

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Publicly funded education markets – Note by Australia****3 June 2019**

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More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/publicly-funded-education-markets.htm>

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## *Australia*

### 1. Summary

1. Australian education markets, both school-level and post-school level, are publicly funded in various ways from both federal, state and territory governments. Over the past decade, Australian Federal Government funding initiatives have sought to develop the market for Vocational Educational Training (VET) in Australia.
2. However, some policy decisions (particularly during the period between 2009-2016) relating to public support for VET created (or made worse existing) problems in this market, including information asymmetry, inadequate price signals, low course completion rates and unlawful conduct by some providers and their agents.
3. A combination of policy change, enforcement action and strengthened regulatory protections has seen a correction in the sector that better enables reputable and high-quality private and public providers to compete fairly, and enable consumers to make more rational decisions when accessing government-funded loans to undertake training.
4. This submission explores the effect a particular income-contingent loan model had on the market for VET services, the resulting detriment to some consumers, the policy adjustments made in response and the related consumer enforcement action taken against providers in this sector by the Australian Competition and Consumer Commission.

### 2. Introduction of income-contingent loans to Australia's VET system

5. Since 1989, student contributions through the Higher Education Contribution Scheme (HECS) and its replacement, the Higher Education Loan Program (HELP), have been a fundamental part of the Australian higher education system.<sup>1</sup> The scheme allows students to defer the costs of tuition until their taxable income reaches a certain level at which repayments commence – a form of income-contingent loan. HELP is regulated by provisions in the *Higher Education Support Act 2003 (HESA)*.
6. The HELP scheme was subsequently expanded with the introduction of Vocational Educational Training (VET) FEE-HELP (VET FEE-HELP) in 2008, to provide loans on the same basis as HELP to students studying for certain higher level VET qualifications (ISCED 5B). VET provides students with technical skills and knowledge to enter the workforce for the first time, to re-enter the workforce, to retrain for a new job or to upgrade their skills for an existing job. Unlike university courses, VET qualification programs generally work on a competency-based rather than graded model of assessment.
7. The VET FEE-HELP loan scheme operated from 2008 to 2016 and assisted students with the cost of their studies through an income contingent loan. This program was administered by the Federal Government's Department of Education and Training (DET). Debts and repayments were managed by the Australian Taxation Office (ATO).

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<sup>1</sup> Parliament of Australia brief 2003 [The Higher Education Contribution Scheme](#)

### 3. VET FEE-HELP expansion

8. The original VET FEE HELP scheme did not provide access to loans for state government-subsidised students (with the exception of one state, Victoria), rather only to full fee-paying students. This was in contrast to Australian universities, where (HECS/HELP) loans were available to students in subsidised (federally supported) places, as well as fee-for-service/full fee-paying students. Initially, loans were only available for qualifications at the level of diploma or above. There were no limits set on fees, leaving market forces to determine prices.

9. The relatively low take up of the scheme (by 2011 the scheme had 84 providers and 39,124 students with an average loan of \$5208) saw the Federal Government conduct a post implementation review of the scheme<sup>2</sup> which led to amendments, including a reduction of restrictions on eligible courses, removal of the credit transfer requirements and a reduction of conditions to become a VET FEE-HELP provider.

10. These amendments enabled substantial growth in the number of approved VET FEE-HELP providers from 37 in 2009 to 254 in 2014, an increase in eligible courses and in VET FEE-HELP loans by both private and public providers.<sup>3</sup>

11. A fundamental flaw with the expansion of the VET FEE-HELP scheme was that VET FEE-HELP providers would receive payments in advance of graduations, based on annual forecasts provided by the provider, rather than being paid in arrears based on actual graduations.

### 4. Issues with the VET market and government reviews

12. Following the expansion set out above, multiple government reviews revealed weaknesses in the conception and implementation of these reforms to the sector.

13. In November 2014, following extensive media, political and broadly expressed public concerns about the rollout of the 2012 amendments, the Australian Senate referred the matter to their Education and Employment References Committee for inquiry and report nine months later.

