

The Senate

Education and Employment
Legislation Committee

VET Student Loans Bill 2016 [Provisions]

VET Student Loans (Charges) Bill 2016
[Provisions]

VET Student Loans (Consequential
Amendments and Transitional Provisions)
Bill 2016 [Provisions]

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RECOMMENDATIONS

Recommendation 1

4.100 The committee recommends that the Government establish a VET Ombudsman and work with key stakeholders to ensure that the Ombudsman operates in a way that is fit for purpose.

Recommendation 2

4.105 The committee recommends that the Minister for Education and Training incorporate the views outlined in this report and that the Senate pass the bills.

Chapter 1

Introduction

Reference

1.1 On 13 October 2016 the Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills introduced in the House of Representatives a package of bills designed to reform Australia's Vocational Educational and Training sector. The bills are the Vocational Educational and Training (VET) Student Loans Bill 2016, the VET Student Loans (Consequential Amendment and Transitional Provisions) Bill 2016 and the VET Student Loans (Charges) Bill 2016 (the VET bills).¹

1.2 On the same day, Senate referred the provisions of the VET bills to the Senate Education and Employment Legislation Committee for inquiry and report by 7 November 2016.²

Conduct of the inquiry

1.3 Details of the inquiry were made available on the committee's website. The committee also wrote to key stakeholders, groups, organisations and individuals to invite submissions.

1.4 The committee received 54 submissions as detailed in Appendix 1.

1.5 One public hearing was held in Melbourne on 25 October 2016. A list of witnesses who appeared at the hearing is available in Appendix 2.

Background to the bills

1.6 The current VET FEE-HELP loan scheme provides eligible VET students with loans to cover the cost of their higher level VET qualifications including Diploma and Advanced Diploma courses.³

1.7 As noted in the explanatory memorandum to the VET bills, the 2012 expansion of the scheme resulted in unsustainable growth, unscrupulous provider behaviour and poor student outcomes. Many students were left with large debts and in some cases, little to no training outcomes.⁴

1 *Votes and Proceedings No. 11*, 13 October 2016, p. 210.

2 *Journals of the Senate No. 11*, 13 October 2016, pp. 325–326.

3 Department of Education and Training, *VET FEE HELP Reform*, 1 July 2016, https://docs.education.gov.au/system/files/doc/other/160901_vet_fee-help_reform_factsheet.pdf.

4 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 1.

1.8 Since 2015, the Government has instituted a number of amendments to the VET FEE-HELP loan scheme to address these concerns. These reforms have largely been aimed at strengthening the system to provide greater protections for students and high quality VET providers.⁵

1.9 However, widespread concerns with the existing VET FEE-HELP scheme remain. In order to fully address these concerns, the Government has proposed to replace the existing scheme with a 'new program that supports high quality training, for genuine students, aligned with workplace needs'.⁶ The bills give effect to these proposed changes.

1.10 In addition to strengthening the VET sector, the proposed reforms are also aimed at reducing the budgetary impact of the VET FEE-HELP scheme. The second reading speech on the bills noted that between 2009 and 2015:

- the numbers of students accessing VET-FEE HELP increased from 5262 to 272 000;
- average course costs tripled from around \$4000 to \$14 000; and
- the value of loans landing as debts to students, and as Commonwealth borrowings, increased from \$26 million to \$2.9 billion.⁷

1.11 In preparing the bills currently before the Senate, the Government has undertaken extensive consultation. In April 2016, the then Minister for Vocational Education and Skills, Senator the Hon Scott Ryan, held consultations with 176 VET providers and a number of peak organisations to inform the content of a VET FEE-HELP discussion paper. The 'Redesigning VET FEE-HELP discussion paper' was publicly released on 29 April 2016.⁸

1.12 The Department of the Prime Minister and Cabinet, Attorney-General's Department, Department of Finance, Department of the Treasury, Department of Social Services, Department of Employment, VET providers, industry representatives, state and territory government officials, student and consumer protection advocates and the public have been consulted in relation to the development of the proposed VET student loans program.⁹

5 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 10, http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/f2541705-5a09-4607-bf3f-1d6fd9b611ff/toc_pdf/House%20of%20Representatives_2016_10_13_4470.pdf (accessed 19 October 2016).

6 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 10.

7 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 10.

8 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 6.

9 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 6.

Purpose and overview of the bills

1.13 As noted earlier, three bills form this package of legislation: the VET Student Loans Bill 2016, the VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016 and the VET Student Loans (Charges) Bill 2016.

1.14 The purpose of the **VET Student Loans Bill 2016** is to introduce a new student loans program that contains a range of measures to protect students and taxpayers and the reputation of VET in Australia. It aims to improve affordability, maximise employment outcomes for students, prioritise loans to skills needs and ensure fiscal sustainability for the Commonwealth.¹⁰

1.15 These outcomes will be achieved by:

- linking loans to courses that meet industry needs and skills shortages and improving the quality of the course delivery by only enabling providers to subcontract training to other approved course providers or higher education providers;
- introducing loan caps for eligible courses approved by the Minister with the initial loan caps to be \$5000, \$10 000 and \$15 000 with the Minister able to exempt courses with high delivery costs;
- strengthening compliance, governance and payment arrangements including by triggering relevant regulatory powers from the *Regulatory Powers (Standard Provisions) Act 2014*. The Bill will enable the Commonwealth to immediately suspend a provider in urgent circumstances and also withhold loan amount payments to providers if it is suspected on reasonable grounds the provider is not complying with the Bill;
- expanding on the existing student protections by banning brokers or agents from engaging or recruiting students in relation to loans, prohibiting contact with students regarding the availability of loans unless the student has expressly consented to contact by the particular provider and broadening the circumstances for which student loans may be re-credited;
- raising the bar for entry by providers to the program to ensure providers have robust governance and management arrangements and maintain acceptable student outcomes and industry links (by way of example);
- introducing an application fee for bodies to apply to become approved course providers and, through the accompanying VET Student Loans (Charges) Bill 2016, imposing an annual levy on providers;
- requiring all existing VET FEE-HELP providers to apply to be approved under the new program. The VET Student Loans (Consequential and Transitional Bill) 2016 will provide for some existing approved VET FEE-HELP providers (such as TAFEs) to be exempt from this re-application

10 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 1.

process, however all providers, including public providers, will need to meet the higher quality benchmarks to remain in the scheme.¹¹

1.16 The purpose of the **VET Student Loans (Consequential and Transitional Bill) 2016** is to provide for:

- continued access to existing VET FEE-HELP students through 2017 provided they were enrolled with existing VET FEE-HELP providers in a course before 1 January 2017, in receipt of VET FEE-HELP for that course and are actively training;
- continued access to existing VET FEE-HELP providers approved for VET FEE-HELP before 4 October 2016 for those continuing students; and
- the closing of VET FEE-HELP to new providers from 4 October 2016 and to new students from 1 January 2017.¹²

1.17 The **VET Student Loans (Charges) Bill 2016** provides for an approved course provider charge to be imposed on approved course providers as a tax. The amount of the course provider charge will be prescribed by regulation or determined in accordance with a method prescribed by regulation. It is anticipated that the amount of the charge will be determined with regard to the size of the provider.¹³

Structure of the report

1.18 Chapter two briefly outlines the extensive problems identified with the existing VET FEE-HELP scheme and the broad support for the new VET loans arrangements.

1.19 Chapter three examines two of the central issues raised by inquiry participants in relation to the bills, known collectively as the courses and loan caps determination.

1.20 Chapter four considers the other key issues identified in relation to the bills, including the new requirements to be an approved course provider, the regulation of agents, brokers and markets and the transition arrangements to the new scheme. The chapter also discusses the importance of ongoing reporting and transparency.

Compatibility with human rights

1.21 The VET Student Loans Bill 2016 engages the following human rights: the right to work, the right to education, the right to privacy, the right to a fair and public hearing, the right to be presumed innocent, the rights of the child, and the rights of people with disabilities.

11 VET Student Loans Bill 2016, *Explanatory Memorandum*, pp. 1–2.

12 VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016 *Explanatory Memorandum*, p. 6.

13 VET Student Loans (Charges) Bill 2016 *Explanatory Memorandum*, p. 3 and p. 5.

1.22 The bills' statement of compatibility with human rights states that the VET Student Loans Bill 2016; VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016; and VET Student Loans (Charges) Bill 2016 are all 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*.¹⁴

Scrutiny of Bills Committee

1.23 At the time of drafting the Senate Standing Committee for the Scrutiny of Bills had not reported on the bill.

Financial Impact Statement

1.24 The explanatory memorandum outlines the financial impact of the bill.

1.25 The measures will reduce the value of new student loans being issued by more than \$2.4 billion per annum by the end of the forward estimates in 2019-20. This will in turn lead to an estimated reduction in otherwise total outstanding HELP debt of more than \$7 billion by June 2020 and by more than \$25 billion by June 2026.¹⁵

1.26 In underlying cash terms, the measures for the VET student loans program will cost \$13 million over the forward estimates (administered funding). This is due to less interest and loan fee receipts received as a result of the reduced value of loans issued. In fiscal balance terms, the measures will save \$13 million over the forward estimates due to reduced concessional loan costs.¹⁶

1.27 The table below outlines the impact on underlying cash over the forward estimates:

Table 1.1—Financial impact on underlying cash over the forward estimates¹⁷

	2016-17	2017-18	2018-19	2019-20	Total
Education & Training (\$m)	-11.1	-15.4	-14.8	-17.2	-58.6

14 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 9; VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016, *Explanatory Memorandum*, p. 6; and VET Student Loans (Charges) Bill 2016 *Explanatory Memorandum*, p. 3.

15 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 6.

16 VET Student Loans Bill 2016, *Explanatory Memorandum*, pp. 6–7.

17 VET Student Loans Bill 2016, *Explanatory Memorandum*, pp. 6–7.

Acknowledgement

1.28 The committee thanks those individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at the public hearing.

Notes on references

1.29 References in this report to the Hansard for the public hearings are to the Proof Hansard. Please note that page numbers may vary between the proof and official transcripts.

Chapter 2

Background

Introduction

2.1 This chapter outlines the problems identified by inquiry participants with the current VET FEE-HELP scheme before discussing the proposed VET Student Loans bills package¹ (the bills) currently before the Senate.

The VET FEE-HELP scheme

2.2 The second reading speech by the Assistant Minister for Vocational Education and Skills, the Hon. Karen Andrews MP, noted that approximately 45 per cent of the financial assistance the Commonwealth invested in VET in 2015 supported income contingent loans for students through the VET FEE-HELP scheme. This has occurred at significant cost to the Federal Budget with the value of loans increasing from \$26 million in 2009 to \$2.9 billion in 2015.²

2.3 Dr Subho Banerjee, Deputy Secretary for Skills and Training at the Department of Education and Training outlined the key VET sector statistics, as shown in the table below:

Table 2.1—Key VET sector statistics 2012–2015³

	2012	2013	2014	2015
Number of students	55 115	100 035	202 776	272 026
Average loan amount per student	\$5890	\$6990	\$8666	\$10 717
Total loans ⁴	\$325 m	\$699 m	\$1.757 b	\$2.915 b

2.4 The table above demonstrates a significant and rapid growth in the sector between 2012 and 2015. This expansion of the VET scheme resulted in unsustainable

1 The VET Student Loans Bills package comprises three bills: VET Student Loans Bill 2016; the VET Student Loans (Consequential Amendment and Transitional Provisions) Bill 2016; and the VET Student Loans (Charges) Bill 2016.

2 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 10.

3 Dr Subho Banerjee, Deputy Secretary, Skills and Training, Department of Education and Training, *Committee Hansard*, 25 October 2016, pp. 62–63.

4 This figure is the total VET FEE-HELP debt for both the VET and Higher Education sectors. The Department of Education and Training was unable to provide the exact value of the VET FEE-HELP loans incurred by the VET sector alone because overall HELP debt is recorded as an aggregate HELP debt and is not disaggregated into the individual parts. See Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 111.

growth, unscrupulous behaviour by a small number of providers and poor student outcomes. The second reading speech noted that the VET FEE-HELP scheme has been utilised by 'unscrupulous providers and brokers to take advantage of vulnerable students, to rip off taxpayers, and to tarnish the reputation of Australia's high-quality training providers and VET system'.⁵

2.5 In particular Indigenous Australians, older Australians and Australians with disability were targeted by unprincipled providers or brokers and signed up for significant loans for courses they did not need or could never complete, or which had no link to employer or skills needs in the economy.⁶

2.6 The conditions of access to the VET FEE-HELP scheme were relaxed prior to the Council of Australian Governments (COAG) signing off the *2012 National Agreement on Skills and Workforce Development*.⁷ The Australian Education Union outlined why this occurred:

Up until this time [2012], take-up of VET FEE-HELP had been relatively small, due, it was argued by providers and stakeholders, to the stringent conditions attached to it. In particular, some stakeholders argued that the requirement for credit transfer arrangements with higher education institutions for vocational education qualifications to be VET FEE-HELP eligible made it far too difficult for providers to access the scheme, and this requirement was abolished in the lead up to the 2012 National Agreement.⁸

2.7 However, in the introduction to the 2016 *Redesigning VET FEE-HELP: Discussion Paper*, the former for Vocational Education and Skills, the Hon. Minister Scott Ryan, acknowledged the severe and ongoing problems that had occurred since the 2012 expansion of VET FEE-HELP:

Since these 2012 changes, the scheme has experienced significant growth, reflecting student demand, but also growing course costs and student debts. This period has also been characterised by serious concerns over the quality, probity and conduct of some providers, low completion rates and unethical practices.

There are many reasons for each of these individual issues, but the key common factor is that the changes in 2012 did not contain sufficient safeguards for students or regulatory powers for the department, instead providing incentives and rewards for unethical behaviour.⁹

5 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 10.

6 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 10.

7 Australian Education Union, *Submission 14*, Attachment A, p. 2

8 Australian Education Union, *Submission 14*, Attachment A, p. 3.

9 Australian Government, *Redesigning VET FEE-HELP: Discussion Paper*, April 2016, p. 5 https://docs.education.gov.au/system/files/doc/other/redesigning_vet_fee-help_-_discussion_paper_0_0.pdf (accessed 28 October 2016).

2.8 The persistent and wide-spread failures of the VET FEE-HELP scheme were explored at some length during the inquiry. According to a number of inquiry participants, problems with the VET FEE-HELP scheme became apparent soon after the access to the scheme was significantly expanded in 2012, with a major increase of problems becoming apparent in 2014. Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre (CALC), outlined when CALC began noticing issues:

We first started seeing complaints to our centre about vocational and training issues back in about 2009-10. That was around the time that the state government here in Victoria, being a Victorian centre, deregulated training. It was not until around 2013-14, particularly during 2014, that we started to receive a spike in complaints related to the marketing of VET products, and that was around the time of the expansion of the VET FEE-HELP scheme.¹⁰

2.9 Mr Brody said of the impact of the broadening of the VET scheme in 2012:

[I]t is fair to say it was inevitable that poor practices would get in if you open up an industry to deregulation without ensuring appropriate consumer protections from the outset. I think that was the failure in this instance.¹¹

2.10 Ms Jeannie Rea, National President, National Tertiary Education Union (NTEU) similarly commented on the timeframe of the NTEU's identification of widespread problems with the scheme:

From not long after the scheme was enacted and starting to operate, the story started to emerge and that started sending some of the investigative journalists in to try and find out what was going on about it. And we were, not surprisingly, hearing of outfits that had set up, things that were going wrong. So a lot of that anecdotal material was coming to us fairly quickly. Somebody saying, 'My kid has gone to do this course'; 'Yes, somebody knocked on the door and signed up my mother to do a course that she can't do because she has a disability that would not enable her to do it.' These things started to come out fairly early on, and we started to, I hope, be part of a growing group of people making comments about, 'There is something going wrong here.'¹²

2.11 Ms Rea continued to explain that it was not until data on the scheme became public that the true extent of the problems emerged:

[I]t was not until the actual data started to come out—which started to show the explosion in enrolments, and the rapidity of that started to show, the enrolments and of course the amount being taken out in loans—that it

10 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 25 October 2016, p. 7.

