consistency and accuracy of the data collection, which relies upon teachers having sufficient professional judgement to make accurate determinations.⁵⁴ A CECV representative added that there are unresolved issues in relation to auditing the dataset:

The government put the cart before the horse, because it hasn't yet come up with an effective way to audit the dataset. It announced that it was going to be used before it actually figured out how to audit it properly. So at the moment the government's trying to figure out how to audit it properly.⁵⁵

Department response to concerns about financial reporting and data collection

2.47 A departmental officer recognised 'the administrative cost to the education sector', which the Department stated is balanced with the need to ensure continued quality student outcomes. The officer described current projects to reduce regulatory burden and compliance costs, as well as continuous improvement measures that have been implemented in recent years—such as the 2015 *Review of Education Services for Overseas Students Act*.⁵⁶

52 For example: Independent Schools Victoria, *Submission 8*, p. [6]; Nigel Bartlett, Manager, Funding and Accountability, Independent Schools Victoria, *Committee Hansard*, 9 October 2018, p. 22, who highlighted that there are slightly dissimilar requirements in each process.

53 Department of Education and Training, 'What is the Government doing to support students with disability', <https://www.education.gov.au/what-government-doing-support-students-disability> (accessed 28 November 2018); *Disability Discrimination Act 1992* (Cth), <https://www.legislation.gov.au/Details/C2018C00125> (accessed 28 November 2018); Disability Standards for Education 2005, <https://www.legislation.gov.au/Details/F2005L00767> (accessed 28 November 2018).

54 Catholic Education Commission of Victoria, *Submission 11*, pp. 2–3; Bruce Phillips, Policy Adviser, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 4.

55 Bruce Phillips, Policy Adviser, Catholic Education Commission of Victoria, *Committee Hansard*, 9 October 2018, p. 6. Also see: pp. 4–5.

56 Susan Hewlett, Group Manager, Industry Skills and Quality, Skills and Training, Department of Education and Training, *Committee Hansard*, 9 October 2018, pp. 38–39.

2.48 In response to specific concerns raised, the Department confirmed its work with the ACNC to reduce the compliance burden associated with dual financial reporting requirements. An officer advised that the Department will continue to look for ways to streamline requirements and noted its six-monthly dialogues with the private school sector.⁵⁷ This evidence corroborated information presented in the ACNC's submission.

2.49 The Department maintained that teachers are best placed to make student assessments for the NCCD. An officer emphasised that the new collection process will be closely monitored, including through post-enumeration exercises:

We monitor those counts of students at the levels of disability year on year to see if there are marked changes. If you were to, for instance, see a large change in one state sector from one year to the next that would raise a concern for us. We would then ask, 'What's happening in that sector?'⁵⁸

2.50 With regard to compliance costs, the representative agreed that spending as much as 15 per cent of students with disability funding on administration costs would be 'a lot'. However, with a new scheme for data collection, 'there's always going to be that sort of start-up cost'.⁵⁹

Coordination of regulation

2.51 Some submitters and witnesses described a lack of legislative and regulatory coordination, which they argued results in unnecessary duplication and administrative burden. For instance, COPHE's representative remarked that higher education providers operate in accordance with three Acts that enliven the regulatory framework: 'we're seeing quite a degree of crossover between the department's oversight of the [*Higher Education Support Act 2003* (Cth)] and the regulatory agency's oversight of the [*Tertiary Education Quality and Standards Act 2011* (Cth)]'.⁶⁰

2.52 COPHE's submission highlighted a lack of streamlining between the Tertiary Education Quality and Standards Agency and ASQA in their regulatory functions under the *Education Services for Overseas Students [ESOS] Act 2000* (Cth).⁶¹ Regulation in this area also concerned ISCA, which commented:

57 David Pattie, Group Manager, Schools Funding and Assurance, Schools and Youth, Department of Education and Training, *Committee Hansard*, 9 October 2018, pp. 39 and 43.

58 David Pattie, Group Manager, Schools Funding and Assurance, Schools and Youth, Department of Education and Training, *Committee Hansard*, 9 October 2018, p. 41. Also see: p. 40.

59 David Pattie, Group Manager, Schools Funding and Assurance, Schools and Youth, Department of Education and Training, *Committee Hansard*, 9 October 2018, p. 41.

60 Simon Finn, Chief Executive Officer, Council of Private Higher Education, *Committee Hansard*, 9 October 2018, p. 27. Mr Finn suggested that there ought to be a review of the *Tertiary Education Quality and Standards Act 2011* (Cth): p. 28.

