

# Redfern Legal Centre



15 July 2016

By email: [VFHPolicyRedesign@education.gov.au](mailto:VFHPolicyRedesign@education.gov.au)

Senator the Hon Scott Ryan  
Minister for Vocational Education and Skills  
Department of Education and Training  
GPO Box 9880  
Canberra Act 2601

Dear Minister,

## **Submission responding to the “Redesigning VET FEE-HELP” discussion paper**

Redfern Legal Centre (RLC) welcomes the opportunity to contribute our submission to the redesigning VET FEE-HELP review process.

RLC welcomes the timely review of the VET FEE-HELP (VFH) scheme. RLC and many others have raised concerns about misleading marketing practices in the VET market and misuse of the VFH loan scheme. There is currently no access to fair and effective dispute resolution for consumers to resolve complaints about VET providers or VFH loans. The misleading way in which many VET courses and VFH loans were targeted to vulnerable consumers has left a significant legacy of unresolved complaints.

Our submission will illustrate RLC’s casework experience and the way in which unresolved complaints continue to disadvantage those vulnerable consumers, who the VFH scheme was designed to assist.

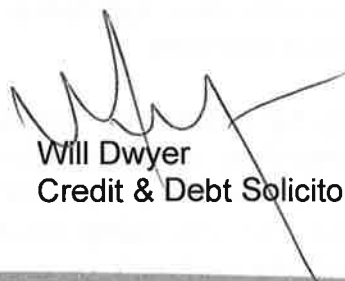
The discussion paper outlines a range of important initiatives to redesign the VFH scheme. RLC’s submission focuses on two key recommendations, which we believe will greatly enhance consumer protections in the vocational training market.

RLC strongly supports the establishment of an industry funded VET Ombudsman with powers to investigate and determine legacy and future complaints about private colleges and the VFH loan scheme.

Yours faithfully  
**REDFERN LEGAL CENTRE**



Jacqui Swinburne  
Acting CEO



Will Dwyer  
Credit & Debt Solicitor

## Recommendations

1. **The establishment of an industry funded VET FEE-HELP Ombudsman, to resolve legacy and future complaints about VFH and vocational training.**
2. **A ban on education brokers or third party sales agents, whose conflicted remuneration and unscrupulous conduct has driven the systemic exploitation of the VFH loan scheme.**

## Introduction

RLC is an independent, not-for-profit, community legal organisation with a prominent profile in the Redfern area. RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and consumer law, employment, discrimination and complaints about police and government agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education, and contribute to law reform process. RLC works towards reforming our legal system for the benefit of the community.

## RLC's work in credit and consumer law

RLC recognises that the protection of financial and consumer rights is central to ensuring other basic rights and freedoms, such as secure housing, effective education and social and economic participation. Since 1977, RLC has run a specialist credit & debt practice and target our work towards those issues affecting vulnerable and disadvantaged consumers.

## Overview

The VFH loan scheme is an important mechanism to ensure equitable access to tertiary and further education. This is particularly cogent for vulnerable or marginalised consumers who might otherwise be excluded or deterred from further education due to the cost of tuition fees. Unfortunately, the way in which the VFH scheme was originally designed has led to widespread rorting of the scheme by unscrupulous providers who prioritised their greed over the provision of quality education services and beneficial student outcomes.

The unscrupulous marketing practices employed by private VET providers was considered in detail by the Senate Standing Committee on Education and Employment and their Inquiry into *'The operation regulation and funding of private vocational education and training providers in Australia.'*<sup>1</sup>

Direct marketing by education agents or brokers (VET Brokers), incentivised by the conflicted remuneration of sales commissions, generated the 'churning' of front-end student enrolments. The structure of VFH mis-incentivised education providers to generate enrolments rather than rewarding course completion or good educational outcomes. The focus on maximising numbers of enrolling students lead to VET Brokers intentionally targeting areas of socio-economic disadvantage, the use of manipulative direct sales tactics and an inherently misleading sales pitch about 'government funded' courses and free laptops.