11 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 25 October 2016, p. 10.

12 Ms Jeannie Rea, National President, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, p. 40.

became clear there was something more than a few bad eggs, a few rorters, a little bit of gaming going on here and there.¹³

2.12 Reporting and transparency issues are further discussed in Chapter 4.

2.13 Two key regulatory agencies—the Australian and Consumer Competition Commission (ACCC) and Australian Skills Quality Authority (ASQA)—were also aware of growing problems within the sector. Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, ACCC outlined when the ACCC first began to detect an emerging problem:

We started to see complaints in mid-2014. That is not to say we did not have complaints before. We receive about 160,000 to 200,000 complaints across all matters. They started to come out as a bit of a trend in that mid to late 2014 period...That exponential increase was not simply by the flow of complaints, but by the fact that we were actively investigating and seeking different leads and streams.¹⁴

2.14 When asked as to the number of complaints received about VET providers and the VET FEE-HELP loan scheme overall, Mr Gregson responded:

When we started to present matters for potential investigation and litigation—I am talking about early 2015—we had in excess of 200 complaints that had come to us. That was either directly to the ACCC or through our key partners at the time, which involved legal aid and New South Wales fair trading. Once we commenced our investigations, we continued to receive complaints directly but also gathered information from different sources. I do not have the precise number, but that grew exponentially as we conducted our investigations. It must be approaching many more hundreds, getting close to a thousand.¹⁵

2.15 Mr Gregson said that 'when we [the ACCC] see 200 complaints we know that there is a deeper problem'.¹⁶ Mr Gregson considered that the problems in the VET sector were 'systemic' and by early 2015 the ACCC 'had formed the view that there was a need for ACCC intervention'.¹⁷

2.16 The ACCC had particular concerns relating to approximately 20 colleges, with court action still being pursued against some providers:

13 Ms Jeannie Rea, National President, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, p. 40.

14 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 23.

15 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 23.

16 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 26.

17 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 24.

[T]here are still undealt with issues from the period that we were looking at; we were certainly looking from that 2014 through to 2015 period as the focus of our investigations. We started with having about 10 colleges on our radar. As I said, we have got four colleges and an undertaking, so five, that we have dealt with. And it has peaked. We probably had about 20 colleges that we had particular concerns about. We have probably now got 10 or so that we are still particularly interested in dealing with. The extent to which we can deal with all of those in the same way as we have the matters in court is yet to be seen.¹⁸

2.17 Mr Gregson commented unfavourably on the unscrupulous tactics used by some in the industry to maximise the number of students enrolled in courses, with vulnerable consumers, especially in indigenous and rural communities, being targeted.¹⁹ Mr Gregson emphasised: 'It was that targeting in particular that raised our concerns and our further investigations... They were just, quite frankly, appalling'.²⁰

2.18 ASQA became aware of problems with the VET FEE-HELP scheme in mid to late 2014.²¹ The Hon. Michael Lavarch, Commissioner responsible for Risk, Intelligence and Regulatory Support at ASQA explained that at that time there was an increase in complaints followed by an 'environmental scanning process' triggered by these emergent issues in the sector:

The way in which ASQA first became aware of the problems was twofold. We received a small, and I have to say a relatively small, uptick in complaints being received by ASQA which were raising direct matters regarding the VET FEE-HELP scheme. In 2014, we received 43 complaints—out of 1,398 received in that year—which raised matters concerning the VET FEE-HELP scheme. In contrast, in 2013 there were only 10 complaints in total—out of 1,247 that ASQA received—which made any reference to VET FEE-HELP matters. So there was that small uptick in complaints in 2014... A key element in determining our treatment of systemic risk was to undertake what we call an environmental scanning process. The first one of those we did, as a pilot, was in the middle to later half of 2014. Through that environmental scanning process we started to detect problems, particularly in the business services training package area... So it was an uptick in some complaints to us—still at that stage, as I say, a small number—together with the fact that our environmental

18 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 24.

19 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 26.

20 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 26.

21 The Hon. Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 50.

scanning began to indicate there may have been some problem with this program.²²

2.19 Following the environmental scanning process, ASQA concluded that 'there was a systemic issue beginning to emerge, and hence that is why we did our first series of targeted audits of VET FEE-HELP approved providers in 2015, flowing out of the work we did in the second half of 2014'.²³

2.20 Mr Lavarch bluntly stated: 'I have been in and around public life for a long time. I think I can fairly say that this was the worst piece of public policy I have ever seen'.²⁴ He continued to explain his perspective of what went so wrong with the scheme was a lack of regulation and the focus on profitability:

In my view, what went wrong was the assumption that a system that had worked perfectly well for decades in higher education could be translated and placed into VET and the same behaviours that applied in higher education would replicate in VET. The program, the way it was designed, did not have, essentially, a proper set of rules and requirements around it... The whole thing [higher education contingent loans arrangements] was geared around making sure that people progressed and got through. This system [VET FEE-HELP], simply, was about getting people enrolled. In fact, it just became a cost if you continued to get them—that would impact on the profits.²⁵

2.21 When questioned as to the Department of Education and Training's understanding of when problems were first identified, Dr Banerjee concurred with the mid to late 2014 timeframe:

[C]ertainly the testimony from ASQA and the ACCC is consistent with my understanding—that both of those agencies started to get concerned through the volume and nature of specific complaints towards the end of 2014, and they talked to us at that time. Then they reiterated or continued expressing those concerns into 2015...we were also receiving some public representations directly to the department.²⁶

2.22 In regard to the number of complaints the Department was receiving, Dr Banerjee advised that:

In 2014 in quarter 3 we had 100 complaints and in quarter 4 we had 200 complaints...We are at the level of 100 to 200 complaints off a base of

22 The Hon. Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, pp. 50–51.

23 The Hon. Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 51.

24 The Hon. Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 55.

25 The Hon. Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, pp. 55–56.

26 Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 58.

200,000 students, which was the eventual student loan in 2014, so it was a fraction of a per cent at that point. The judgement for the department is really to try and determine what that indicates.²⁷

2.23 Dr Banerjee said that 'it was clear that there were some dramatic increases in student numbers and in loan amounts'.²⁸ Reflecting on the figures outlined at Table 1, Dr Banerjee noted that the Department worked to determine the cause of these dramatic increases: 'Each of the years year on year showed a dramatic increase, and then the matter for the department and indeed the regulators was to try and distil how much of that growth was genuine and how much of it was not'.²⁹

2.24 Dr Banerjee indicated that the Department had used the lessons learnt from the VET FEE-HELP scheme to inform the planning of the proposed VET student loans scheme as outlined in the bills:

[T]here are clearly stringent lessons to be learnt from the way that the program has run. The department has looked at those lessons and looked to incorporate those in the design of the new student loans scheme. The new student loans scheme has clearly strengthened compliance powers, data provision, information provision and a range of other measures that were clearly difficulties in the previous scheme. Also, we absolutely need to be monitoring it very carefully as it goes forward. I think that is clearly a lesson as well. I think, under those circumstances, we need to see how the scheme works in practice but we have looked to learn from the lessons of the past and make sure that it is a considerably strengthened system.³⁰

2.25 These new accountability and transparency measures are discussed in Chapter 4.

The need for new scheme

2.26 Given the unanimous recognition of a multitude of problems with the VET FEE-HELP scheme, there was much support for the establishment of a new loans scheme. The Victorian TAFE Association noted the negative impact that VET FEE-HELP abuses have had on the sector as a whole, and indicated a strong desire to restore the sectors reputation:

The scandal of VET FEE-HELP abuse has adversely impacted the entire VET sector, undermining public confidence in our world-class VET system. TAFEs, governments and industry have been battling for years to enhance the status of VET, and make it a genuine tertiary education option. VET FEE-HELP has set back our case, sure, but it has also hardened our

27 Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 59.

28 Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 59.

29 Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 59.

30 Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 114.

resolution to provide a quality education experience with excellent learning outcomes and pathways to employment and/or further education.³¹

2.27 Ms Rea considered that any new scheme should re-focus the higher education sector on how to achieve the best educational outcomes for students:

[W]hat we have now is a very complex system which has just been built upon and built upon. I would make these comments about the constructions of some of the higher education qualifications too. I think we have an opportunity now in VET to get back to what is required—and at what sorts of levels and what sorts of qualifications are required. If this starts to open the door to a greater investigation of exactly how we can best provide our post-school education, it will certainly have done a great thing.³²

2.28 Ms Jenny Lambert, Director of Employment Education and Training at the Australian Chamber of Commerce and Industry (ACCI), expressed support for a 'much more thoughtful approach' to VET in Australia:

With all the controversy around the impact on students and the public purse of the failings of the VET FEE-HELP program, the simple but most important point is lost: providing loans to students studying higher level VET qualifications remains sound public policy. In the same way as for higher education, loans improve access and equity for those who could not otherwise afford the fees associated with diplomas and advanced diplomas. But clearly the larger number of providers and the lower barriers to entry for providers, as well as other structural issues that differ between VET and higher education, require a much more thoughtful approach to program design, enforcement and monitoring than we have seen since the access was widened in 2012.³³

2.29 Ms Lambert continued to emphasise the imperative for reform:

VET FEE-HELP has so damaged VET that we all need to move on. We need to move on from the language, the poor program design, the dodgy providers, the hurt students and the fiscal nightmare. The VET Student Loans Bill offers a way forward and we support it.³⁴

VET Student Loans bills package

2.30 The purpose of the VET Student Loans bills package is to replace the VET FEE-HELP loan scheme from 1 January 2017 and 'introduce a vastly improved student loan program for vocational education and training.'³⁵

31 Victorian TAFE Association, Submission 46, pp. 3–4.

32 Ms Jeannie Rea, National President, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, p. 39.

33 Ms Jenny Lambert, Director, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 25 October 2016, p. 44.

34 Ms Jenny Lambert, Director, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 25 October 2016, p. 44.

35 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 1.

2.31 Inquiry participants strongly supported the bills and the need to reform the existing VET FEE-HELP system to ensure the sustainability and excellence of the VET sector.³⁶ For example, the Australian Council of Trade Unions (ACTU) viewed the bills as a 'broadly positive' proposal:

[T]he ACTU views the bills being considered as a broadly positive first step towards repairing the broken VET system and restoring public and industry confidence in the ability of the sector to deliver high quality skills training. Steps to limit the amounts students can borrow in order to effectively control prices, to prevent brokers from taking advantage of students and to implement a more effective compliance system for private training providers are long overdue.³⁷

2.32 Mr Lavarch considered that the reforms represented a sound package to address many of the concerns with the previous scheme:

ASQA thinks this is a good reform based on the work that the agency has done, particularly since the second half of 2014, when it first became apparent that there were emerging concerning behaviours in relation to the VET FEE-HELP scheme. The legislation adopts a range of measures which one finds across a number of the state training authorities and skill support schemes of the states and territories. We think it provides a reasonably sound foundation for the scheme going forward. Certainly, the experience of the states, being long-term program managers in providing support for students in accessing VET programs, is a good starting point, in our , in terms of the basic design of the program administration aspects at least, of a vet student loan scheme.³⁸

2.33 Mr Lavarch concluded: 'certainly the skeleton of how the new scheme will operate as outlined in the legislation we think should take us a long way towards overcoming the poor behaviours that we have seen in the VET FEE-HELP space over the last several years'.³⁹

2.34 Master Builders Australia (MBA) considered that the bills would 'help to ensure Australia has a highly skilled and capable workforce to meet the needs of a competitive construction industry'.⁴⁰ The MBA continued:

Master Builders supports the Federal Government's efforts to overhaul the flawed VET FEE-HELP scheme and believes the introduction of VET student loans will go further to protect taxpayers' dollars and students by

36 See for example Sydney Film School, p. 2; Jillian Pryor, pp. 1–2; ACTU, *Submission 6*, p. 1; Australian Education Union, p. 1; Academy of Interactive Entertainment, p. 1; National Tertiary Education Union, *Submission 2*, p. 2 and Navitas, *Submission 35*, p. 1.

37 ACTU, *Submission 6*, p. 1.

38 The Hon. Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 50.

39 The Hon. Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 50.

40 Master Builders of Australia, *Submission 42*, p. 2.

improving the assurance that only those providers who have a proven track-record of high employment outcomes will gain access to the system...The impact of VET FEE-HELP on the reputation of VET, its poor implementation and the budgetary impact of the scheme are strong reasons for the Parliament to act immediately to pass the VET Student Loans Bill 2016...⁴¹

2.35 TAFE Directors was of the view that the reforms would benefit the VET sector as a whole:

The much-abused VET FEE-HELP scheme has damaged Vocational Education as a sector, with good providers being tainted by those that have seen students merely as a pathway to taxpayer money.

Therefore TDA supports the Government's intentions to close the VET FEE-HELP scheme and replace it, on the 1st January 2017, with a VET student income contingent loan scheme that will shut the door on bad training providers.⁴²

2.36 The Sydney Film School reinforced these sentiments:

Sydney Film School is broadly supportive of the Government's intent to rid the VET sector of providers who have rorted the VET Fee Help Scheme and largely agrees with the objectives of the legislation. We support the Government's intent to favour courses that meet industry needs and skills shortages and that result in high completion rates, high levels of employment and an ability to repay VET loans.⁴³

2.37 Mr Mel Koumides, Chair of the Australian Council of Private Education and Training (ACPET), expressed the qualified support of private VET providers for reform of the system:

We only want the very best providers in the country delivering high-quality education for students. We therefore support measures to raise the bar and ensure that only the very best access the system. However, we do have concerns that some elements of the VET Student Loans will diminish Australia's capacity to develop skills for the future.⁴⁴

2.38 Despite this broad support for reform, a number of issues were identified with the bills. Navitas, an international private sector VET service provider, explained that, notwithstanding its general support for the bills, a number of concerns remained:

Navitas believes that several of the central elements of the proposed reforms will have a strong negative impact on Australia's VET system. Further, the timelines that have been attached to the reforms are largely unworkable, and risk major disruption and confusion for ongoing and

41 Master Builders of Australia, *Submission 42*, p. 2.

42 TAFE Directors, *Submission 26*, p. 2.

43 Sydney Film School, *Submission 15*, p. 2.

44 Mr Mel Koumides, Chair, Australian Council of Private Education and Training, *Committee Hansard*, 25 October 2016, p. 28.

prospective learners, and the employers and industries that depend on the skills that are delivered through Australia's vocational education and training sector.⁴⁵

2.39 Ms Jillian Pryor, the Chief Executive Officer of Unity College, a not-for-profit Registered Training Organisation and VET FEE-HELP provider, also articulated concerns:

I applaud the government for its attempt to bring in measures to address the problems. However, I strongly believe that some of the measures in both the 2015 reforms and now the new VET Student Loans Bill are not well thought through, are highly discriminatory and will severely disadvantage either directly or indirectly, the students for whom the scheme was created and who it is meant to support in their quest for an education that benefits both them and society.⁴⁶

2.40 The CALC considered that while the bills were a positive step for the VET sector, the bills would not assist those students who had accrued unfair debt under the current VET FEE-HELP system:

Broadly, we are very encouraged by the reforms announced by the Government that identify many of these gaps and present practical solutions. However, these changes will not help those Australians already impacted through the accrual of an unfair FEE-HELP debt. We are most concerned about legacy issues created by poor consumer protection during previous iterations of the VET FEE-HELP scheme.⁴⁷

2.41 The CALC also identified a number of areas where in its view there is a risk that the new VET loans arrangements could be circumvented by a small group of unscrupulous providers.⁴⁸

Committee view

2.42 It is evident that while there is significant and wide-spread support for reform, certain aspects of the bills raised concerns, including the eligible course list, proposed loan caps and the transition arrangements to the new scheme. These and other issues raised by inquiry participants are explored in detail in the next chapters of this report.

