

**Submission to the
West Committee of
Review of Higher Education Financing and Policy**

learning for life: a policy discussion paper

by

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Introduction

This submission addresses issues raised in the Committee of Review's policy discussion paper, *learning for life*, specifically relation to the following matters:

Accreditation, quality assurance and accountability (pp.32-33)

It is clearly indicated in the policy discussion paper of the West Committee of Review that, over the next decade or so, higher education institutions are likely to become:

- part of a national, competitive post-secondary market with a global focus;
- part of a 'seamless postsecondary educational environment', including VET;
- more student-centred and demand-driven;
- increasingly entrepreneurial and 'business-like'; and
- more deregulated and reliant on private provision and financing.

These are all developments that have occurred to various degrees within the context of the Australian VET sector over the past decade. As the higher education system also begins to move in this direction over the coming years, it is therefore necessary and desirable to take account of the experience of the VET sector to ensure both that any potential pitfalls are avoided, and that educational quality and equitable access are maintained, if not improved.

The Committee has identified a number of problems that may emerge in the context of the transition to a more competitive postsecondary education and training market from a both a quality and student/consumer perspective. These problems are outlined under the following sub-sections of the policy discussion paper:

- educational accreditation (pp.32-33);
- assuring the financial viability of institutions (p.33); and
- information (p.33).

The Committee has clearly indicated that although the move to a more student-centred and demand-driven system of postsecondary education and training may increase institutional flexibility and responsiveness, there is a need to ensure that educational quality and consumer interests are adequately protected.

The VET experience

The current transition to a more deregulated, open and competitive market in the VET sector has highlighted a number of potential problems that may emerge with respect to quality control and consumer protection. Many of these problems are outlined in the attached article entitled '(Re)regulating the Training Market: Quality Control and Consumer Protection', published in the latest issue of the *Australian Vocational Education Review*, Vol.4, No.2, pp.1-14.

In short, the article suggests that, taken in isolation, measures such as a common accreditation system, consumer access to information, a 'prudential regulator' of financial probity and a reliance on market forces do not necessarily provide adequate protection for educational quality and consumer interests. Students/consumers require additional supports and safeguards to assist them to exercise choice effectively, particularly to use their power of 'exit', and to enable them to hold their providers to account. Moreover, the market itself is unlikely to operate in an efficient, effective and equitable manner unless consumers have access to, and the ability to exercise, their market powers in a meaningful way. As the attached article argues:

If consumers are to be given greater responsibility for exercising choice in the training market, there is a commensurate obligation to ensure that their rights and interests are recognised and adequately protected ... The demand-driven market model under development will only work effectively and equitably if all parties are aware of their rights and responsibilities, and able to seek fair and just redress for valid grievances. (Anderson 1997, p.11)

Policy proposals

The aforementioned article makes several practical policy proposals for ensuring that regulatory arrangements safeguard educational quality and consumer interests in the VET market. Many of these could readily be translated to the higher education market. Some of the more important and relevant proposals identified in the article are outlined below:

1. Educational quality

In addition to a common accreditation framework for providers in a post-secondary education market, the following mechanisms are required:

Educational audits

Providers should be subject to regular and rigorous educational audits conducted by teams of independent and qualified experts in all aspects of curriculum development, delivery and assessment. Such audits should be conducted against a nationally consistent set of standards and benchmarks, in addition to being adequately resourced.

Information

If students are to be given greater responsibility for choosing between providers and courses in a market-driven environment, they require access to ***comprehensive, up-to-date and reliable information*** based on ***meaningful outcome measures*** including:

- course completion, graduation destinations and job/further education outcomes; and
- student and graduate satisfaction studies.

Such performance indicators should be both quantitative and qualitative in form to minimise the possibility of blunt statistical indicators distorting the nature of educational provision.

Such information must be provided in a variety of formats and languages to ensure equitable access for consumers from all backgrounds. Special account must be taken of the information requirements of disadvantaged groups, such as people with disabilities (eg. sight and hearing impairments); people from non-English speaking backgrounds; people with low levels of numeracy and literacy skills; and the information-poor (eg. those with limited access to information technology)

Monitoring of assessment and credentialling

In a performance-based post-school education and training system which driven by consumer choice, there is a danger that unprincipled providers will be tempted to lower standards so as to achieve improved outcomes, thereby attracting more government/student funds. To ensure that educational standards are maintained, it would be desirable to introduce a cross-institutional system of assessment and credentialling moderation. Such a system could be organised on a disciplinary/regional/industry basis, depending on the nature of the providers/courses.