14. In 2015, the final report entitled '*The operation, regulation and funding of private vocational education and training (VET) providers in Australia*' showed that:<sup>4</sup>

- examples of unscrupulous practices were commonplace, including evidence of brokers targeting disadvantaged or vulnerable consumers (for example residents of remote Indigenous communities)
- the revised scheme saw a shift of funding for higher level VET qualifications from states to individuals;

<sup>2</sup> [Regulation Impact Statement: VET FEE- HELP Redesign 2012](#)

<sup>3</sup> [University of Melbourne VET FEE-HELP: What went wrong? Francesca Saccaro & Robyn Wright August 2018](#)

<sup>4</sup> Senate Standing Committee on Education and Employment [Final Report - The operation, regulation and funding of private vocational education and training \(VET\) providers in Australia 15 October 2015.](#)

- conditions of loans were based on a higher education model of delivery without sufficient adaptation to vocational education, and students had insufficient means to seek review or recompense under their contracts;
  - the cost of courses increased across the sector, resulting in higher debts for many students. Course tuition fees increased from an average of \$4,060 in 2009 to \$14,018 in 2015 and average loans per student more than doubled from \$4,861 in 2009 to \$10,739 in 2015; and a large proportion of VET FEE-HELP loans were provided for courses that had no links to industry needs or specific employment outcomes for students.
15. The 2016, DET Redesigning VET FEE-HELP: Discussion Paper<sup>5</sup> posited that:
- “VET providers were able to extract substantially higher margins due to a serious information asymmetry, and particularly poor consumer information or access to it”.*
16. Data in the paper disclosed that course costs increased for all students following the introduction of VET FEE-HELP and that disadvantaged students accrued higher fees/debts on average compared to their non-disadvantaged counterparts, particularly Indigenous and low socio-economic status students (see **Table 1** below).

**Table 1. 2015 VET FEE-HELP mean tuition fee by student characteristics and mode of delivery**

Characteristic	Face-to-face	Online	Mixed-mode	Mean annual tuition fee
Indigenous	\$20,448	\$19,875	\$18,007	\$19,977
Non-indigenous	\$12,972	\$16,515	\$12,042	\$14,328
Quintile 1 (low SES)	\$15,153	\$18,127	\$12,970	\$16,193
Quintile 5 (high SES)	\$11,555	\$15,114	\$11,151	\$12,835

Source: VET FEE-HELP data collection

17. The Australian National Audit Office (ANAO) in Report 31 of 2016-17 entitled *Administration of the VET FEE-HELP Scheme*<sup>6</sup> noted that:

*“The VET FEE HELP scheme was not effectively designed or administered. Poor design and a lack of monitoring and control led to costs blowing out even though participation forecasts were not achieved and insufficient protection was provided to vulnerable students from some unscrupulous private training organisations.”*

18. A 2016 National Centre for Vocational Education Research (NCVER) occasional paper entitled *Trends in VET: policy and participation*<sup>7</sup> suggested that avoidance of upfront costs appeared to have led to some students perceiving the courses to be free, and likewise some providers promoted the courses as free or ‘government funded’. The paper concluded that result was that the cost of courses with access to VET FEE-HELP bore little relationship to the true (efficient) cost of delivery and that the proliferation of different providers led to mixed messages and some price confusion.

<sup>5</sup> Department of Education and Training: [Redesigning VET FEE-HELP: Discussion Paper](#)

<sup>6</sup> [Administration of the VET FEE-HELP Scheme](#)

<sup>7</sup> [Trends in VET: policy and participation](#)

19. Ultimately while the VET FEE-HELP expansion introduced many additional VET providers, inadequate price signals and a lack of quality indicators for providers impeded rigorous competition between providers. In other words the market could not operate efficiently in favour of quality providers because of the way the scheme was designed.

## 5. Response to issues by Federal Government

20. In 2015-16, the Federal Government moved to introduce more regulatory rigour in the VET FEE-HELP scheme. Stronger measures, many of them recommendations from the Senate Committee, were implemented. These included:

- stopping aggressive marketing practices;
- banning the use of brokers and cold calling;
- requiring literacy and numeracy screening for applicants;
- strengthening provider approval rules;
- introducing the National Training Complaints Hotline, giving students means to appeal; and
- improving the capacity for information sharing between relevant Commonwealth agencies.

21. The Federal Government progressively reformed, and ultimately closed the VET FEE-HELP scheme in response to the problems experienced with the policy.

22. In January 2017, VET FEE-HELP was replaced with VET Student Loans and required all training providers to reapply under this new system for further funding. VET Student Loans are regulated by provisions in the *VET Student Loans Act 2016*. To date, none of the training providers investigated or taken action against under the VET FEE-HELP regime have been allowed into this new system. The VET Student Loans Ombudsman (VSLO) was also created and has received in excess of 10,000 complaints regarding provider misconduct since July 2017.