45 Navitas, *Submission 35*, p. 1.

46 Ms Jillian Pryor, Chief Executive Officer, Unity College, *Submission 41*, pp. 1–2.

47 Consumer Law Action Centre, *Submission 22*, p. 2.

48 Consumer Law Action Centre, *Submission 22*, pp. 2–7. For example: a prohibition of commissions, bonuses or incentives that can be paid for the enrolment of students into a courses with a VET Student Loan; banning an approved course provider from marketing or promoting a course to a person whose details they have obtained for another purpose; a prohibition on representations that a VET Student Loan amounts to 'government funding' or 'tuition assistance' or analogous terms; and that the VET Ombudsman be established to comply with Treasury's *Benchmarks for industry-based Customer Dispute Resolution*.

Chapter 3

Eligible courses and loan caps

Introduction

3.1 This chapter examines two of the key issues raised by inquiry participants in relation to the bills, known collectively as the courses and loan caps determination. The courses determination is an eligible course list which restricts the number of courses that attract student loans. The loan caps determination places a ceiling on the maximum amount that an approved course provider can charge for a course. The loans caps proposed for the start of the program are \$5000, \$10 000 and \$15 000 per course.

3.2 The chapter commences by exploring issues pertaining to the eligible course list.

Eligible course list

3.3 The eligible course list seeks to address some of the excesses of the VET FEE-HELP scheme by limiting the number of courses that will attract financial assistance from the government. Under the new scheme, course eligibility will be limited to courses that have a high national priority, meet industry needs, contribute to addressing skills shortages and align with strong employment outcomes.¹ Students will not be able to access VET Student Loans for courses not on the eligible course list.²

3.4 Courses are eligible if they are current (in other words, not superseded), and on at least two state and territory skills lists, or are Science, Technology, Engineering and Mathematics (STEM) related. STEM courses are defined as any course in the following fields:

- information technology;
- natural and physical sciences;
- engineering and related technologies; and
- agriculture, environment and related studies.³

3.5 The Minister for Education and Training will have the power to approve the course list by a legislative instrument known as the courses and loan caps

1 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 1, https://docs.education.gov.au/system/files/doc/other/161010_eligible_course_list_fact_sheet.pdf (accessed 23 October 2016).

2 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 2.

3 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 1.

determination. The determination permits the minister to change the list and ensure that it remains flexible to meet changing workplace skills needs.⁴

3.6 Dr James Hart, Group Manager of the Skills Programs at the Department of Education and Training, acknowledged that the methodology used to devise the eligible course list may not have captured all appropriate courses:

We relied on the requirement to be on two state subsidy lists, because one could be artefactual in terms of a particular jurisdiction's needs. We were looking to develop a national needs list. We saw the fact that they were on two lists as good starting point. We acknowledge that that may not capture all courses, and that is why we went through the consultation process.⁵

3.7 Dr Hart explained that courses not appearing on the proposed eligible course list were excluded because they did not appear on at least two state and territory skills lists, or were not STEM courses:

In terms of the 478 that are not on the proposed VET student loans course list that are currently eligible for VET FEE-HELP, they are not there because they are not on two states' lists. So there is no direct intervention to remove a course other than the fact that they were not on those two states' lists... the minister's office wanted the STEM courses added as well, because it was deemed to be of government need.⁶

3.8 Dr Subho Banerjee, Deputy Secretary of Skills and Training at the Department of Education and Training, indicated that the states, in preparing their lists, undertake 'extensive consultation and analysis':

Different states do it in different ways, but all of them go through very extensive processes to determine exactly what is on and what is off. They do a lot of modelling, they do a lot of industry analysis and they do a lot of industry consultation.⁷

3.9 The Department of Education and Training has recently undertaken consultations on the proposed eligible course list to be implemented from 1 January 2017, which consists of 347 courses.⁸ The list will be updated periodically to ensure workforce requirements are being met.⁹

4 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 11.

5 Dr James Hart, Group Manager, Skills Programs Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 60.

6 Dr James Hart, Group Manager, Skills Programs Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 61.

7 Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 60.

8 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 11; and Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 1.

9 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 2.

3.10 Dr Hart explained that the Department has recently completed the two-week consultation period on the courses contained on the list, receiving approximately 1500 submissions, 200–250 of which recommended changes. The Department is currently analysing the feedback with a view to providing advice to the Minister by early November 2016.¹⁰

3.11 Dr Hart stated that it was the intent for the eligible course list to be a fluid document, amended twice a year to ensure relevancy and utility:

[T]he legislation allows for a course list, but the view was that the actual list would be provided for through a disallowable instrument, and the reason for that is so that it could evolve. It would be a living list and there would be opportunities for that list to be amended from time to time...I think we were of the view that, if we had a process to amend that twice a year so that new courses were available for the start of the calendar and the financial year, that would be our preferred approach to address those changes as they came through.¹¹

3.12 A core issue for inquiry participants was what courses were included and excluded from the eligible course list. The Australian Chamber of Commerce and Industry (ACCI) supported moves to reduce the number of courses available to be studied:

The Chamber encourages the Government to reduce the number of accredited courses on the approved funding list, with the aim to eliminate them from the list. Where accredited courses are currently in use, they should only be supported under a sunset clause arrangement in order to provide incentive for that training to migrate to a training package qualification. The Chamber believes 12 months should be sufficient time to achieve this.¹²

3.13 The Hon Michael Lavarch, Commissioner for Risk, Intelligence and Regulatory Support at the Australian Skills Quality Authority (ASQA), also supported the premise of limiting the number of courses attracting loans:

In terms of the quality issue, the idea that the program should be limited to particular courses which are considered by government to be appropriate courses for public support is completely consistent with the way in which schemes of this broad nature—obviously not a loan scheme per se but programs to support access to education programs like VET provider programs—operate throughout Australia at the state and territory level. There is nothing exceptional about that. In fact, to the extent that it has been

10 Dr James Hart, Group Manager, Skills Programs Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 107; p. 61.

11 Dr James Hart, Group Manager, Skills Programs Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 61.

12 Australian Chamber of Commerce and Industry, *Submission 25*, Attachment A, p. 2.

able to be a target of public funds going to programs which are considered to be in the public interest, it would appear to be consistent and sensible.¹³

3.14 However, the majority of inquiry participants expressed some concerns about the composition of the eligible course list. The joint submission from the Ai Group and Business Council of Australia (BCA) gave qualified support for the reduction in courses eligible to receive VET funding given the proliferation of enrolments 'in fields of education that do not have significant new job creation'.¹⁴ The submission argued that the proposed list was 'narrow in its conception of VET':

Vocational training is not limited to the trades and areas of skills shortage. It services every industry in the country, and every industry in the country needs a pipeline of skilled workers.

There is a public policy argument to exclude courses that do not have a potential employment outcome. However, given that VET is deeply vocational and industry-led, the list of Training Package qualifications and accredited courses without a potential employment outcome should be quite limited.

The loan scheme should support students to undertake VET studies in growth industries such as health, as well as industries that have fewer employees than 20 years ago such as agriculture and manufacturing, and small industries such as creative arts.¹⁵

3.15 To address their concerns, the Ai Group and BCA recommended that the VET Student Loans Bill be amended such that:

- the eligible course list operate on an exclusionary basis, rather than an inclusionary one, noting loans are only available for Diploma level and above qualifications;
- industry has an opportunity to appeal any course excluded from the loan scheme;
- where a state is offering a subsidy, the student will be eligible for a loan, subject to other eligibility requirements; and
- if enrolments become excessive in low-employing industries, the government can cap enrolments in those courses.¹⁶

3.16 However, if the government did not move to an exclusionary rather than inclusionary list, the Ai Group and BCA considered that the government should at a minimum have courses on the eligible list that are offered in a single state.¹⁷

13 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 53.

14 Ai Group and Business Council of Australia, *Submission 43*, p. 9.

15 Ai Group and Business Council of Australia, *Submission 43*, p. 9.

16 Ai Group and Business Council of Australia, *Submission 43*, p. 11.

17 Ai Group and Business Council of Australia, *Submission 43*, p. 11.

3.17 The Australian College for Private Education and Training (ACPET) noted that under the proposed list nearly 480 of the 800 courses previously supported through VET FEE-HELP would be no longer available to students. ACPET considered that:

This wholesale removal of courses leaves few, if any, options for many students to gain support to obtain qualifications and pursue careers in fields of education that are likely to provide the 'future of work' as Australia's services sector economy develops. This hardly seems a forward looking approach for a country that aspires to build its innovative and creative capabilities to support a new economy. The response that individuals will need to pay is a considerable blow to the principle of an equitable access to education for all Australians.¹⁸

3.18 Many submitters, mainly those within the private VET providers sector were concerned about a number of current courses that are anticipated to be excluded from the eligible course list, including:

- a number of counselling and psychotherapy courses;¹⁹
- a number of ministry and theology courses;²⁰
- a number of performing and creative arts courses;²¹
- Graduate Certificate in Intense Pulsed Light and Laser Hair Reduction;²²
- Diploma of Audiometry;²³
- Diploma of Anaesthetic Technology;²⁴ and
- Diploma of Professional Writing and Editing, Diploma of Justice/Advanced Diploma of Justice, Diploma of Product Design.²⁵

3.19 Navitas was critical of the criteria for assessing course to be included on the course list, identifying several potential issues:

Firstly, the state and territory skills lists used as the benchmark for course eligibility are designed for a different purpose – that is to identify areas of

18 Australian College for Private Education and Training, *Submission 23*, p. 4.

19 Australian Institute of Family Counselling, *Submission 34*, p. 4.

20 Harvest Bible College, *Submission 10*, p. 3, Wesleyan Methodist Church of Australia, *Submission 19*, p. 1; Kairos Christian College, *Submission 13*, p. 1.

21 NIDA, *Submission 24*, p. 4; Sydney Theatre School, *Submission 12*, p. 3; National Association for the Visual Arts, *Submission 21*, p. 1; and Photography Studies College (Melbourne), *Submission 38*, p. 1.

22 Australian Academy of Beauty and Spa Therapy, *Submission 49*, supplementary information, p. 1.

23 Hearing Care Industry Association, *Submission 47*, p. 3.

24 Mater Education, *Submission 29*, p. 1.

25 Swinburne University of Technology, *Submission 31*, p. 2.

current skills shortage in a particular jurisdiction. By definition then they do not seek to identify the jobs and skills that will drive the Australian economy into the future. Thus, the approach adopted by the states and territories is not well suited to identifying the emerging higher level skill needs and opportunities in the burgeoning human services sector or those of the creative industries, for example, where traditional industry links and employment pathways are less well defined.

Next, these lists often reflect narrower State and Territory government priorities and consultation protocols with industry, as well as their funding responsibilities for trade training and related sectors.

Further, these lists often deliberately exclude courses currently eligible for Commonwealth funding via VET FEE-HELP and reflect state and territory obligations and priorities under the National Partnership agreement to deliver a Certificate III entitlement.

Finally, as has been pointed out by Andrew Norton, an expert on income-contingent loans, the changes adversely affect female learners who to-date have been great beneficiaries of the VET FEE-HELP scheme.²⁶

3.20 The Australian Major Performing Arts Group (AMPAG) reflected the view of many performing and creative course providers in arguing that the removal of a number of arts courses from the list, combined with unrealistic loan caps, was of serious concern: 'The chosen criteria for determining which courses are deemed valuable are based on a narrow approach that fails to recognise the needs and, we believe, the value of the performing arts sector'.²⁷

3.21 ArtsPeak, a confederation of Australia's peak arts organisations collaborating with other sector organisations and artists, identified the extent of the substantial reduction in the number of creative arts course eligible for loans:

We support the government's attempts to rein in rogue operators in the vocational education sector and would welcome changes that will lead to a more robust sector. However, students should not be punished for this by depriving them of the opportunity to pursue vocational training in the arts and cultural sectors. Out of 70 previously supported courses in the creative arts sector, only 13 will continue to be eligible for loans. The proposed cuts represent a significant reduction in student choice, and will adversely disadvantage many students.²⁸

3.22 AMPAG outlined the sources of its concerns with the list:

26 Navitas, *Submission 35*, p. 2.

27 Australian Major Performing Arts Group, *Submission 40*, p. 2. See also the submissions from NIDA, Sydney Theatre School, Sydney Film School, Canberra Academy of Dramatic Art, National Association for the Visual Arts, Academy of Interactive Entertainment; and Photography Studies College (Melbourne).

28 ArtsPeak, *Submission 45*, p. 1.

- it fails to consider the quality and reputation of the training provider and the contribution this training proves to support industry outcomes in the performing arts;
- it negatively impacts leading performance-based arts training in some of the leading arts training institutions;
- it excludes all performance-based performing arts training courses;
- it has been derived without research and consultation with the professional performing arts sector or the government agencies that support the sector; and
- it is based on criteria that prioritise and support for courses building on skills in STEM but fails to recognise the significant contribution of arts training to workforce skills in the 21st century economy (STEAM).²⁹

3.23 The Sydney Theatre School observed that as a consequence of exclusion from the eligible course list some providers may have to downsize or close, potentially resulting in 'the loss of a significant number of jobs; and the exclusion from VET training and employment of many students who are unsuited to any of the courses currently on the eligible course list'.³⁰

3.24 There were other concerns regarding the method for determining the eligible course list articulated by the National Tertiary Education Union (NTEU):

The proposed Bill does not specify what, if any, factors the Minister must consider in either determining the rules or determining their decision. While the Minister has said that in determining the current list of approved VET courses he has taken into consideration courses covered by the skills needs lists of at least two of the States and Territories, this is not a requirement specified in the legislation. While this is highly objective criteria, this is not so for all the factors the Minister says he wants to take into consideration when considering what courses should or should not be included. For example, the Minister says he does not think it is appropriate to support so-called 'lifestyle' courses. What this Minister considers to be a 'lifestyle' might differ significantly overtime and depending on the Minister of the day.³¹

3.25 Ms Jeannie Rea, the NTEU's National President, further expanded on the union's concerns that the subjectivity inherent within the framework could cause instability within the sector as courses are ruled in and out of the eligible list:

So we are concerned—and we state this in our submission—at the degree of subjectivity inherent within the framework and the application of the rules proposed. A lack of clarity means that courses that are or are not included may well change over time, leading to uncertainty for both providers and potential students. There is also no doubt that ministers will come under

29 Australian Major Performing Arts Group, *Submission 40*, p. 2.

30 Sydney Theatre School, *Submission 12*, p. 3.

31 National Tertiary Education Union, *Submission 2*, p. 6. See for similar concerns Australian College for Private Education and Training, *Submission 23*, p. 3.

considerable pressure from various providers or provider groups to have their courses included on the list. We are recommending that, rather than ruling individual courses in or out, the government enforce its much stricter rules in relation to eligible providers and levels of enrolment.³²

3.26 Inquiry participants identified alternative approaches to determining the eligible course list. For example, ACPET suggested that 'a strategic and evidence based approach to identifying skills priorities would be a considerably better model than relying on State and Territory level lists constructed for a different purpose'.³³

3.27 Similarly, the Sydney Theatre School proposed that a broader range of factors should be taken into consideration:

The VET Student Loans Bill 2016 should be amended to ensure that the selection criteria for inclusion on the Eligible Course List (ECL) allows for a much wider range of courses that will cater for the diverse training needs and career goals of every Australian citizen.

Courses to be included on the ECL should not be determined by their appearance on narrow 'skills shortage' lists; by the Education Minister; Department of Education employees; or any other government body or official.

The methodology used for the selection of approved courses needs to be evidence-based; properly informed by extensive consultations with all stakeholders (including industry; students and course providers); flexible; and fair.