61 Council of Private Higher Education, *Submission 14*, pp. 2–3.

[There is] no mechanism or agency oversight to ensure consistency of application of ESOS regulation across states and territories. Previous [attempts to streamline] ESOS have yielded some small results after long periods of consultation and effort but have generally advantaged other sectors to a far higher degree than schools.⁶²

2.53 Again, there was some dissatisfaction expressed with regard to regulation based on a one-size-fits-all approach.⁶³ ISCA, for instance, broadly identified international education as an area in which that approach has inadvertently and adversely burdened schools, discouraging them from entering or expanding into the international education market.⁶⁴ In another example, NECA commented that ACNC legislation and practice needs a 'more nuanced understanding and appreciation of the different regulatory and reporting environments within which certain highly regulated charities are operating'.⁶⁵

A better methodology would ensure the ACNC takes the specific circumstances of charities into account, differentiating between those charities that are primarily and comprehensively regulated by, and report to, government departments relevant to their field of operation and those of the general charity sector whose central regulator is ACNC. This would lead to a more coherent and coordinated approach to the regulation and reporting framework for charities. The circumstances of already highly regulated charities would be fully acknowledged and their reporting obligations to the ACNC adjusted accordingly. This legislative change could also address the issue of duplication in reporting.⁶⁶

Committee view

2.54 The committee accepts that there is duplication in regulation of the private education sector, with the school sector focussing on two specific areas. In relation to:

- financial reporting—there are two key regulators collecting information each for their own purposes. The committee believes regulators should be coordinating and expeditiously finalising arrangements whereby schools report once only in a common format.
- data collection—the committee acknowledges the compliance burden experienced by providers and their staff. Notwithstanding the Department's reassurances, the committee is not convinced that this burden will automatically be ameliorated over time, that it is being appropriately recognised, or that it will not have unintended consequences due to incentives

62 Independent Schools Council of Australia, *Submission 6*, p. 11.

63 For example: Catholic Education Commission Victoria, *Submission 11*, p. 5.

64 Independent Schools Council of Australia, *Submission 6*, p. 10. Also see: pp. 11–12, which illustrates the argument by referencing the Tuition Protection Service.

65 National Catholic Education Commission, *Submission 9*, pp. 1–2. Also see: Catholic Education Commission Victoria, *Submission 11*, p. 6.

66 National Catholic Education Commission, *Submission 9*, p. 3.

to classify students as disabled or more severely disabled. Accordingly, the committee considers that the Department should schedule a two-year review of the NCCD, including audit options to ensure the consistency of quality data collection.

Recommendation 5

2.55 The committee recommends that the Department of Education and Training schedule a two-year review of the Nationally Consistent Collection of Data on School Students with Disability, including audit options to ensure the consistency of quality data collection.

2.56 As in its other interim inquiries, the committee heard that legislation and regulation are not well coordinated to prevent duplication and reduce compliance costs at the Commonwealth level, as well as the federal/state levels. This is a continuing concern and one that the committee considers should have been considered, or even progressed, much earlier under the Deregulation Agenda.

Regulators' performance

2.57 As part of the Deregulation Agenda, the Australian Government established a Regulator Performance Framework (Framework) to:

...encourage regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives and to effect positive ongoing and lasting cultural change within regulators.⁶⁷

2.58 The Framework sets out six outcomes-based Key Performance Indicators (KPIs), which some submitters and witnesses argued are not always being achieved. For example, ACPET indicated that ASQA is not demonstrating regular, ongoing consultations or engagement with stakeholders on policies and procedures (KPI 1):

The present regulatory environment is one where independent providers largely see they are little more than regulatory 'objects'. There has been little, if any, real consultation with [the] sector in the development of the raft of legislation and regulations that have been introduced in recent years.⁶⁸

2.59 In relation to higher education, COPHE raised concerns about TEQSA's demonstrated understanding of the operating environment of the higher education sector, the circumstances of individuals, and current and emerging issues (KPI 1). Its submission argued:

TEQSA needs to better understand the nature and role of independent higher education providers and provide a more flexible regulatory framework across the higher education sector. TEQSA's relationship with

67 Australian Government, *Regulator Performance Framework*, 2014, p. 4, https://docs.jobs.gov.au/system/files/doc/other/regulator_performance_framework.pdf (accessed 28 November 2018).