Severe penalties

Providers who breach the controls on assessment, accreditation and credentialling should be subject to severe penalties, in particular de-registration for a period of time until sufficient evidence is provided to demonstrate that effective quality assurance processes have been established.

National register of lecturers/teachers/trainers

As lecturers, teachers and trainers are the most important ‘input’ to the educational process, and the key determinant of the quality of learning, it would be desirable to

establish a national register of lecturers/teachers/trainers with approved qualifications and experience.

To ensure that the quality of new entrants to the educational workforce is maintained, it is essential that lecturers/teachers/trainers have access to:

- secure and well-remunerated employment;
- high quality teaching resources; and
- professional development programs.

The current trend towards contract-based and casualised employment arrangements in the VET sector is seriously undermining the quality, coherence and consistency of educational programs due to the lack of teacher/trainer access to the abovementioned conditions.

2. Consumer protection

The following measures are designed to protect the interest of consumers in a national post-school education and training market beyond the important, but narrow, confines of financial probity:

National Education and Training Ombudsman (NETO):

Modelled on the Health Services Commissioner which has an office in each capital city, a National Education and Training Ombudsman (NETO) would provide consumers with access to an effective appeals mechanism on a nationally consistent basis. Provided that the NETO is adequately resourced and genuinely independent of any vested interests in the national education and training market, it would ensure fair play and a more level playing field for consumers and providers alike. By providing national coverage of the postsecondary education and training market, a NETO would provide a 'one-stop shop' for consumers and providers in both the VET (including VET in post-compulsory levels of schooling) and higher education markets.

In addition to resolving disputes between consumers and providers, the NETO should be given sufficient power and resources to undertake ***educational quality audits*** of providers operating within the framework of the national postsecondary education and training market. However, as identified below, complex issues arise if the national postsecondary market is to be opened up to foreign competitors.

It may be both feasible and desirable to consider merging the financial responsibilities of the ‘Prudential Regulator’, as proposed in the Review Committee’s discussion paper with the roles outlined above for a NETO.

Charter of consumer rights and responsibilities

One of the first responsibilities of the NETO should be to codify the rights and responsibilities of consumers in the form of a charter for wide dissemination in a variety of accessible formats and languages. Such a charter should be developed on the basis of national consultations with all affected parties. Consumer charters are becoming commonplace in best practice sectors of commerce and industry.

Code of practice for service providers

Any accredited provider in receipt of public funds should be required to sign and comply with a mandatory Code of Practice, developed through widespread consultation with consumer and provider groups. Among other things, the Code should include minimum national standards for: access and equity; quality assurance mechanisms; teaching/learning resources (including facilities and equipment); external review processes; financial probity management and administration; ethical marketing and advertising; assessment processes; support services; internal grievance procedures; and awarding of qualifications. Such standards would provide the criteria against which providers would be subject to regular auditing and review.

Providers should be required to furnish students with a copy of both the Code of Practice and Charter of Consumer Rights and Responsibilities on enrolment. Serious breaches of either the Code or Charter should incur de-registration and other appropriate penalties.

Internal dispute resolution mechanisms and consumer advocates

The NETO should preferably be a ‘last resort’ for aggrieved consumers and providers. As part of the mandatory Code of Practice, providers should be required to develop ***internal dispute resolution mechanisms*** which comply with world best practice. As far as possible, consumers and providers should be encouraged to resolve their disagreements at the local level in the first instance. Where disputes cannot be resolved at the local level, they should then be referred to the relevant state office of the NETO.

To ensure that individual consumers are able to initiate and participate in internal dispute resolution processes - which can often be intimidating and difficult to negotiate, particularly where the student suffers from some form of disadvantage - they should have access to ***independent consumer advocates***. Student organisations should be encouraged to provide such a service, but can only do so

effectively if they are given access to adequate resources and information for this purpose. For instance, access to on-line communication facilities would become essential as increasing numbers of students undertake off-campus modes of study via modern technology-based systems.