It also needs to recognise and acknowledge the valuable contribution to society—and the economy—that is made by the creative and performing arts sector.³⁴

3.28 Ms Jenny Lambert, the Director of Employment Education and Training at ACCI, argued that a formal consultation process with industry should form part of the process for determining the eligibility list:

We only have a concern if there is no mechanism by which industries can raise legitimate concerns and have them dealt with... in our view, we need to encourage a vocational training system that is based on national training packages that the industries have endorsed through the system. A lot of those lists are done by states, and they put forward these accredited courses outside of the system. So, no, we do not believe the sole criterion should be that it is on two states' lists. We believe the criteria should be a formal and structured process of consultation with industry so that it brings forward the opportunity for people to say what courses they believe are job facing.³⁵

32 Ms Jeannie Rea, National President, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, p. 37.

33 ACPET, *Submission 23*, p. 5.

34 Sydney Theatre School, *Submission 12*, p. 9.

35 Ms Jenny Lambert, Director, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 25 October 2016, pp. 46–47.

3.29 Master Builders Australia also considered that industry must 'play an ongoing role in determining the high level qualifications on the list and that the list take into account the needs of an ever changing labour market'.³⁶

Committee view

3.30 The purpose of the eligible course list is to ensure that courses offered by the VET sector are courses that have a high national priority, meet industry needs, contribute to addressing skills shortages and align with strong employment outcomes.³⁷ There will also be an emphasis on STEM related courses. The eligible course list will also reduce the ability of a small number of unscrupulous providers to take advantage of students.

3.31 The committee acknowledges this change will mean that some courses—which do not meet industry, student or skill needs—will not be supported and that this will impact on some providers. Given the poor practices of some unscrupulous providers that occurred under VET FEE-HELP, the committee views the eligible course list as an important mechanism for protecting students and taxpayers. The committee also views continued Government support for a broad range of VET courses as crucial for Australia's competitiveness and prosperity.

3.32 The committee acknowledges the concerns of many stakeholders that the eligible course list will be too narrow in its composition, and exclude a number of courses that contribute positively to the economic and cultural prosperity of Australia.

3.33 The committee supports the introduction of an eligible course list. The committee also notes that the Department of Education and Training is currently consulting on the composition of the eligible course list for the introduction of the new VET scheme. The committee notes the department's evidence that the course list released for consultation is a 'good starting point'.

3.34 The committee is of the view that if there are courses required to address industry or skill needs which are not on the eligible list, and a strong case is made, then the list should be amended accordingly. To ensure strong employment outcomes, the government should seek advice from key stakeholders.

3.35 In finalising the eligible course list, the committee urges the department to give consideration to expanding the number of approved courses where sufficient justification is provided that courses are a high national priority, meet industry needs, contribute to addressing skills shortages, align with strong employment outcomes or provide specialist training. The committee further encourage the department to actively consult with stakeholder, including students, providers, industry groups and employee representative, when finalising and revising the eligible course list in the future.

36 Master Builders of Australia, *Submission 42*, p. 2.

37 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 1, https://docs.education.gov.au/system/files/doc/other/161010_eligible_course_list_fact_sheet.pdf (accessed 23 October 2016).

Loan cap limits

3.36 The second central area of concern with the bills was the establishment of loan cap limits for all courses on the eligible course list. The aim of the caps is to protect students from rapidly rising course costs and set a ceiling on the maximum loan amount the government is willing to loan to a student for a specific course.³⁸

3.37 The rapid rise in course costs was addressed by some inquiry participants. For example, Mr Lavarch of ASQA noted the escalation of course costs under VET FEE-HELP was widely acknowledged:

In terms of the funding caps...I think it is a matter of public record that one of the issues arising through the VET FEE-HELP program was a very substantial escalation in the charges for particular courses. That was quite stark between some of the public providers and the private providers.³⁹

3.38 Similarly, Ms Lambert questioned the ability of the government to accurately set loan caps, but acknowledged that the caps were necessary to prevent course providers from setting unaffordable fees:

[C]an the government, with industry information, nail the cap level that fits a quality program that delivers a great outcome? It would be hard to answer that generically. In other words, there will be situations where the caps will work and others where they will not. Caps are not ideal. We say that in our submission: it is not ideal. Obviously you would prefer the market to adjust, but at the moment we have seen too many examples where courses that were previously charged at X have become three times X, without any shift in quality, and that certainly is something that we are trying to address.⁴⁰

3.39 Three maximum loan caps are proposed for the start of the program: \$5000, \$10 000 and \$15 000 per course.

3.40 These levels are derived from actual VET FEE-HELP tuition fee data and the New South Wales Smart and Skilled program.⁴¹ Dr Hart explained that the Department of Education and Training used information on average course costs from the NSW Independent Pricing and Regulatory Tribunal (IPART) to calculate the loan caps to be used devising eligible course list:

In terms of the methodology that we went through with the course list, we looked at the IPART in New South Wales in terms of course costs. We did a mapping exercise against those course costs against what the VET FEE-HELP cost was in the period 2010 to 2013. We went back to that time

38 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 12.

39 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 53.

40 Ms Jenny Lambert, Director, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 25 October 2016, p. 46.

41 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 11.

period because that preceded this rapid expansive growth that we just talked about. By field of education we averaged the course costs.⁴²

3.41 The bill provides for the caps to be indexed annually in line with the government's other student loan programs.⁴³

3.42 The three bands of loan caps will apply irrespective of whether the course is being delivered face-to-face, online, or via mixed delivery modes.⁴⁴

3.43 As noted previously, students will not be able to access VET Student Loans for courses not on the eligible course list. For these courses, students will need to pay for the course themselves.⁴⁵

3.44 The loan caps do not prevent approved providers from setting tuition fees above the cap. The caps simply set a ceiling on the maximum loan amount the government is willing to provide a student for a specific course.⁴⁶

3.45 If a student wishes to undertake an eligible course at an approved VET loan provider that charges above the allocated loan cap, the student will need to pay for the difference.⁴⁷

3.46 Pending the passage of the bills, the Minister for Education and Training will have the power to specify which courses fall under which band, to exclude courses from any band and to specify exemptions from loan caps for courses that result in a high social good but have high delivery costs. Minister Birmingham has indicated that some courses, such as those in aviation, will be exempt from the loan cap.⁴⁸

3.47 Some inquiry participants were concerned that there was often no correlation between the loan cap allocated to particular courses and the actual delivery costs for that course. For example, ACPET said:

The overwhelming evidence, for example, from high quality, reputable nursing training providers across the country indicates the loan cap for the Diploma of Nursing (at \$10,000) is at least \$10,000 below that required to meet the needs of this highly resource intensive program. Similar evidence across a broad range of courses including in the interactive media, aviation, hospitality, creative arts, and business and building fields indicates fundamental concerns with the price bands.⁴⁹

42 Dr James Hart, Group Manager, Skills Programs Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 60.

43 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, House of Representatives Hansard, 13 October 2016, p. 11.

44 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 2.

45 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 2.

46 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 2.

47 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 2.

48 Department of Education and Training, *VET Student Loans – Eligible Courses*, p. 2.

49 Australian College for Private Education and Training, *Submission 23*, p. 7.

3.48 The same concern was raised by the ACCI, which submitted that:

As a general proposition, caps are not an ideal tool... In introducing caps, care is needed to ensure continued access by students undertaking courses that are of high quality and meet industry needs. In that regard, feedback from members and a scan of some key qualifications delivered by long standing providers indicates that the cap amounts of \$5,000, \$10,000, and \$15,000 will not cover the delivery amounts for some courses.⁵⁰

3.49 The disparity between capped course loans and the actual delivery costs for courses was highlighted by a number of submissions. For example:

- Sage Institute of Education identified gaps for its Diploma of Early Childhood Education and Care (gap of approximately \$9740) and a Diploma of Remedial Massage (gap of approximately \$10 240);⁵¹
- Sydney Film School identified a gap of approximately \$16 000 for Screen and Media Studies;⁵²
- Sydney Theatre School identified a gap of approximately \$6950 for its Advanced Diploma;⁵³ and
- Ella Bache identified a gap of approximately \$7327 for its Diploma of Beauty Therapy.⁵⁴

3.50 Restaurants and Catering Australia (R&CA) considered that unrealistic loan caps would have a negative impact on the skills of graduates, resulting in the needs of employers and industry not being met:

The current VET FEE-HELP proposed list relegates these [Chefs or Restaurant Managers] qualifications, in very high demand from an employment perspective, to the lowest funding band of \$5,000. This is insufficient to provide training that would facilitate the acquisition of appropriate skills to do these jobs... the cap is likely to distort the market and delivery of qualifications. R&CA would expect that cheaper qualifications costing under the cap would increase their fees to match the cap, while those over the cap will reduce resources allocated to the provision of this qualification. This will certainly reduce the quality of hospitality qualifications to a point where they do not meet the needs of industry.⁵⁵

3.51 In its submission to the inquiry, Navitas articulated four concerns about the loan cap:

50 Australian Chamber of Commerce and Industry, *Submission 25*, Attachment A, p. 3.

51 Sage Institute of Education, *Submission 50*, pp. 6–7.

52 Sydney Film School, *Submission 15*, p. 2.

53 Sydney Theatre School, *Submission 12*, p. 7.

54 Ella Bache, *Submission 7*, pp. 2–3.

55 Restaurants and Catering Australia, *Submission 37*, pp. 2–3.

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- imposing loan caps will reduce access to tertiary education for learners and therefore their ability to secure the skills they need to succeed in the workforce;
 - price bands for many courses bear little correlation to the cost of delivery;
 - setting arbitrary caps at \$5000 intervals does not support the provision of high quality, industry-relevant training that the Australian economy needs; and
 - having only three separate caps does not adequately reflect market diversity in the VET sector and may lead to further uncertainty for the sector.⁵⁶

3.52 The Victorian TAFE Association (VTA) was concerned that the disparity between the loans caps and actual course delivery could push students towards cheaper and poorer quality course providers:

VTA members are frustrated at the logic behind some of the band settings, which do not reflect the cost of quality program delivery. In Victoria's highly contestable VET marketplace, TAFEs have sought to remain the benchmark of quality despite hundreds of competitors undercutting on both price and quality. Where the gap between the loan and the fee threatens access to a high quality education experience, a student may choose a poor quality option instead. VTA considers this a likely—and dangerous—outcome for students and industry, under the proposed VSL settings.⁵⁷

3.53 The Academy of Interactive Entertainment argued that the loan caps would disadvantage students from low socioeconomic backgrounds who would be unlikely to be able to afford to pay for any fee gaps:

Funding caps need to be removed because they don't reflect the cost of providing quality education and discriminate against VET students who want to choose to undertake a quality education. Particularly those students who come from low socioeconomic backgrounds and are therefore unable to afford quality programs that exceed the capped amount... The need for a strong regulatory body is necessary to prevent shonky operators from simply registering courses with high caps on the published list, on their scope and delivering them in a substandard manner so they can continue to make a profit. Caps on courses are not a substitute for strong regulatory oversight. Removing caps will ensure students are able to access quality training, and not increase the necessary regulatory processes.⁵⁸

3.54 The National Institute of Dramatic Art (NIDA) similarly observed that restricting access to VET student loans would reduce opportunities for students from some socioeconomic backgrounds:

56 Navitas, *Submission 35*, pp. 2–3.

57 Victorian TAFE Association, *Submission 46*, p. 4.

58 Academy of Interactive Entertainment, *Submission 16*, pp. 2–3. Similar concerns were raised by Australian College for Private Education and Training, *Submission 23*, p. 7; Sydney Theatre School, *Submission 12*, p. 5; and Australian Major Performing Arts Group, *Submission 40*, pp. 4–5.

NIDA students in these courses [Diploma of Musical Theatre and the Diploma of Stage] need to have access to VET Student Loans to ensure that students from all social backgrounds have the opportunity to participate. If students in these two courses are not able to access VET Student Loans, selection will be limited to fewer, financially privileged candidates.

The entertainment industry will perpetuate a culture of privilege, missing out on the contributions of those that cannot afford to pay for their education and training up front.⁵⁹

3.55 AMPAG considered that the loans caps could 'mean that the student cohort be increasingly comprised of people who can afford to study the creative industries, as opposed to those who have the talent and aptitude to do so'.⁶⁰ AMPAG commented further on the likely implications of this deterrent to study:

The Education Minister's proposal to cap student loans at \$10,000 for those performing arts courses that continue to be eligible for student loan support bears no relationship to the cost of delivery. This gap between cost and level of support will deter students from diverse cultural and economic backgrounds from accessing training. This raises the issue of the long term impact on the cultural diversity within the performing arts through creating new barriers of entry.⁶¹

3.56 The VTA was concerned that the imposition of the lowest band cap of \$5000 might reinforce perceptions that VET was a lesser tertiary education option, and suggested that giving ASQA stronger powers was a better way to minimise rorting of the loans scheme:

The imposition of loan caps as low as \$5,000 for some courses sends a derogatory message about VET to prospective students and other stakeholders. This perverse outcome of VET Student Loans indicates that we're pulling the wrong lever to tackle the right problem: to win back consumer confidence the rorting of the loans scheme must cease and to make this happen ASQA needs stronger regulatory resourcing and powers, especially at the point of provider entry to the VET system.⁶²

3.57 The ACTU was of the view that loans caps may provide opportunities for 'unscrupulous' providers to reduce staff pay and conditions in order to maintain profits:

While caps on loans may prevent students being exposed to high prices and increased debts, there is always the possibility that this will provide an incentive for unscrupulous providers to dramatically reduce costs to allow for greater profits. This price pressure may also have negative implications for the VET workforce, as private providers attempting to increase profit

59 NIDA, *Submission 24*, p. 6.

60 Australian Major Performing Arts Group, *Submission 40*, p. 4.

61 Australian Major Performing Arts Group, *Submission 40*, pp. 4–5.

62 Victorian TAFE Association, *Submission 46*, pp. 3–4.

margins in a capped-loan environment may identify staff pay and conditions as areas where savings can be carved out.⁶³

3.58 A number of suggested changes to the proposed loan caps were made. For example, the Australian Catholic University strongly recommended raising the loan cap for the Diploma of Nursing to \$15,000 'to reflect the true cost of delivery and ensure no negative effect on student enrolments'.⁶⁴

3.59 R&CA felt that there needed to be '...greater clarity around the Minister's or department's methods of industry consultation on the lists and caps and the ability to provide exemptions to the cap limits, and the parameters by which exemptions are granted under'.⁶⁵

3.60 R&CA further suggested that the best way to limit the loan exposure of the government would be to institute a cap on the number of places in a course rather than the amount of the funding, and that the loan cap be subject to a higher cap than that proposed.⁶⁶

3.61 The William Angliss Institute proposed that a much broader range of loans caps be implemented, as follows:

- Tier 1 – Low end: \$0 to \$5000 or \$8000;
- Tier 2 – Public Provider/High quality: \$0 to \$50 000; and
- Tier 3 – Bespoke programs: on application.⁶⁷

3.62 The ACCI, reflecting on the method of determination for both the eligible course list and the loans caps, suggested that there should be greater clarity around the methods of industry consultation used by both the minister and department to make determinations:

The impact of the determination on skill needs will be significant, which means that the process of arriving at course and cap amounts needs to be the subject of wide industry consultation as well as evidence-based...There needs to be greater clarity around the Minister's or department's methods of industry consultation on the lists and caps and the ability to provide exemptions to the cap limits, and the parameters by which exemptions are granted under.⁶⁸

63 ACTU, *Submission 6*, p. 2.

64 Australian Catholic University, *Submission 9*, p. 5. Mater Education raised similar concerns about the loan cap applied to its nursing diploma. See Mater Education, *Submission 29*, p. 1 and p. 5.