68 Australian Council for Private Education and Training, *Submission 3*, p. 8.

providers would also benefit from regular meetings with providers, particularly in relation to risk assessments.⁶⁹

2.60 COPHE voiced concerns also about TEQSA's performance in: delivering decisions in a timely manner (KPI 2); applying a proportionate approach to regulatory decisions (KPI 3); and its openness regarding the operation of the regulatory framework (KPI 5).⁷⁰

2.61 Similarly, Open Colleges questioned ASQA's performance across KPIs 1, 5 and 6 (engagement of stakeholders in the development of options to reduce compliance costs). Open Colleges contended that removing a rectification step in the audit process has reduced regulated entities' ability to engage early with ASQA and minimise negative regulatory impacts (often resulting in appeals to the Administrative Appeals Tribunal). Open Colleges concluded that ASQA 'isn't operating within the principles of [the] Framework'.⁷¹

Department response to concerns about regulators' performance

2.62 A departmental officer noted the Braithwaite review, in which Professor Braithwaite highlighted and promoted the benefits of regulatory partnerships. Professor Braithwaite's first recommendation was to support stakeholder engagement:

Recommendation 1: ASQA develop and implement processes to enhance its capabilities and opportunities to proactively engage in regulatory conversations with students, teachers, RTOs, industry and other interested stakeholders. The desired outcomes are to improve the value of the student-focused regulatory approach and involve the sector in developing the regulatory culture that drives ASQA's use of its legislative powers.⁷²

2.63 The officer advised that 'in principle the government supports [the recommendation], and now we're looking at how we might actually implement that'.⁷³

69 Council of Private Higher Education, *Submission 14*, p. 6.

70 Council of Private Higher Education, *Submission 14*, p. 7; Simon Finn, Chief Executive Officer, Council of Private Higher Education, *Committee Hansard*, 9 October 2018, pp. 27 and 30.

71 Open Colleges, *Submission 12*, pp. 7–8.

72 Braithwaite, V., *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011 report*, January 2018, Recommendation 1, p. 54, <https://www.education.gov.au/nvetr-act-review> (accessed 28 November 2018). Also see: pp. 27–28. Also see: Australian Government, *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011, Australian Government Response*, June 2018, p. 5, https://docs.education.gov.au/system/files/doc/other/australian_government_response_to_the_nvetr_act_review_0.pdf (accessed 28 November 2018).

73 Susan Hewlett, Group Manager, Industry Skills and Quality, Skills and Training, Department of Education and Training, *Committee Hansard*, 9 October 2018, p. 44.

Committee view

2.64 The committee heard that there is disconnect between regulators and private providers in the VET and higher education sectors. The committee considers that regulators must do more to strengthen engagement with these providers and to incorporate their knowledge, experience and expertise into the regulatory environment. More broadly, the committee recommends that the Framework be reviewed to identify opportunities to improve Commonwealth regulators' performance, including across all six KPIs.

Recommendation 6

2.65 The committee recommends that the Australian Government initiate a five-year review of the Regulator Performance Framework, to identify opportunities to improve Commonwealth regulators' performance.

Differences in regulation

2.66 Some submitters and witnesses argued that there are regulatory differences between the public and private education sectors which result in a greater regulatory burden on private providers.⁷⁴ For example:

- NCEC referred to dual financial reporting obligations;⁷⁵
- ISCA highlighted the need for each private school to be a registered provider under the ESOS Act, compared to education departments whose single registration covers all public schools in their jurisdiction;⁷⁶ and
- ISV submitted that independent schools are significantly affected by town planning processes that do not apply to public schools (such as road and infrastructure works):

A very recent example—we found this out yesterday—is of a school on the urban fringe of Melbourne. Very tragically, someone was killed out the front of the school a year or so ago—they were hit by a car—so finally traffic lights are going to be installed, which is a wonderful thing, but the school is being asked to put up \$2 million to pay for it. This is on a highway outside of Melbourne. That example is not atypical.⁷⁷

2.67 COPHE described higher education policy settings and regulatory attitudes as enforcing:

...a bifurcated system that preferences publicly funded institutions at the expense of private education. In comparison, public institutions are heavily

74 For example: Federation of Parents and Citizens Association of New South Wales, *Submission 4*, pp. 2–3, which argued that, in many ways, private schools operate in a less restrictive environment than their public counterparts.