23. In addition, the new VET Student Loans scheme includes new safeguards on public money by ensuring payments to providers are made in arrears, and that students demonstrate engagement to continue to access the loan.

24. In November 2018, the ANAO released their report on the new scheme assessing the '[Design and Implementation of the VET Student Loans Program](#)'<sup>8</sup>. The replacement program was selected for audit because it was intended to address a number of significant deficiencies identified with the administration of the previous scheme. An assessment of the extent to which the department has incorporated lessons learnt from the former scheme into the new program showed the design and implementation of the VET Student Loans program was largely effective.

25. In September 2018, the Federal Government introduced legislation to amend HESA to provide redress for consumers affected by unacceptable conduct by a VET FEE-HELP provider. The *Higher Education Support Amendment (VET FEE-HELP Student Protection)*

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<sup>8</sup> [Design and Implementation of the VET Student Loans Program](#)

*Act 2018* received royal assent in December 2018 along with the VET FEE-HELP Guidelines (VFH Guidelines)<sup>9</sup> and the scheme commenced in January 2019. The VSLO estimates that almost 5,000 complaints will be considered under this scheme.

## 6. Enforcement action by the ACCC

26. Beginning in 2015, DET and the Australian Competition and Consumer Commission (ACCC) launched actions in the Federal Court of Australia against four former VET FEE-HELP providers alleged to have breached various provisions of the Australian Consumer Law (ACL) by engaging in misleading, deceptive and unconscionable conduct, including inducing and pressuring consumers to enrol in Commonwealth-funded education and training courses.

27. These investigations indicated that signing up conduct varied from door-to-door sales and cold calling to approaching consumers outside Centrelink (social security offices) and in shopping centres in low socio-economic suburbs. Brokers were alleged to have offered cash, alcohol, cigarettes and petrol in addition to laptops to induce consumers to sign-up to courses.

28. The actions relate to enrolment conduct before 1 January 2016 and all remain before the court:

- Unique International College Pty Ltd (Unique) – liability has been determined and the hearing on relief is set to occur in April 2019<sup>10</sup>.
- Cornerstone Investment Aust Pty Ltd (t/as Empower Institute) (Empower) – liability has been determined and the hearing on relief occurred on 29 January 2019 and is awaiting judgment<sup>11</sup>.
- Australian Institute of Professional Education Pty Ltd – liability hearing concluded on 9 November 2018 and is awaiting judgment. New South Wales Office of Fair Trading (NSW OFT) was also a partner in this investigation<sup>12</sup>.
- Phoenix Institute of Australia Pty Ltd – liability hearing expected early-mid 2019. As noted above NSW OFT participated in this joint investigation<sup>13</sup>.

29. The ACCC has also acted independently to address consumer harm caused by inducing and pressuring consumers to enrol in Federally-funded education and training courses.

30. In November 2018, the ACCC instituted proceedings against Productivity Partners Pty Ltd trading as Captain Cook College and other related entities and individuals.<sup>14</sup> Unlike

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<sup>9</sup>[\*Higher Education Support \(VET\) Amendment \(VET FEE-HELP Student Protection\) Guidelines 2018\*](#)

<sup>10</sup>[\*Full Court upholds appeal by Unique College\*](#)

<sup>11</sup>[\*Court finds training college's conduct to be misleading and unconscionable\*](#)

<sup>12</sup>[\*ACCC takes action against AIPE following a joint investigation with NSW Fair Trading\*](#)

<sup>13</sup>[\*Court finds training college's conduct to be misleading and unconscionable\*](#)

<sup>14</sup>[\*ACCC action against Captain Cook College for alleged systemic unconscionable conduct\*](#)

the jointly pursued matters above, these proceedings do not seek consumer redress and DET is not involved as a co-applicant. This matter remains before the court.

31. In addition, the ACCC accepted a court-enforceable undertaking from Careers Australia in May 2016 (in relation to receiving around \$190 million in payments from the Federal Government for around 20,000 students), and from the Australian Vocational Learning Centre in March 2017 (in relation to receiving around \$2.1 million in payments from the Federal Government for 195 students). The undertaking with Careers Australia has resulted in approximately \$50,000,000 refunded to the Commonwealth, while the Australian Vocational Learning Institute has voluntarily refunded approximately \$25,000,000.

32. While the ACCC and others played a role in highlighting and responding to detrimental conduct in the VET market, in this instance the most significant tool for change was recalibration of the policy settings.