65 Restaurant and Catering Australia, *Submission 37*, p. 2.

66 Restaurant and Catering Australia, *Submission 37*, p. 3.

67 William Angliss Institute, *Submission 44*, p. 4.

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

3.63 Specifically, the Chamber felt that the government should announce a clear process by which providers can apply for exemptions on course caps and invite stakeholder feedback on the process.⁶⁹

3.64 Given the number of gaps already identified between the proposed loan caps and actual course delivery costs, the Photography Studies College (Melbourne) argued that more analysis was needed to identify realistic loan caps:

The type and quantum of loan cap and the three levels or 'bands' for loans has not formed part of any consultation process. Nor has any methodology been developed and tested to appropriately assess the true cost of delivery of vocational education and training programs – especially not in the non-public sector... For this to really be about achieving quality outcomes, a true analysis of the costs of delivery, involving and respecting the industry professionals who have the experience of providing the delivery needs to be urgently undertaken.⁷⁰

3.65 ACPET considered that the Minister should declare additional exemptions for courses that have high delivery costs, such as nursing:

The legislation provides for the Minister to declare exemptions for courses that have high delivery costs but also high social good. While there are indications aviation training will be exempt from the loan cap this must be confirmed. There is also a strong case for nursing and a number of other courses including those in the creative arts sector to also be exempt.⁷¹

3.66 Sage Institute of Education suggested that loan caps should not be applied equally irrespective of whether the course is being delivered face-to-face, online, or via mixed delivery modes: 'Loan caps applied equally irrespective of delivery mode could negatively impact quality, not improve quality, as providers may look to move high-cost courses online in order to compete'.⁷²

Consistency across the tertiary education sector

3.67 Some participants were concerned that the creation of different approaches to student loans in the VET and higher education sectors through the imposition of loan caps for VET courses could result in unequal opportunities for students, or distortions between the two sectors.

3.68 The Academy of Interactive Entertainment argued that the proposed system would not provide equal opportunities for all students and would create a two-tiered education funding structure whereby higher education was fully funded through VET FEE-HELP and Commonwealth subsidies while VET student loans were subject to loan caps.⁷³

69 Australian Chamber of Commerce and Industry, *Submission 25*, Attachment A, p. 4.

70 Photography Studies College (Melbourne), *Submission 38*, p. 2.

71 Australian College for Private Education and Training, *Submission 23*, p. 8.

72 Sage Institute of Education, *Submission 50*, p. 6.

73 Academy of Interactive Entertainment, *Submission 16*, p. 1.

3.69 The Canberra Academy of Dramatic Arts (CADA) considered that the introduction of different approaches to course fees between the VET and higher education, describing it as 'discriminatory':

When caps are placed on course loans, the government is effectively asking students to make a co-contribution. The proposed co-contributions are not required for student loans in higher education, and it is discriminatory to ask for a co-contribution in vocational education. Meanwhile it is entirely possible that a small RTO like CADA can provide a higher quality of actor training to students than fully funded higher education institutions offering similar courses.⁷⁴

3.70 The NTEU was concerned that 'opportunities to manipulate or game student loans and public funding will continue to exist as long as there remain fundamental differences in the way higher education and VET are funded and regulated'.⁷⁵ The NTEU suggested that the government should be cautious of any unintended impacts of creating two different VET and higher education regulatory frameworks, such as:

- the creation of gaps in the coverage, especially with regard to enabling or pathway courses for students who might qualify to enter upper level VET or higher education programs;
- providers seeking to register existing VET qualifications as higher education qualifications because of a lack of restrictions on what can be covered and/or the capacity to charge higher fees because of the higher loan limits applying to FEE-HELP loans (approximately \$100,000) compared to the \$5,000, \$10,000 or \$15,000 limits those being proposed for VET Student Loans; and
- students enrolling in higher education rather than VET simply because higher education offers a broader range of options than those that will be eligible for VET Student Loans.⁷⁶

3.71 TAFE Directors considered that the bills, if passed without amendment, would push students towards the simpler to navigate higher education rather than the more complex VET sector:

[A] key concern for our TAFEs is that prospective VET diploma students will instead be drawn to simpler, more navigable and likely Commonwealth subsidised study paths through bachelor and sub-degree courses especially if further extended to reforms in higher education to the benefit of Universities. This will inevitably further decrease participation in VET Diploma courses, that are highly valued by industry, particularly key technical paraprofessional qualifications.⁷⁷

74 Canberra Academy of Dramatic Arts, *Submission 4*, pp. 4–5.

75 National Tertiary Education Union, *Submission 2*, p. 2.

76 National Tertiary Education Union, *Submission 2*, p. 3.

77 TAFE Directors, *Submission 26*, pp. 3 and 5.

3.72 Unity College similarly felt that the stringent requirements in the VET sector of restrictions on eligible courses and the loan cap limits would potentially push prospective VET students towards higher education instead:

The new scheme is discriminatory in that the HELP loans program is available to all eligible students for ALL higher education courses at University level without restriction. Why should students who wish or need to study in the VET sector be restricted in the area of study they can do with the help of a student loan? This bill may only serve to force many students to leave the VET sector and choose courses at universities for which they can access a loan (usually for a much higher amount) meaning the government will have not actually saved any money at all and in fact forcing the student to be in greater debt.⁷⁸

3.73 The joint submission from the Ai Group and BCA expressed concerns that there would be a migration of both students and course providers from the VET sector to the higher education sector:

The combination of the loan cap, the course list, and the additional requirements on providers will drive private providers out of the VET market and into Higher Education ... The incentive is for providers to move to the easier and higher funded market – that is, the market where there is no loan cap. This is particularly true for Graduate Certificates and Graduate Diplomas, as the proposed list is very limited in the VET qualifications eligible for the loan scheme.

If these course levels are not available under the new loan scheme, it is an incentive for both providers and students to move to the Higher Education sector where equivalent qualifications are not subject to the same constraints as the VET market.

The demand-driven system in Higher Education has already driven both students and providers from VET to Higher Education. This is a poor outcome for the students who are more suited to VET, as well as government, as Higher Education costs more than VET.⁷⁹

3.74 Ms Rea explained why the NTEU felt that the migration of students towards higher education would be a negative outcome:

[B]ecause those [higher education courses] might not be the courses that students are already prepared to do—noting my point about the enabling and preparatory issues as well. But, if people are making the choice of what course they do on the basis of what loan they can get and the costs of it, that will be the basis for making the choice of course rather than whether it actually leads to what they want to do. Our view is that, when you make your choice of course, it should go with what your ambitions are, what sort

78 Ms Jillian Pryor, Chief Executive Officer, Unity College, *Submission 41*, p. 2.

79 Ai Group and Business Council of Australia, *Submission 43*, pp. 10–11.

of career you see yourself doing and so on and so forth, not which one you can afford.⁸⁰

3.75 The Ai Group and BCA encouraged the government to 'break away from the silos of the two sectors':

The sectors are deeply entwined, and changes to one program can create unintended consequences in one or both of the sectors. It is time for Australia to move to a tertiary policy approach, where the policies are designed with a consistent philosophy and principles across tertiary education.⁸¹

3.76 However, Innovative Research Universities argued in favour of clearer delineation between the VET and higher education sectors as a way to reduce confusion:

The decision to separate the VET loans away from higher education loans reduces the habitual confusion of VET specific issues into higher education debates. For instance, a significant aspect to the Parliamentary Budget Office's exaggerated assessment of the long term cost of the Higher Education Loans Program was the impact of the rapid escalation in VET FEE-HELP.⁸²

Committee view

3.77 The proposed loan cap limits will be applied to all courses on the eligible course list. The Minister for Education and Training will determine which courses fall under which band on the loan cap scale or specify exemptions from loan caps for certain courses.

3.78 The committee notes students would be required to pay the difference between the allocated loan cap and the actual course fee charged by approved VET providers.

3.79 The most significant concern amongst inquiry participants in relation to the loan caps was the disparity between the capped course loan limits and the actual delivery costs for courses. It was suggested that the proposed loan caps would have a negative impact on the skills of graduates, potentially resulting in the needs of employers and industry not being met. It was also feared that students from low socioeconomic backgrounds would be excluded from the VET system as they would be unlikely to be able to afford to pay for any fee gaps.

3.80 The committee also acknowledges the concerns raised about the imposition of loan caps which creates inconsistency across the tertiary education sector, with loan caps imposed on the VET sector but not the higher education sectors. This was argued

80 Ms Jeannie Rea, National President, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, p. 38.

81 Ai Group and Business Council of Australia, *Submission 43*, p. 16.

82 Innovative Research Universities, *Submission 36*, p. 1.

to potentially result in unequal opportunities for students, or distortions between the two sectors.

3.81 A number of participants argued that the three proposed loan cap bands be increased to minimise these concerns, and that additional exemptions should be granted to courses that have a high delivery cost, such as nursing. There was also a view that the Minister and the department should consult widely to determine more realistic caps.

3.82 Given the opportunistic, unfair and excessive price rises by some providers under the VET FEE-HELP scheme the committee supports the introduction of loan caps for the VET system. The loan cap bands will be a useful tool in providing certainty for students as to the cost of their courses, so long as the loan cap bands realistically reflect the delivery cost of courses.

3.83 The committee acknowledges the methodology used by the department to determine the loan cap limits by calculating average course costs based on information from the NSW IPART. The committee notes that the period of time used—2010 to 2013—encompasses a time period largely before the rapid fee escalations seen under the VET FEE-HELP scheme. The committee views this method as a reasonable basis for establishing initial loan cap limits, and encourages the Minister to take other matters into account when finalising bands for individual courses and exemptions to ensure unintended consequences are minimised.

3.84 While it will be impossible to entirely minimise fee-loan gaps while also fulfilling the budgetary restraint desired by the government, the committee notes that it is within the power of the Minister to adjust the loans caps to ensure a greater correlation to the actual course delivery costs. The committee encourages the Minister to give adequate consideration to stakeholders where there are justifiable claims to increase the loan caps to ensure they realistically reflect the course delivery costs. Further, where a compelling case is made, the committee urges the Minister to ensure that courses with a high social value, high costs of delivery, or provide specialist skills are given consideration for an exemption from the loan caps, for example nursing.

Chapter 4

Further issues

Introduction

4.1 This chapter explores a number of further issues raised in regard to the bills. These issues relate to the new requirements to be an approved course provider, the regulation of agents, brokers and markets and the transition arrangements to the new scheme. The chapter also discusses the importance of reporting and transparency in ensuring that the new scheme is not subject to the same exploitation as the VET FEE-HELP scheme. The chapter concludes by considering the proposed establishment of a VET student loans ombudsman.

Approved course providers

4.2 The explanatory memorandum for the VET Student Loans Bill explains that the bill contains stronger eligibility requirements to qualify as an approved course provider under the VET student loan program.

4.3 All existing VET FEE-HELP providers will have to apply to be approved under the new program. The Consequential and Transitional Bill provides for certain bodies, such as TAFEs, to be exempt from the re-application process.¹

4.4 Schedule 2 of the Consequential and Transitional Bill lists the providers that are deemed to be approved course providers from 1 January 2017 and thus exempt from the re-application process.²

4.5 The Queensland Department of Education and Training noted that one of Queensland's public providers of VET, the Queensland Agricultural and Training Colleges (QATC), may not come within the terms of Schedule 2. This is despite it being a statutory body under the *Queensland Agricultural Training Colleges Act 2005* (Qld) and a currently approved provider of VET FEE-HELP courses.³

4.6 The Department suggested that the Transitional Bill may need to be amended to ensure that the QATC is deemed to be an approved course provider to '...ensure that the Bill achieves its policy objective of deeming public providers of VET to be approved course providers of VET student loans'.⁴

4.7 Three other issues arose regarding approved course providers: the inability of trustees to be an approved provider, restrictions on third party training arrangements, and the levying of a tax on approved providers under the VET Student Loans (Charges) Bill. These issues are discussed below.

1 VET Student Loans Bill 2016, *Explanatory Memorandum*, pp. 3–4.

2 VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016, Schedule 2.

3 Queensland Department of Education and Training, *Submission 33*, pp. 1–2.

4 Queensland Department of Education and Training, *Submission 33*, p. 2.

Trustees

4.8 The VET Student Loans Bill states that the Secretary of the Department of Education and Training may approve a body as an approved course provider if the Secretary is satisfied that the body meets the course provider requirements. The clause continues to state that, among other things, a course provider must 'be a body corporate that is not a trustee'.⁵

4.9 This aspect of the bill was of significant concern for the existing VET FEE-HELP providers that are trustees, for example the Photography Studies College (Melbourne), Churchill Education, Harvest Education Technical College and Estrada College.⁶ As Churchill Education explained: 'Effectively, under the proposed new changes, we would be precluded from applying for approval as a VET Student Loan course provider'.⁷

4.10 Photography Studies College (Melbourne) observed that the prohibition on trustees being approved course providers was new, and had 'not been part of any consultation process and is not referred to in the Regulatory Impact Statement'.⁸ The college noted the potential impact of the prohibition on trustees:

It [the ban] therefore introduces a new regulatory burden - the impact of which has not been tested or assessed for regulatory impact and burden. This places an unfair burden on companies to disrupt their company structures. The flow on effect of such material change will drastically increase the regulatory, legal and tax burden on such body corporate companies. It will require such companies to advise their national regulators – two of them if they are dual sector providers - and in some cases State regulators as well - of the company change.

This will trigger an unknown and untested level of additional regulation and requirements, which could lead to such providers being rendered 'unregistered'. Such material change will trigger a requirement for providers to re-apply for their status as either an RTO or a Higher Education Provider. This will be the final nail in the coffin for many education companies already devastated by the sweeping, unadvised and unforeseen changes.⁹

4.11 Estrada College observed that it was not possible for trusts to swiftly transition to another approved business structure, and further, that if trusts were no longer able to lawfully operate, there would likely be significant job losses:

5 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 31. See Clause 25.

6 Photography Studies College (Melbourne), *Submission 38*; Churchill Education, *Submission 18*; Estrada College *Submission 36*; and Harvest Education Technical College, *Submission 48*, p. 1.

7 Churchill Education, *Submission 18*, p. 1.

8 Photography Studies College (Melbourne), *Submission 38*, p. 3.

9 Photography Studies College (Melbourne), *Submission 38*, p. 3.

It is not possible to change structure swiftly without an immediate and significant impact on our business that educates many students and supports many Australian families. Presently, we have 72 staff employed in our Registered Training Organisation. And we are teaching over 8,500 VET FEE HELP students... If these changes are to pass, we anticipate that it would be necessary to make a large number of redundancies before the end of the year. We support positive reform that focusses on quality training and employment outcomes. However, permitting body corporates as trustees is a measure that will have no negative impact on the scheme or the services offered to students, and standards maintained by our Registered Training Organisation.¹⁰

4.12 Australian College for Private Education and Training (ACPET) noted that while it was working with the Department on transitional arrangements for impacted members, it did not seem appropriate to exclude a specific corporate arrangement regulated by ASIC. ACPET therefore recommended the provision excluding trustees be removed from the bill.¹¹

4.13 Harvest Education Technical College considered that taking into account its history of compliance, quality course provision and sound financial status, the College should be not prohibited from operating.¹² Accordingly, the College suggested that the Minister be granted discretion to allow a trust to be an approved course provider, so long as the trust had demonstrated that it did not pose a financial risk:

Proper consideration should be given to enabling existing businesses, such as Harvest Education Technical College, to continue operating through their existing structures provided they are financially sound and satisfy the other criteria contemplated by the legislation. There are a variety of ways that that outcome might be achieved. For example, rather than trustees being prohibited from being approved course providers, the Minister instead could be given discretion in respect of the structure of an approved course provider, provided that he is satisfied that it does not pose an unsatisfactory financial risk to the Commonwealth and to students.¹³

4.14 Churchill Education recommended that the clause should be removed from the bill, or alternatively, a two year grace period be allowed until 31 December 2018 to allow trustees sufficient time to manage the transition to a new corporate structure.¹⁴

4.15 In her summing up speech, the Assistant Minister for Vocational Education and Skills outlined the actions already taken by the Government to prevent new

10 Estrada College, *Submission 36*, p. 1. The same observation was made by Harvest Education Technical College, *Submission 48*, p. 3.