75 National Catholic Education Commission, *Submission 9*, p. 2.

76 Independent Schools Council of Australia, *Submission 6*, p. 11.

77 Peter Roberts, Director, School Services, Independent Schools Victoria, *Committee Hansard*, 9 October 2018, p. 25. Also see: Independent Schools Victoria, *Submission 8*, p. [7].

subsidised, lightly regulated, and free to pursue market and product development without external approvals. By contrast, private institutions operate without public subsidy, are extremely heavily regulated and effectively require government approvals for new sites, new courses, new delivery modes, permission to grow international student numbers, and change of ownership.⁷⁸

2.68 COPHE contended that the broader policy settings are inequitable, with private providers ineligible for Commonwealth Subsidised Places (and other funding opportunities) and subject to various evolving market constraints. Its submission argued that providers' students are affected by these constraints:

...as they are excluded from Commonwealth tuition assurance schemes and are levied a 25% loan fee on the Commonwealth funded FEE-HELP loan scheme. This loan fee does not apply to students in publicly funded institutions or to private universities. Students of private higher education providers are required to loan 125% of their course costs if they access the government funded HELP scheme.⁷⁹

2.69 COPHE's Chief Executive Officer stated that 'abolition of the loan fee would create greater economic stimulus and that revenue would be recouped, if not increased, by a decision to abolish the fee'. Mr Finn said that independent economic analysis on the impacts of the loan fee will shortly be published and highlighted some key points of that analysis:

What it establishes is that the loan fee raises, on a net present value analysis, about \$6 million per year in revenue to the Commonwealth. The loan fee doesn't fund the HELP scheme. The loan fee goes into consolidated revenue...When you look at its abolition, and if you take the market from simply an analysis around price stimulus and you take a conservative approach that says you reduce a price—that is, remove the fee; do you stimulate growth?—then our analysis works on a model of stimulating about a two per cent growth in the sector [about \$100 million], which we think is a conservative approach, but the economic stimulus of that transfers to assets, the employment of staff, and then direct revenue back through the taxation system.⁸⁰

78 Council of Private Higher Education, *Submission 14*, p. 2. Also see: pp. 9–10, which noted that this regulation creates compliance burden and costs for private providers.

79 Council of Private Higher Education, *Submission 14*, pp. 2 and 11. COPHE noted that the 25 per cent loan fee has recently been abolished for independent universities and their undergraduate courses.

80 Simon Finn, Chief Executive Officer, Council of Private Higher Education, *Committee Hansard*, 9 October 2018, p. 31. Also see: p. 28.

2.70 ACPET expressed similar concerns about the absence of a 'level playing field', public funding for private providers, and financial support for those providers' students.⁸¹

Department response to concerns about FEE-HELP loan fee

2.71 A departmental representative explained that the purpose of the FEE-HELP loan fee is to compensate the Australian Government. An officer said:

The loan fee for both sectors is designed to compensate the Commonwealth for the cost of lending amounts that are significantly higher than those loaned to Commonwealth supported students and, therefore, may take significantly longer to repay. All categories of HELP debt incur a cost to the Commonwealth in the form of an implicit subsidy that may take the form of an interest rate subsidy and a doubtful debt subsidy.⁸²

Committee view

2.72 The committee notes there are differences in regulation of the private and public education sectors, the reasons for which are not always clear. The committee accepts that there is inequity in the provision of FEE-HELP to VET and higher education students who choose to enrol in courses offered by private providers.

2.73 The committee considers that the policy rationale underpinning the 25 per cent loan fee may not be justified. The committee has not received any statistical information regarding the Commonwealth's lending costs to confirm that higher costs are indeed associated with managing debts incurred by students who enrol with private providers.

2.74 Further, the committee understands that one objective of the VET Student Loans program is to help deliver quality and affordable training linked to industry need. In the committee's view, private and public education both seek to achieve these objectives and any differentiation in Commonwealth funding should be appropriately justified.

81 Australian Council for Private Education and Training, *Submission 3*, pp. 3–4. Also see: Alexis Watt, Chief Executive Officer, Open Colleges' School of Health, and Member, Executive Team, Open Colleges, *Committee Hansard*, 9 October 2018, p. 16, who supported consistency between the public and private education sectors.

82 Richard Buker, Director, HELP Integrity and Superannuation Team, HELP and Provider Integrity Branch, Higher Education Group, Department of Education and Training, *Committee Hansard*, 9 October 2018, p. 44.

Recommendation 7

2.75 The committee recommends that the Australian Government review the assumptions underpinning the 25 per cent loan fee and if they are not substantiated with statistical information, take action to abolish this fee.

Concluding comment

2.76 Based on views expressed in this report, the committee makes a number of recommendations that are intended to improve regulation and contribute to red tape reductions in the private education sector.

Senator David Leyonhjelm

Chair