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<sup>1</sup>[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/vocational/Final%20Report/c03](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/vocational/Final%20Report/c03)

The Redesigning VET FEE HELP Discussion Paper (VFH Discussion Paper) considers both recent reforms, and proposals to redesign, the VFH scheme to avoid the historical trends described above and improve the efficiency and effectiveness of VET in Australia.

The VFH Discussion Paper presents a timely opportunity to assess the effectiveness of recent reforms and consider other measures to better improve consumer protections and student outcomes. RLC will reiterate our ongoing concerns about the conduct of some Registered Training Organisations (RTOs) and VET Brokers. RLC's primary recommendations, to efficiently resolve legacy and future complaints about the VET system, are the establishment of a VET industry Ombudsman scheme and a ban on VET Brokers.

**Recommendation 1: The establishment of an industry funded VET FEE-HELP Ombudsman, to resolve legacy and future complaints about VFH and vocational training.**

RLC has acted for a number of acutely vulnerable clients who were victims of misleading, deceptive and unconscionable marketing practices. These consumers were often induced to apply for VFH loans with misrepresentations about the cost or funding of the course, or the promise of a free laptop. Many of the consumers we continue to encounter did not commence, complete or derive any benefit from the VET course. Despite this they are saddled with significant VFH debts, which create further barriers to their engagement and achievement.

We expect that there are many more consumers who are not yet aware they have incurred a VFH liability and will not discover such until a significant length of time has elapsed. Seeking redress after a significant delay will make it increasingly difficult to seek redress from the VET provider directly, many of who have been deregistered, liquidated, or prosecuted by the ACCC. Where vulnerable consumers have incurred considerable VFH debts, without deriving any tangible benefit, in terms of skills, qualifications or employment outcomes, they should be entitled to a free, fair and accessible dispute resolution scheme. In our view, this is best administered through an industry funded VET Ombudsman scheme.

RLC strongly believes that a VFH Ombudsman is the only way to effectively address student complaints and latent consumer issues around VET and VFH. At present, consumers wishing to raise a grievance or consumer complaint against a VET provider must first raise a complaint, and seek a remittance of VFH liability, through the discretionary internal review process of the RTO. If the situation is unresolved after this process, students are required to navigate complex, technical and adversarial litigation process - through either a state consumer tribunal, such as NCAT or VCAT, or through the Federal Court. Litigation in these jurisdictions continues to involve the risk of adverse costs orders. Administrative review for the remittance of VFH debts, where a student withdraws from a course on limited 'special circumstances' grounds, is a narrowly available remedy. For most consumers, the complexity and anxiety involved in taking a case to Administrative Appeals Tribunal is a significant barrier.

Currently, the only available dispute resolution processes in this area are complex, adversarial and inaccessible for vulnerable consumers. These are also significant costs and cost risks associated with these processes. The status quo does not provide consumers with access to fair, free and enforceable resolution of disputes around VFH

liability. Consumers should be entitled to resolve these common disputes through a free, accessible and efficient external dispute resolution scheme.

### **Case study**

Linh\* is from a non-English speaking Vietnamese background. She is a single parent carer to three young children, relies on social security income and resides in social housing in inner-Sydney. Having arrived in Australia from Vietnam as a refugee, she did not complete education beyond a primary level in Vietnam and has not progressed her education in Australia. In late 2013, a marketing agent approached Linh at her home. The marketing agent was a Vietnamese speaker and told her about a free education course which was funded by Centrelink. The marketing agent also told Linh that she would receive a free laptop if she went to the free course.

Linh was enrolled in a Diploma of Business course at an RTO. Linh signed a number of enrolment forms at the RTO's request, including an application for VFH. Given that no interpreter, or translation, was provided Linh did not have any real understanding of her rights or obligations. Linh did not understand census dates before she started the course. Linh stopped attending the course started as she struggled to understand the course content and thought it was free anyway. After some time, her daughter translated the course information for her, Linh discovered that the Diploma of Business course had cost \$12,000 and she had incurred a VFH liability for this amount.