11 Australian College for Private Education and Training, *Submission 23*, p. 8.

12 Harvest Education Technical College, *Submission 48*, p. 1.

13 Harvest Education Technical College, *Submission 48*, p. 3.

14 Churchill Education, *Submission 18*, p. 2.

providers from being trustees and the consultations undertaken by the department with respect to existing providers which are trustees:

On the issue of Trusts, the government changed the VET FEE-HELP legislation last year to require all new approved providers to not be a trust. This was to reduce financial risk to the Commonwealth and increase financial transparency. Although this requirement was not applied to existing VET FEE-HELP providers that had already been approved, some have already sought information on how to address this requirement, no doubt expecting the change in the redesigned program. Where it is clear that the same entity continues, but no longer acts in the trustee capacity, it will not change the department's ability to assess the entity's track record as a training provider. The department has briefed the stakeholder bodies TAFE Directors Australia (TDA) and the Australian Council for Private Education and Training (ACPET) on this issue, and will provide this advice to any organisations requesting information. Any concerned provider can contact ACPET, TDA or the department to discuss their individual situation.¹⁵

Approved course provider charge

4.16 The VET Student Loans (Charges) Bill permits an approved course provider charge to be imposed on approved course providers. The amount of the charge will be prescribed by regulation or determined in accordance with a method prescribed by regulation. It is anticipated that the amount of the charge will be determined with regard to the size of the provider.¹⁶ The regulations may provide for exemptions from the approved course provider charge.¹⁷

4.17 The Explanatory Memorandum to the VET Student Loans Bill (Charges) Bill states that the charge's purpose is 'to fund the VET student loan program including the costs incurred by the Commonwealth in administering the program, data collection and analysis as well as compliance and enforcement activities'.¹⁸

4.18 The lack of detail concerning this charge was of concern for some participants. For example, Mr Mark Warburton, a former public servant and former Principal Analyst for Universities Australia, said:

The full details of the proposed tax are not available, but will be in regulation. The bill documentation does not specifically state if these regulations will be disallowable, though I understand that is usual practice for most legislative instruments. The introduction of the tax is not covered in the Regulation Impact Statement for the new VET Student Loan scheme.

15 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 19 October 2016, p. 91.

16 VET Student Loans (Charges) Bill 2016, *Explanatory Memorandum*, p. 3 and p. 5.

17 VET Student Loans (Charges) Bill 2016, *Explanatory Memorandum*, p. 5.

18 VET Student Loans (Charges) Bill 2016, *Explanatory Memorandum*, p. 1.

The level of the proposed tax and the full range of factors that might contribute to determining its level is not clear.¹⁹

4.19 ACPET was concerned about the lack of consultation before the introduction of the charge, stating the charge was not:

...canvassed with industry during the VFH redesign consultations and the details have not been announced. This measure comes in addition to significantly reduced loan caps and will further erode the capacity of providers to deliver to quality benchmarks. The application of the tax to only private providers is anti-competitive.²⁰

4.20 Navitas held the same concerns, and recommended that the charge not be supported. However, if it were to be imposed, Navitas suggested that it be equally applied to public and private VET providers.²¹

4.21 Mr Warburton suggested that given the purpose of the tax to fund the loan program, 'it is unclear why a similar tax would not also be contemplated for the loans schemes in the higher education sector'.²² However, Mr Warburton cautioned about the appropriateness of such a tax on either the VET or high education sectors:

...I have some concerns about its [the tax] appropriateness for the regulation of Australia's tertiary sector. The tax is a charge which is likely to be passed onto students in the form of increased course fees. To the extent that this occurs, it will be paid upfront by VET students in any circumstance where their fees exceed the VET Student Loan limits or their course is not an eligible course.²³

Third party training providers

4.22 The VET Student Loans Bill introduces a requirement that to be eligible for a VET student loan, the course must be provided by an approved course provider and delivered by that provider. Alternatively, the course may be delivered for the approved course provider by one or more of the following:

- a different approved course provider;
- a person or body that has been accredited by Tertiary Education Quality and Standards Agency, the Commonwealth's higher education regulator; and/or

19 Mr Mark Warburton, former public servant and former Principal Analyst for Universities Australia, *Submission 32*, p. 3.

20 Australian College for Private Education and Training, *Submission 23*, p. 9.

21 Navitas, *Submission 35*, p. 4.

22 Mr Mark Warburton, former public servant and former Principal Analyst for Universities Australia, *Submission 32*, p. 3.

23 Mr Mark Warburton, former public servant and former Principal Analyst for Universities Australia, *Submission 32*, p. 3.

- a person or body that the Secretary has approved in writing to deliver the course.²⁴

4.23 This provision will mean that approved course providers may no longer outsource the delivery of their courses (or part of their courses) except to those bodies referred to above.²⁵

4.24 This prohibition on the use of third party training providers was of concern for some inquiry participants. For example, the Study Group argued that there was an 'absolute need' for approved course providers to be able to use third party training providers.²⁶ The Study Group explained that:

The main reason for engaging third party providers is the specialist skill set they bring, the ability to support students in different geographic locations otherwise underserved the ability to support different delivery models and with specialist support or electives and sometimes a simple case of resource management.²⁷

4.25 The Group noted that the second reading speech had indicated that individual subcontractors engaged to provide specialist expertise for part of a course will be allowed on a case by case basis. However, no information has been forthcoming as to how this will be determined.²⁸

4.26 Swinburne University of Technology was also concerned about the prohibition on this party training providers:

[T]he restrictions on third party training arrangements in the legislation will erode successful industry partnerships that involve high quality public providers of vocational education work with employers, for example Swinburne's partnership with Siemens Ltd to deliver an Industry 4.0 apprenticeship, an initiative championed and facilitated by the Federal Government.²⁹

4.27 Notably, Swinburne expressed particular concern that its online delivery unit would be unable to continue operating:

On its face, section 15 of the Bill would simply no longer permit Swinburne Online to deliver courses on behalf of Swinburne University of Technology. It would force Swinburne Online to seek an alternative legal basis for delivering Swinburne courses, possibly through seeking registration as a Registered Training Organisation in its own right... As a public university with the authority to self-accredit courses granted by the Tertiary Education Quality and Standards Authority Act, we submit that the

24 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 25.

25 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 25.

26 Study Group, *Submission 51*, pp. 11–12.

27 Study Group, *Submission 51*, p. 11.

28 Study Group, *Submission 51*, pp. 11–12.

29 Swinburne University of Technology, *Submission 31*, p. 3.

Bill should make provision for a course to be provided by a person or body that is delivering the course for a provider authorised by TEQSA to self-accredit its courses of study.³⁰

4.28 Churchill Education explained that the use of third party training providers was a common occurrence within the VET industry:

The practice of using third party contractors is widely exercised in the Vocational Education sector by both TAFEs and the private sector. In part, the use of contract trainers allows for trainers to also have other jobs in the industry, which ensures they maintain industry currency, in both skills and knowledge, and promotes higher educational outcomes. Churchill Education uses four contract trainers, whose work was audited by ASQA this year, with no compliance issues identified.³¹

4.29 Churchill Education recommended that the bill be amended to allow the course delivery to be completed by third party training providers, with the approved course provider accountable for the work of the third party trainers.³²

Committee view

4.30 Given the chequered history of some third party providers under the VET FEE-HELP scheme, the committee supports these aspects of the bills that greatly strengthen the regulatory framework for course providers. This is achieved through tougher eligibility requirements to qualify as an approved course provider, a prohibition on trustees acting as approved course providers and the introduction of a requirement that to be eligible for a VET student loan, the course must be provided and delivered by an approved course provider. In implementing these changes the committee encourages the Minister to ensure industry partnerships which benefit students and enhance the quality of training are supported.

4.31 Each of these elements combine to make a stronger VET system that reduces the ability of students to be the victims of a small number of unscrupulous providers, protects the quality of courses offered and ensures that the reputations of high quality VET providers are not sullied as they have been in the past.

4.32 The committee notes that some inquiry participants were concerned by the prohibition on trustees being approved course providers. The committee believes that the Minister for Education and Training, together with the department, should closely consider these concerns during the finalisation of the proposed reforms.

4.33 On the issue of trusts the committee also notes that the department has had held discussions with several VET peak bodies and is able to provide advice to any organisation regarding their individual situation.

30 Swinburne University of Technology, *Submission 31*, pp. 3–4.

31 Churchill Education, *Submission 18*, p. 4.

32 Churchill Education, *Submission 18*, p. 4.

4.34 Further, the committee acknowledges that the proposal to levy an approved course provider charge on approved course providers provoked a mixed response, most notably in regard to the lack of detail currently available on the charge.

4.35 The committee notes that the amount of the charge will be prescribed by regulation and is likely to be commensurate with the size of the provider. The regulations may also provide for exemptions from the approved course provider charge.

4.36 The committee considers that the levying of a charge on approved course providers is an appropriate option for the government to recoup some of the costs incurred in administering and monitoring the VET student loans program. In determining the amount and application of the levy, the committee encourages the Department of Education and Training to consult with key stakeholders to ensure that the charge is implemented on a fair and equitable basis, taking into account any impact on students.

Agents, brokers and marketing

4.37 The VET Students Loans Bill prevents providers from engaging third parties, such as agents or brokers, to undertake activities on the provider's behalf such as enrolling students for whom the tuition fees will be covered by a VET student loan. This provision will ensure providers themselves are fully responsible for any engagements with the students regarding their student loans.³³

4.38 The Consumer Law Action Centre (CALC) supported this provision but contended that the provisions could be strengthened:

Section 49 of the Student Loans Bill is a broad provision which should provide regulators with the ability to enforce the ban. However, without an associated ban on incentivised selling practices, Consumer Action remains concerned that VET Student Loans providers could move sales agents 'in-house' with no real change to the way prospective students are identified, targeted and recruited. The sector has been very adept at circumventing reforms in the past to maintain their market position... Staff on commission-based payment structures are often highly trained and motivated to sell. The very nature of the way they are paid means they are not concerned that the good or service is appropriate or affordable for the consumer, but simply that the sale be closed. Vocational education should be about education, not sales.³⁴

4.39 Mr Mel Koumides, the Chair of the Australian Council of Private Education and Training (ACPET) also argued that the ban did not extend far enough, highlighting that some providers may seek to circumvent the proposed restrictions:

We also welcome the banning of brokers, but I would suggest that that does not go far enough. ACPET has received calls from brokers, delighted that they are not banned. They have simply read the current directions as being

33 VET Student Loans Bill 2016, *Explanatory Memorandum*, p. 41. See Clause 49.

34 Consumer Law Action Centre, *Submission 22*, p. 2.

banned from the enrolment and course delivery process but not before or after that. So if brokers are to continue then we recommend strong controls and transparency on commissions and other matters to ensure that that does not compromise the new VET general loan system going into the future.³⁵

4.40 Ms Jeannie Rea, the National President of the National Tertiary Education Union (NTEU), was in favour of minimising the influence of brokers in the sector. Ms Rea further suggested that the establishment of an ombudsman would be an effective complaints mechanism to oversee 'in-house' activities:

I think getting rid of brokers is a very good start, though. I think then it does become a matter of what is seen to be appropriate behaviour in-house as well, which I would agree is quite difficult to control. But there certainly are measures that one could put around it...the ombudsman would be a help there because then you would have a complaints mechanism, but it is always better not to have something to complain about. Then, as to the providers themselves, there should also be standards of behaviour and so on...But I certainly think that getting rid of the third-party brokers would be a good start.³⁶

4.41 Mr Scott Gregson, Executive General Manager of the Consumer Enforcement Division at the Australian Consumer and Competition Commission (ACCC), contended that moves to limit the use of agents and brokers was likely to reduce the number of complaints received about unprincipled behaviour:

We saw a system that had a focus on entitlement as opposed to looking at quality and ensuring that service was delivered. We saw a system that lent itself to third-party marketers underwritten by commissions and incentives... Having that [marketing] direct through companies rather than through third-party marketers, in our experience, will dramatically reduce the instances. Just to give an example: when we looked at energy door-to-door sales through third-party marketers, following our extensive actions in that industry many stepped away from third-party marketers, and we saw a dramatic reduction in complaints. Whether it has gone far enough, I have to say we have not terribly looked at the policy as it has come through. I have had a quick look at the announcements, and they seem to tick many of the boxes.³⁷

4.42 The CALC recommended the inclusion of a prohibition of commissions, bonuses or incentives that can be paid for the enrolment of students into courses with a VET Student Loan.³⁸

35 Mr Mel Koumides, Chair, Australian Council of Private Education and Training, *Committee Hansard*, 25 October 2016, p. 28.

36 Ms Jeannie Rea, National President, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, pp. 41–42.

37 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, pp. 25–26.

38 Consumer Law Action Centre, *Submission 22*, p. 2.

4.43 Similarly, the VET Student Loans Bill strengthens provisions relating to the marketing of VET courses. This includes clauses relating to:

- misrepresenting VET student loans;
- offering certain inducements;
- engaging in cold calling;
- use of third party contact lists, and
- other marketing requirements.³⁹

4.44 Once again the CALC supported the new provisions, and recommended that the government further strengthen the provisions:

It is critical that this prohibition also covers situations where the company or person that receives the personal details is linked to or is the same as the person who contacts, markets or enrolls people into courses... [We recommend that the government] strengthen the prohibitions in sections 62 and 63 of the VET Student Loans Bill by also banning an approved course provider from marketing or promoting a course to a person whose details they have obtained for another purpose, for example, as part of an application for a job.⁴⁰

4.45 Churchill Education believed that the bill should 'prohibit any third party from enrolling students with a VET Student Loan provider, regardless of whether marketer or trainer'.⁴¹

4.46 However, other submitters were less convinced of the need to ban agents and brokers. For example, in her personal submission to the inquiry Ms Mary Ancich considered that approved course providers should be permitted to use agents and brokers so long as the course provider is 'totally responsible for recruitment practices and enrolments. No student should be able to be enrolled unless they have been personally vetted for suitability by the RTO'.⁴²

4.47 The Study Group was also unsupportive of the proposals to ban brokers and marketing agents, suggesting that their use should be allowed subject to strict guidelines and penalties for non-compliance:

Study Group recognises the unscrupulous practices of some which are well documented and agrees that they should be banned from the industry. It does not mean though that the use of brokers or agents should be banned in their entirety.

Students come to Study Group via a number of different channels and brokers and agents form a vital role in this facilitation. To ban them entirely

39 VET Student Loans Bill 2016, *Explanatory Memorandum*, pp. 48–49. See Division 5, clauses 60–64.

40 Consumer Law Action Centre, *Submission 22*, p. 3.

41 Churchill Education, *Submission 18*, p. 4.

42 Ms Mary Ancich, private citizen, *Submission 3*, p. 2.

is an overreaction. Study Group is willing to work with the Government to ensure the continuation of the use of brokers and marketing agents but with strict guidelines with appropriate penalties for non-compliance.⁴³

Committee view

4.48 The committee supports these aspects of the bills that provide greater regulation on the use of agents, brokers and marketers. Under the current scheme, vulnerable students have been taken advantage of, frequently to their significant financial detriment. The bills represent a clear opportunity to provide students with greater protection. The committee encourages the Minister for Education and Training to consider the measures proposed by organisations such as the CALC to the further strengthen students' protections and to discourage the circumvention of the new VET loan arrangements by a small number of unscrupulous providers.

Transition to the new scheme

4.49 Another issue related to the transition arrangements to the new scheme. As noted in chapter one, the Consequential and Transitional Bill provides for the following timeframes for the transition to the new scheme:

- continued access to existing VET FEE-HELP students through to the end of 2017 provided they were enrolled with existing VET FEE-HELP providers in a course before 1 January 2017, in receipt of VET FEE-HELP for that course and are actively training;
- continued access to existing VET FEE-HELP providers approved for VET FEE-HELP before 4 October 2016 for those continuing students; and
- the closing of VET FEE-HELP to new providers from 4 October 2016 and to new students from 1 January 2017.⁴⁴

4.50 The Australian Chamber of Commerce and Industry (ACCI) emphasised the critical importance of the three bills being passed as soon as possible to allow for implementation of the new scheme for 2017:

The impact VET FEE-HELP had on the reputation of VET, the distress caused to students that have been poorly served by a few 'dodgy' providers, and the budgetary impact of the VET FEE-HELP scheme are strong reasons why the Government needs to act immediately in securing the passage of the VET Student Loans legislation... [The bills] need to pass with minimal delay to ensure certainty for 2017. Parliament should commit to swift action to amend legislation as necessary and pass the Bills to ensure certainty for providers, industry, and students for 2017.⁴⁵

43 Study Group, *Submission 51*, pp. 10–11.

44 VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016, *Explanatory Memorandum*, pp. 6–7.

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

4.51 Master Builders Australia, Ai Group and BCA were also adamant that the Parliament should pass the bills as soon as possible.⁴⁶

4.52 Although the government has clearly articulated the timeframes for the transition to the new scheme, some participants were concerned that insufficient time had been allocated to VET providers to ensure a smooth transition. Others were concerned about the potential impact on current or recently enrolled VET students who would be affected by the changes.