Certain states, such as Victoria, which currently outlaw 'political activity' by student unions under Voluntary Student Union legislation should be required to repeal or modify such legislation to enable student organisations to operate effectively as consumer advocacy groups.

On campuses where no representative student organisations exist - for example in many VET institutions where student populations are predominantly part-time - providers should be required to establish mechanisms to facilitate the development of student organisations as consumer advocacy groups. As an alternative, positions for Student Liaison Officers should be established (as currently exist on some Victorian TAFE campuses) to provide advocacy services. To ensure that such advocates are sufficiently independent of provider management, they should be appointed by an independent body comprising student representatives, and employed under contractual arrangements which provide them with adequate protection from potential intimidation or retribution.

Consumer education

If students are to bear increasing responsibility for choosing and financing their own education and training in a deregulated market environment, it is essential that they are equipped with the requisite knowledge and skills to act as informed consumers. Clearly this presupposes adequate access to comprehensive, up-to-date and reliable information, both about providers/courses and consumer rights and responsibilities. However, as experience in the VET sector to date shows, it is impossible to provide consumers with the 'perfect information' imagined in market theory, if only because of the diversity and complexity of educational products and services. Students must therefore not only be equipped with the best available information, but they must also be educated to become *discerning consumers*.

Any transition to a more student-driven market should therefore be accompanied by consumer awareness and education programs and marketing strategies delivered both at school and in the wider community. Such programs and strategies should enable prospective school age and mature age students both to discriminate more effectively between the relative quality and value of different course/provider options, and to exercise their rights and responsibilities as consumers in the education marketplace.

Other considerations

Some market advocates may argue that existing Fair Trading legislation at a state level is sufficient to protect students as consumers. However, the experience to date of the Victorian TAFE Students and Apprentices Network (VTSAN) - the peak body representing the interests of TAFE students in Victoria - suggests that the relevant Office of Fair Trading in Victoria is too slow to react to consumer complaints (due in large part to under-resourcing) and too far-removed from the training market to understand the often complex issues that arise. As a result, cases are frequently referred by the Office of Fair Trading to the relevant State Training Authority (STA). The STA however faces a potential conflict of interest when handling complaints about courses it has funded and, in some instances, has been accused of ‘complicity’ with errant providers. In addition, existing Fair Trading legislation tends to be overly generic in nature, and is more relevant to simple commodity markets (eg. automobiles, foodstuffs, home construction) than to service markets such as education and training.

Furthermore, when grievances cannot be satisfactorily addressed by the Office of Fair Trading or the STA, students/consumers are left with no alternative course of action other than to take their case to the courts. Such action however is complex, expensive and undesirable from the perspective of all parties involved. Individual students/consumers are clearly much more vulnerable than large educational institutions which enjoy access to (in some cases) limitless financial, legal and cultural resources to defend themselves. Widespread resort to the courts by aggrieved customers would eventually create an adversarial and litigious environment which is in no way conducive to the development of a healthy education and training market based on mutual respect, trust and, preferably, shared interests.

State-based Fair Trading legislation is inadequate to cover the activities of domestic postsecondary education and training providers operating in a *national market framework*. Moreover as the market becomes increasingly *global* in scope, it is possible to foresee that major problems could arise in cases where irresponsible or unscrupulous foreign providers are given access to the Australian national postsecondary education market. Will state-based (or national) Fair Trading legislation be adequate to cover the activities of such providers who effectively operate outside Australian legal jurisdictions and commercial constraints? If such services are provided on-line from a foreign corporate base, how can they be effectively regulated under existing Australian consumer laws? And how will individual fee-paying students/consumers be able to seek effective redress and financial compensation when services provided are sub-standard or not delivered as advertised and/or specified in the relevant commercial contract?

Much more research needs to be undertaken on the complex legal and regulatory issues which arise in the context of the competitive environment envisaged by the West Review. Specifically, what constitutes a legally enforceable ‘contract’ in a borderless postsecondary education and training market? How can educational quality and the rights of domestic Australian students be defined and adequately protected therein? Such complexities and potential problems suggest that until such time as the aforementioned issues can be effectively resolved, any transition to a more competitive market (and access to public

education funds subsidised by Australian taxpayers) should be restricted to providers who fall within the jurisdiction of domestic laws and regulations.

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