Two years after the course, Linh came to RLC for help. RLC approached the RTO who denied any that they or their marketing agents had conducted themselves improperly. The RTO refused to remit the VFH liability on the basis that Linh did not withdraw from the course before the enrolment date. RLC and Linh considered her options for redress, which were essentially limited to commencing a consumer claim at the NCAT. Linh was very daunted by the prospect of courts and litigation and was reluctant to progress her complaint. RLC wrote again to the RTO, who by this time had engaged a law firm to act on their behalf. After lengthy negotiations, the RTO reluctantly agreed to remit Linh's VFH liability on a without admissions basis.

Without RLC's intervention, Linh would not have been able to resolve her complaint and would remain liable for the VFH loan. Linh could have resolved her complaint more fairly and efficiently through a VET Ombudsman.

\*Names have been changed for privacy reasons

As Linh's case demonstrates, in the absence of an external dispute resolution or Ombudsman scheme, many consumers affected by the unscrupulous conduct of RTOs and VET Brokers are left with no alternative avenue of redress other than through the courts. Leaving vulnerable consumers indebted, and without effective redress, as a result of the exploitative and unscrupulous behaviour of private businesses, is an inherently unjust state of affairs and the antithesis of the underlying intent behind the VFH system.

Industry Ombudsman schemes have proven success in efficient dispute resolution. The resolution of complaints through industry funded Ombudsman schemes improves self-regulation by business, promotes fair and mediated resolution of complaints early in the process and improves access to justice by reducing the need to involve the courts.

Comparable schemes such as the Financial Ombudsman Service, the Energy and Water Ombudsman and the Telecommunications Industry Ombudsman play a crucial role by effectively resolving individual consumer complaints, and redressing systemic misconduct, within their respective industries and markets.

An industry funded Ombudsman scheme, membership of which is a condition of licensing, requires all players in the market to participate. Where the Ombudsman scheme is funded by industry, the cost incentive to minimise complaints acts as an important and effective deterrent. Industry Ombudsman schemes can efficiently resolve most complaints with both a 'carrot and a stick' - through a negotiated or mediated resolution between consumers and VET providers (carrot) and through binding determinations enforceable against the VET provider (stick).

The *Benchmarks for Industry-based Customer Dispute Resolution*,<sup>2</sup> which apply to all current external dispute resolutions schemes, should guide the establishment of a new VET Ombudsman scheme.

**Recommendation 2: A ban on education brokers or third party sales agents, whose conflicted remuneration and unscrupulous conduct has driven the systemic exploitation of the VFH loan scheme.**

VET Brokers acting on a sales commission basis are inherently conflicted. The widely reported accounts of unconscionable behaviour<sup>3</sup> has established sufficient basis for an outright ban which prevents VET Brokers or third party sales agents having any involvement with VFH.

VET Brokers have been motivated by performance pay and financial incentives to maximise the number of courses they sell, regardless of whether these course are in fact suitable or appropriate for the consumers they enrol. This has generated the systemic malpractice, which continues to undermine the policy intent of the VFH system.

VET Brokers should be banned from accessing the VFH system.

The underlying priority during the enrolment process must be to ensure that consumers enrol in courses suitable to their circumstances, skills and objectives. This is best facilitated through an independent 'careers / course advisor' role where course recommendations are not tainted by sales commissions. Where the agent selling a course has a personal financial incentive to maximise the number of enrolments they process, they have an inherent conflict of interest. Conflicted remuneration generates the types of consumer exploitation and malpractice, which has brought the VET industry into disrepute.

<sup>2</sup> <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/benchmarks-ind-cust-dispute-reso>

<sup>3</sup> *Vocational education, the biggest get-rich quick scheme in Australia*, The Age, 16 September 2015 at <http://www.smh.com.au/national/vocational-education-the-biggest-getrich-quick-scheme-in-australia-20150916-gjnqwe.html> and *Privatisation turned vocational education into a den of shonks and shysters*, Sydney Morning Herald, 3 December 2015, at <http://www.smh.com.au/comment/rorted-by-the-public-sector--the-vocational-education-lesson-20151202-gldi64.html>