4.53 In regard to the impact of the transition for providers, ACPET expressed concern over the short time for existing private VET providers to seek provisional approval to participate in the new scheme, or to plan future operations:

While Clause 27 will enable Table A and B providers [higher education providers as listed in the *Higher Education Support Act 2003*], TAFEs and other government owned providers automatic entry to VET Student Loan, existing VET FEE-HELP private providers will need to seek provisional approval to participate in VET Student Loan during the period 1 January to 30 June 2017. These providers will then, during the provisional approval period, be required to apply again for formal approval under new streamlined eligibility requirements... At the time of writing no provisional application process had been released – less than 3 months from the start of the new academic year for some providers. They are unable to market programs, plan resources or staffing. There is almost no time for private providers to plan and fund the necessary infrastructure required to support course delivery. This will cause considerable turmoil and ongoing uncertainty.⁴⁷

46 Master Builders of Australia, *Submission 42*, p. 2; Ai Group and Business Council of Australia, *Submission 43*, p. 2.

47 Australian College for Private Education and Training, *Submission 23*, pp. 8–9. Similar concerns were also raised by Navitas, *Submission 35*, pp. 4–5 and the Academy of Interactive Entertainment, *Submission 16*, p. 3.

Under the *Higher Education Support Act 2003*, subdivision 16-B, Table A providers include: Central Queensland University; Charles Darwin University; Charles Sturt University; Curtin University of Technology; Deakin University; Edith Cowan University; Federation University Australia; Griffith University; James Cook University; La Trobe University; Macquarie University; Monash University; Murdoch University; Queensland University of Technology; Royal Melbourne Institute of Technology; Southern Cross University; Swinburne University of Technology; The Australian National University; The Flinders University of South Australia; The University of Adelaide; The University of Melbourne; The University of Queensland; The University of Sydney; The University of Western Australia; University of Canberra; University of Newcastle; University of New England; University of New South Wales; University of South Australia; University of Southern Queensland; University of Tasmania; University of Technology, Sydney; University of the Sunshine Coast; University of Western Sydney; University of Wollongong; Victoria University; Australian Catholic University; and Batchelor Institute of Indigenous Tertiary Education.

Table B providers include: Bond University; The University of Notre Dame Australia; MCD University of Divinity and Torrens University Australia.

4.54 In order to address these concerns, ACPET recommended that the provisional and formal application process for existing providers be merged with the Department granting automatic approval for providers without significant adverse compliance actions that are meeting provisional contractual requirements.⁴⁸

4.55 The Sydney Film School argued that given the significant extent of the changes, the government should provide additional time for implementation once legislation has been passed so that providers have time to adjust to the new scheme. The School suggested that the government defer the start date of the legislation, once enacted, to 1 July 2017 or 1 January 2018.⁴⁹

4.56 Concerns were also raised about the impact of the transition on students, as outlined by the Academy of Interactive Entertainment:

There is little time for alternative funding arrangements to be made for students enrolling in courses starting in 2017. There are no details available for the banking industry to provide VET loan packages, to help fund the gap between what the government new VET Student Loan scheme will pay for, and what the cost of a particular course is. In addition, families and students who have applied for their chosen courses are now in a position where they have not been able to budget for funding the course fees on their own, as they were anticipating being able to access VET-FEE HELP.⁵⁰

4.57 As a direct example of the impact of the transition, Kairos Christian College explained the potential effect for two of its students:

We have students studying two year programs in the Diploma of Music and they will lose support as these courses are only till Dec 2017 and currently their courses end only July 2018. If the proposed bill is passed in parliament we have no backup to support these students...⁵¹

4.58 TAFE Directors emphasised the importance of managing the transition well to ensure that 'no bona fide student is disadvantaged'⁵²:

Students particularly at risk in the transition are those recently enrolled, including through State tertiary admission centres for the 2017 academic year, and those with study patterns that may reasonably take longer than one year to complete. TDA notes that the Australian Qualifications Framework specifies a duration of 18 months to two years for Diploma courses. There will also be students who, through no fault of their own, encounter an unexpected delay in their ability to complete their course. It is important that transition arrangements are sufficiently flexible to meet

48 ACPET, *Submission 23*, p. 9.

49 Sydney Film School, *Submission 15*, pp. 4–5.

50 Academy of Interactive Entertainment, *Submission 16*, p. 3. Similar concerns were raised by Navitas, *Submission 35*, p. 5; Churchill Education, *Submission 18*, p. 3; and Jillian Pryor, *Submission 41*, p. 5.

51 Kairos Christian College, *Submission 13*, p. 1.

52 TAFE Directors, *Submission 26*, p. 7.

student needs by extending VET FEE-HELP loan access beyond 31st December 2017 and not causing unnecessary distress.⁵³

4.59 ArtsPeak advocated for a delay in the implementation of the bills pending further consultation given the extent of the proposed changes:

These changes amount to a huge shift in vocational training and the future priorities of the Australian economy and therefore it is imperative that the community and the arts and creative sectors are consulted and given adequate time to respond.⁵⁴

4.60 The Ai Group and BCA suggested that current students should be allowed to complete their study even if their course is not on the new eligible course list:

Ai Group and the Business Council therefore propose that a minor amendment is made to the legislation that explicitly allows for students to continue in their course of study until they have completed, or the end of 2018, even if the course is not on the new approved course list. This clause would only apply to students currently enrolled under the VET FEE-HELP scheme.⁵⁵

4.61 Other inquiry participants also suggested that the government honour the loan contracts already entered into with students in the current VET FEE-HELP program for the full duration of the course, or that transition arrangements for students in the current loans program be extended to at least December 2018.⁵⁶

Remediation of debt

4.62 The Consumer Action Law Centre (CALC) argued that the transition to the new scheme represented an opportunity to assist Australians carrying debts that were accrued due to the 'unacceptable conduct' of a provider or broker. CALC suggested that a scheme to remediate debt 'would recover much needed funds for the Commonwealth and erase wrongly incurred VET FEE-HELP debts'.⁵⁷

4.63 The amount of debt unfairly incurred by students in the VET FEE-HELP scheme is vast. Dr James Hart, the Group Manager of the Skills Programs at the Department of Education and Training, advised that a newly formed unit within the department had been able to remediate student debts of \$13.2 million:

Since May of this year we have had a complaints handling unit. We have been able to get the remission of \$13.2 million in debt, so that is the student

53 TAFE Directors, *Submission 26*, p. 7.

54 ArtsPeak, *Submission 45*, p. 1.

55 Ai Group and Business Council of Australia, *Submission 43*, p. 6.

56 See for example Jillian Pryor, *Submission 41*, p. 5. Navitas, *Submission 35*, p. 5; and Churchill Education, *Submission 18*, p. 3.

57 Consumer Action Law Centre, *Submission 22*, pp. 3–4.

will not have the debt and the Commonwealth will get that paid back, and that equates to around 1,500 debts.⁵⁸

4.64 In addition, Dr Subho Banerjee, the Deputy Secretary for Skills and Training at the Department of Education and Training, advised that the Department is currently co-party to four actions with the ACCC to recover the Commonwealth's expenditure from providers. In addition, there are 28 other matters being audited.⁵⁹

4.65 The Hon Michael Lavarch, Commissioner for Risk, Intelligence and Regulatory Support at the Australian Skills Quality Authority said that as a result of their 2015 audit program, four providers had their registrations cancelled. These four providers had VET FEE-HELP loan entitlements from students amounting to about \$288 million.⁶⁰

4.66 Mr Lavarch also stated that there were a further ten matters that had an insufficient evidence base to support the cancellation of registration but that nonetheless warranted action:

In another 10 instances we decided that we did not have an evidence base which justified the imposition of sanctions in terms of a cancellation, suspension or some other sanction, but we were sufficiently concerned about what we found when we looked at these 10 providers to place some conditions on the providers and impose an enhanced monitoring regime. The conditions that we imposed went to the supply of data and information to us, which would be over and above the normal supply of data and information that an RTO supplies. In the case of those 10 providers, one of them has subsequently gone into liquidation, so there are still nine in play. We are doing follow-up work with those providers as part of our 2016 [audit] program.⁶¹

4.67 Mr Gerard Brody, the Chief Executive Officer of CALC said that the transition to the new scheme represented an important opportunity to tackle these 'legacy issues' of the VET FEE-HELP scheme by remediating unfairly accrued debt:

Given what we know about enrolment practices that were engaged in by significant players in the sector, including door-to-door sales in lower socioeconomic regions and cold-calling jobseekers, coupled with the disgracefully low completion rates, we surmise that tens of thousands of Australians, and maybe more, were enrolled in courses as a result of what the bill calls 'unacceptable conduct'. As widely accepted, these Australians

58 Dr James Hart, Group Manager, Skills Programs Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 64.

59 Dr Subho Banerjee, Deputy Secretary, Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 114; Dr James Hart, Group Manager, Skills Programs Department of Education and Training, *Committee Hansard*, 25 October 2016, p. 64.

60 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 51.

61 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 52.

are now carrying large debts, with nothing to show for it. Tackling the legacy issues must be of the highest priority for government. As policymakers, you cannot simply accept there is a problem and legislate to reform for the future and not be prepared to remedy those exploited by the problem you are seeking to fix.⁶²

4.68 To achieve debt remediation, CALC made a number of recommendations, as follows:

- the Department of Education and Training contact all students with incomplete courses to determine whether the enrolment was as a result of 'unacceptable conduct', with re-crediting of the student's FEE-HELP balance to immediately follow;
- amend section 25(2) of the VET Student Loans Bill 2016 to include a requirement for an approved course provider to appoint an independent third party to assess all previous VET FEE-HELP enrolments by that provider, and refund/re-credit any loan deemed to be a result of 'unacceptable conduct';
- That the meaning of 'unacceptable conduct' in section 71(2) in the bill, which is to be defined by the rules, include conduct that contravenes the Australian Consumer Law; and
- amend section 68 to remove the proposed time limitation of 12 months for the re-crediting of a FEE-HELP balance.⁶³

Committee view

4.69 Given the gross abuse of the current VET FEE-HELP system by a small number of unscrupulous providers, the committee is strongly of the view that the bills should be implemented as soon as possible.

4.70 However, in order to not disadvantage currently enrolled students, the government should consider honouring the loan contracts already entered into with students in the current VET FEE-HELP program for the full duration of the course, or that transition arrangements for students in the current loans program be extended until December 2018.

Reporting and transparency

4.71 In order to avoid the failures of the VET FEE-HELP scheme, it was argued that the new scheme should have an emphasis on reporting and transparency to ensure that any issues with the scheme are identified as earlier as possible to enable corrective action to be taken. As observed in Chapter 2, Ms Rea highlighted that slow access to data was one of the factors that contributed to the ongoing abuse of the VET FEE-HELP scheme:

62 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 25 October 2016, p. 6.

63 Consumer Action Law Centre, *Submission 22*, pp. 3–5.

So it was not until the actual data started to come out—which started to show the explosion in enrolments, and the rapidity of that started to show, the enrolments and of course the amount being taken out in loans—that it became clear there was something more than a few bad eggs, a few rorters, a little bit of gaming going on here and there.⁶⁴

4.72 Mr Lavarch similarly observed that under the VET FEE-HELP scheme, ASQA had limited access to data on the scheme which inhibited its ability to undertake investigations in the VET sector:

We had relatively little information about performance under the VET FEE-HELP program. We are not the administrator of the program. Our providers do not engage with us as approved VET FEE-HELP providers. Information such as enrolment numbers, growth in enrolment, percentage of loan increase and the like is not supplied to ASQA. I think the department will say in its evidence that the regime around that was not particularly adequate, as events have turned out. It seemed to have been adequate in the higher education space from which the scheme has been borrowed to be brought into the VET space but was not adequate in the VET space. For our 2016 [audit] program we have worked closely with the department to look at the data sets that they have had available to compare with the data sets that ASQA has available to select the providers to be examined.⁶⁵

4.73 Accordingly, the ACCI argued that it was of the 'utmost importance' that the new loans scheme promoted transparency:

There are many reasons for the failure of the VET FEE HELP scheme, but the faults in program design and oversight could have been identified earlier if the Minister and department were required to report on a regular basis concerning the utilisation of the scheme. It is of utmost importance that the replacement program has built in requirements for greater transparency including the regular reporting of real-time data to better monitor the progress of the new program.⁶⁶

4.74 Ms Jenny Lambert, ACCI's Director of Employment Education and Training, emphasised this during her appearance before the committee:

A really important message is that the legislation must require transparency... We would add to that list that was proposed a list of qualifications as well. As we have seen from the VET FEE-HELP situation and, indeed, the evidence the previous witnesses pointed to about the reforms that happened in Victoria, you cannot predict 100 per cent of what providers are going to do. So you try and get the system design as good as possible, and then you have got to monitor it. Part of the monitoring has to reveal it to others to make it more transparent so that others can see what is

64 Ms Jeannie Rea, National President, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, p. 40.

65 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 52.

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

going on. One of the downfalls with the VET system at the moment is that the data takes so long to get in the public domain through the system.⁶⁷

4.75 Mr Lavarch concurred that regular reporting and transparency must be embedded in the new system:

It will be very important that there is appropriate monitoring and visibility. One of the weaknesses is that it seems like people were scrambling six months or 12 months later to realise that a provider was sitting there with \$3,000 worth of loan and you blinked and they had \$30 million worth of loan: 'Oh, I've discovered that six months later.' That is, again, a recipe for unfortunate outcomes, which is what we received.⁶⁸

4.76 The VET Student Loans Bill specifies that there may be ongoing information requirements for the purposes of ensuring that approved course providers are complying with the Act, and that the Secretary of the Department of Education and Training has access to information and documents related to the operation of the Act.⁶⁹

4.77 These ongoing information requirements may require an approved course provider to provide the Secretary with a broad range of information relating to:

- the provider's financial position;
- courses of study provided by the provider and the delivery of those courses;
- the provider's students, including information and documents relating to enrolment, attendance, completion rates, education outcomes and existing and projected enrolment numbers;
- tuition fees charged by the provider;
- changes in the provider's management or governance arrangements; and
- information the provider has collected for the purposes of, or in relation to, applications by students for VET student loans.⁷⁰

4.78 Notably, in addition to these requirements for providers to submit information, the VET Student Loan Bill stipulates that the Secretary of the Education and Training Department can cause an audit of an approved course provider to be conducted to determine whether the provider is complying with the Act, and/or one or more students enrolled by the provider are genuine.⁷¹ Mr Lavarch explained that as a consequence of this provision it will be far easier for ASQA to monitor the activities of approved course providers:

67 Ms Jenny Lambert, Director, Employment Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 25 October 2016, p. 44.

68 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 56.

69 VET Student Loans Bill 2016, cl. 52.

70 VET Student Loans Bill 2016, cl. 52(2).

71 VET Student Loans Bill 2016, cl. 45.

In essence, we will stand in the shoes of the department as their agent to undertake the audit, but the other important change, which is in the consequential amendments bill, is that it makes a condition of registration for an RTO to be compliant with both the run-out of the VET FEE-HELP program and the VET student loan program going forward. That will enable ASQA when we do our audits, whether we are in there wearing the hat of the department and doing a departmental audit pursuant to the VET student loan legislation or visiting the provider wearing our own hat under our own legislation—this change to our legislation will enable us to look at compliance against the new VET student loan and the run-out of the VET FEE-HELP program.⁷²

4.79 Mr Lavarch stated: 'We think that is a good outcome, and it is something which ASQA advocated for in its consultations with the department when the legislation was being developed'.⁷³

Committee view

4.80 The committee believes that better reporting arrangements and greater transparency, especially in relation to data, will be central to restoring faith in the VET sector. Better and timely access to data will greatly minimise the risk of a reoccurrence of the widespread reporting and abuse that occurred under the previous scheme.

4.81 The committee encourages the Minister for Education and Training to provide annual updates to the Parliament on the VET student loans arrangements including information on individual providers and the courses they provide.

4.82 The enhanced ability of ASQA to investigate matters in the VET sector provides further protection for students and course providers that any misbehaviour in the sector will be quickly identified and rectified.

4.83 An additional protection for the sector will be the establishment of a VET student loans ombudsman. This measure is discussed in the final section of this chapter.

VET Ombudsman

4.84 In her second reading speech, the Assistant Minister for Vocational Education and Skills advised that in order to further strengthen student protections the government intends to establish a VET student loans ombudsman.⁷⁴ No further detail on this proposal has yet been forthcoming.

72 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, pp. 52–53.

73 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 50.

74 The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Skills, Second reading speech, *House of Representatives Hansard*, 13 October 2016, p. 12.

4.85 Mr Lavarch observed that Australia currently has a patchy framework to resolving student issues:

Australia seems to have a relatively fragmented structure in terms of the position of access to ombudsman support to resolve student matters. There is the international student ombudsman, which covers students who are here on a student visa. That is a Commonwealth body. If I happen to be studying with a public institution, I will have a pathway that takes me to one of the state or territory ombudsmen. If I happen to be in some states—for instance, Queensland or South Australia—positions called training advocates exist in those states, which play some role. If I am in another jurisdiction, there may not be that particular structure.⁷⁵

4.86 The establishment of a VET student loans ombudsman was a widely supported action. For example, Mr Gregson of the ACCC was of the view that the establishment of a single point of complaint, be it an ombudsman or a similar office, would be a positive development to mitigate risk:

There is no doubt that, where issues arise across industries, to have one common area for complaints to be compiled, trends to be identified and either regulatory action taken or referred assists with dealing with issues sooner than later. Whether that is achieved through current infrastructure, whether it is achieved through an ombudsman or other lobbyists in the area, they are all mechanisms in which you could actually have the compilation of, and the greater oversight of, particular industries at risk.⁷⁶

4.87 The CALC described the establishment of an ombudsman scheme as 'a significant step to resolve disputes involving the VET sector and students as they arise'.⁷⁷

4.88 The CALC further outlined support for the establishment of an ombudsman:

An ombudsman will assist the sector to rebuild its reputation and the trust and confidence of students, parents and employers. The fact that the Government is acting quickly to establish this service is welcomed, as accessible and free dispute resolution is complimentary to a rigorous consumer protection environment.⁷⁸

4.89 Mr Brody of CALC, advocated for the establishment of an industry ombudsman scheme for the VET sector.⁷⁹ He explained why the Centre supported an industry based scheme, which rather than any alternative approach:

75 Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support, Australian Skills Quality Authority, *Committee Hansard*, 25 October 2016, p. 53.

76 Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division, Australian Consumer and Competition Commission, *Committee Hansard*, 25 October 2016, p. 25.

77 Consumer Action Law Centre, *Submission 22*, p. 6.

78 Consumer Action Law Centre, *Submission 22*, p. 6.

79 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 25 October 2016, p. 9.

Firstly, industry ombudsman schemes are independent in the sense that the person appointed is not subject to the direction of industry. They are funded by industry, so therefore it provides, I think, a general incentive for industry to prevent complaints from occurring because they do not want to be subject to the costs of those complaints. We also think that industry ombudsman schemes tend to be more flexible. They can adapt their rules more easily without having to come back to the legislature every time and therefore respond to changes in the marketplace. Industry ombudsman schemes also have a role in systemic mispractice: where they identify one complaint that may have happened to many other people, they can take steps to ensure that redress is provided to all and can also provide that information to regulators who can then take enforcement action if they deem that is necessary.⁸⁰

4.90 Mr Brody continued to outline the six key principles contained in the Australian Treasury's 'Benchmarks for Industry-based Customer Dispute Resolution' necessary for a successful industry ombudsman scheme:

The federal Treasury released, in 2015, principles for industry ombudsman schemes, and that means they are subject to six benchmarks. Independence is core amongst those, but they also include accessibility, to ensure that it costs nothing to take a complaint there; that they are proactive around more vulnerable members of the community; they include accountability, to ensure that they report back to the public on issues and complaints that they have seen; and they include effectiveness, to ensure that the scheme covers the field in terms of the complaints that are generally going to apply in that sector. And our view is that, in the main, those schemes have worked well. In fact, we would say that industry ombudsman schemes have probably been the single biggest step forward in consumer protection in Australia in the last 20 years.⁸¹

4.91 TAFE Directors considered that the ombudsman should play a consumer awareness role in addition to a complaints handling role:

It is important that the role of this officer [the VET Ombudsman] be more than managing complaints. Rather the role should provide consumer awareness of the decisions of regulators, including from non-referring States, and consumer protection which to date has required the intervention of Commonwealth, State and community based consumer protection bodies.⁸²

4.92 ACPET welcomed the announcement of a VET student loans ombudsman, describing it as a positive development:

80 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 25 October 2016, pp. 9–10.

81 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 25 October 2016, p. 10; Consumer Action Law Centre, *Submission 22*, p. 6.

82 TAFE Directors, *Submission 26*, p. 6.

We have long advocated for an independent umpire for the sector to give students a better avenue to have their complaints resolved. An ombudsman also offers the vast majority of providers the protection of knowing that those who do the wrong thing will be weeded out.⁸³

4.93 The Academy of Interactive Entertainment was similarly supportive of the establishment of a VET ombudsman: 'One essential process is the appointment of a VET Ombudsman to protect and advocate for students who access these loans and the associated public awareness campaigns that are associated with this'.⁸⁴

4.94 However, the Academy expressed concern about the time necessary to establish the office and the lack of detail currently available on its powers and responsibilities:

The amount of administrative work required to effectively establish this important office is simply not possible prior to 1 January 2017, and without this in place, the entire system should be delayed.

Additionally, there is no legislative detail on the exact responsibilities of, and relationship between, ASQA, the Secretary and the Ombudsman or where the additional resources to manage and monitor the introduction of a new system will come from.⁸⁵

4.95 Dr Terri MacDonald, the NTEU's National Policy and Research Officer argued that the office should also be tasked with examining the higher education sector as well:

We are certainly supportive of an ombudsman... It is very important, though, that it has independence and that it has the ability to investigate not only VET but also higher education. That would make it quite big, so, of course, how you would manage that would have to be nussed out...⁸⁶

4.96 Mr Brody concurred that the remit of the ombudsman include all VET-related complaints, not just those relating to the VET Student Loans scheme.⁸⁷

Committee view

4.97 The committee strongly supports the establishment of a VET Ombudsman as an essential mechanism for the resolution of disputes in the VET sector.

4.98 The committee believes that the Government should be guided by the principles of ensuring that the Ombudsman is accessible to all VET students, and accountable through regular public reporting on the outcomes of complaints. The

83 Australian College for Private Education and Training, 'ACPET welcomes Ombudsman', *Media release*, 13 October 2016.

84 Academy of Interactive Entertainment, *Submission 16*, p. 4.

85 Academy of Interactive Entertainment, *Submission 16*, p. 4.

86 Dr Terri MacDonald, National Policy and Research Officer, National Tertiary Education Union, *Committee Hansard*, 25 October 2016, p. 42.

87 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Committee Hansard*, 25 October 2016, pp. 12–13; Consumer Action Law Centre, *Submission 22*, p. 6.

committee further believes that the Treasury's benchmarks should be used as a central tenet to establishing the Ombudsman's operations and functions.

4.99 Once established, the committee encourages the government and private providers to actively promote the Ombudsman to ensure that VET students are fully informed about their rights.

Recommendation 1

4.100 The committee recommends that the Government establish a VET Ombudsman and work with key stakeholders to ensure that the Ombudsman operates in a way that is fit for purpose.

Concluding committee view

4.101 It is widely agreed that the current VET FEE-HELP system has been exploited by a small number of unscrupulous providers and, as a consequence, a large number of students have been taken advantage of. In particular Indigenous Australians, older Australians and Australians with disability were signed up for significant loans for courses they did not need or could not complete.

4.102 These unfortunate actions from the minority have damaged the reputations of the many high quality VET providers that operate in Australia. These providers equip their students with the necessary skills and knowledge to make a positive contribution to the Australian economy.

4.103 It is critically important that this damage to the reputation of the VET sector be repaired to ensure the sector's integrity and longevity, and importantly, to provide a highly skilled and capable workforce to drive Australia's economic growth.

4.104 These bills represent a significant improvement. In order to affect this positive change as soon as possible, and to provide certainty for students and the VET sector, the committee recommends that the Senate pass the bills.

Recommendation 2

4.105 The committee recommends that the Minister for Education and Training incorporate the views outlined in this report and that the Senate pass the bills.

Senator Bridget McKenzie

Chair

Australian Greens' Additional Comments

1.1 The years of exploitation within the VET sector are a textbook example of privatisation gone wrong. Public money should never have been given to for-profit providers and the Australian Greens will continue to support TAFEs across Australia.

1.2 The Australian Greens support reforming the Vocational Education and Training sector in light of systemic corruption and rorting within the industry. The Australian Greens make the following additional comments.

1.3 Students who were let down by the privatisation of the VET sector, and the resultant widespread rorting, should not be left financially worse off. Students who were enrolled into courses that were worthless, effectively did not exist or that they could never have been expected to complete should have their debts to the Commonwealth forgiven.

1.4 The Australian Greens are pleased to see that the committee report has come to support the establishment of an Ombudsman for the VET sector.

1.5 TAFEs are, and should always be, the backbone of the VET sector. Recognising that, and the important role that they will play in the wake of these reforms being made to the for-profit sector, TAFEs should be given greater flexibility to provide ongoing education to students whose courses are no longer available due to colleges closing and providers going out of business. A 12 month exemption from the VET Student Loans Eligible Course List and new fee caps would allow TAFEs to provide education to students who would otherwise be left in the lurch while supporting the transition to the new VET Student Loans scheme.

1.6 Arts courses, which produce graduates ready to work in Australia's creative industries, should be supported into the future. The Australian Greens note with concern that very few creative and artistic courses are in the Minister's draft VET Student Loans Eligible Course List. The Australian Greens ask that the list be amended, before the VET Student Loans Bill 2016 is enacted, to include more arts courses.

Recommendations

1.7 That the VET Student Loans Eligible Course List be amended, before the VET Student Loans Bill 2016 is enacted, to include a greater number of artistic and creative industry courses.

1.8 That TAFEs be exempted from the need to comply with the VET Student Loans Eligible Course List and fee limits for a period of 12 months.

1.9 That students who were enrolled into sham courses on false pretences have their debts forgiven by the Commonwealth.

1.10 That public money be used to support public education and TAFEs and not for-profit providers and colleges.

Senator Sarah Hanson-Young

Appendix 1

Submissions and additional information received by the committee

Submissions

Number	Submitter
1	Australian Academy of Business
2	National Tertiary Education Union
3	Ms Mary Ancich
4	Canberra Academy of Dramatic Art
5	Dr Tony Keys
6	Australian Council of Trade Unions
7	Ella Bache College
8	Pastor Roma Hosking
9	Australian Catholic University
10	Harvest Bible College
11	Estrada College
12	Sydney Theatre School
13	Kairos Christian College
14	Australian Education Union
15	Sydney Film School
16	Academy of Interactive Entertainment
17	Arts Party
18	Churchill Education
19	Wesleyan Methodist Church of Australia
20	National Centre for Vocational Education Research
21	National Association for the Visual Arts
22	Consumer Action Law Centre
23	Australian Council for Private Education and Training
24	National Institute of Dramatic Art
25	Australian Chamber of Commerce and Industry
26	TAFE Directors Australia
27	Australian Careers Business College
28	Ausdance
29	Mater Education Limited
30	Ms Sharon Cho

31	Swinburne University of Technology
32	Mr Mark Warburton
33	Queensland Government
34	Australian Institute of Family Counselling
35	Navitas
36	Innovative Research Universities
37	Restaurant and Catering Industry Association
38	Photography Studies College
39	Ms Louise Litchfield
40	Australian Major Performing Arts Group
41	Ms Jillian Pryor
42	Master Builders Australia
43	Australian Industry Group and the Business Council of Australia
44	William Angliss Institute
45	Arts Peak
46	Victorian TAFE Association
47	Hearing Care Industry Association
48	Harvest Education Technical College
49	Australian Academy of Beauty and Spa Therapy
50	Sage Institute of Education
51	Study Group
52	Karl Von Busse Institute of Design
53	Ms Christine Johnston
54	Revd Dr Andrew Cameron

Additional information

- 1 Additional information provided by the National Institute of Dramatic Art, 27 October 2016.

Answers to questions taken on notice

Public hearing Melbourne, 25 October 2016

- 1 Answers to questions taken on notice by the Australian Ballet School.
- 2 Answers to questions taken on notice by TAFE Directors Australia.
- 3 Answers to questions taken on notice by the Australian Council for Private Education and Training.

- 4 Answers to questions taken on notice by the Australian Skills Quality Authority.
- 5 Answers to questions taken on notice by the Australian Competition and Consumer Commission.
- 6 Answers to questions taken on notice by the Department of Education and Training.

Tabled documents

Public hearing Melbourne, 25 October 2016

- 1 Document tabled by Consumer Action Law Centre.
- 2 Document tabled by TAFE Directors Australia.

Appendix 2

Public hearings

Melbourne, Victoria, 25 October 2016

Committee Members in attendance: Senators McKenzie, Marshall, Hanson-Young.

Witnesses

The Australian Ballet School

Mrs Sandra Ball, General Manager, The Australian Ballet School

National Institute of Dramatic Art

Mr Mark Gaal, Director, National Institute of Dramatic Art

Consumer Action Law Centre

Mr Gerard Brody, CEO, Consumer Action Law Centre

Ms Denise Boyd, Director, Policy and Campaigns, Consumer Action Law Centre

TAFE Directors Australia

Ms Mary Faraone, Chair, TAFE Directors Australia

Mr Martin Riordan, CEO, TAFE Directors Australia

Australian Competition and Consumer Commission

Mr Scott Gregson, Executive General Manager, Consumer Enforcement Division,
Australian Competition and Consumer Commission

Australian Council of Private Education and Training

Mr Mel Koumides, Chair, Australian Council of Private Education and Training

Mr Rodney Camm, CEO, Australian Council of Private Education and Training

National Tertiary Education Union

Ms Jeannie Rea, National President, National Tertiary Education Union

Dr Terri MacDonald, National Policy and Research Officer, National Tertiary
Education Union

Australian Chamber of Commerce and Industry

Ms Jenny Lambert, Director, Employment Education and Training, Australian
Chamber of Commerce and Industry

Australian Skills Quality Authority

Mr Michael Lavarch, Commissioner, Risk, Intelligence and Regulatory Support,

Australian Skills Quality Authority

Mrs Elizabeth Stafford, General Manager, Regulatory Strategy Governance and Corporate, Australian Skills Quality Authority

Department of Education and Training

Dr Subho Banerjee, Deputy Secretary, Department of Education and Training

Dr James Hart, Group Manager, Skills Programs, Department of Education and Training

Ms Maryann Quagliata, Branch Manager, Skills Programs, Department of Education and Training

Mr David Pattie, Branch Manager, VET Quality and Regulation, Department of Education and Training

Mrs Shelley Owen, Director, Department of Education and Training