

VICTORIA

**DEPARTMENT OF EDUCATION LEGISLATIVE REVIEW
STEERING COMMITTEE**

**NATIONAL COMPETITION POLICY REVIEW OF
LEGISLATIVE RESTRICTIONS ON COMPETITION**

**REVIEW OF LEGISLATION IN THE TERTIARY
EDUCATION AND TRAINING PORTFOLIO**

AUGUST 1997

FINAL REPORT

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ACRONYMS

ACFE	Adult Community and Further Education
ACFEB	Adult Community Further Education Board
ACTRAC	Australian Committee for Training Curriculum
AMES	Adult Multicultural Education Services
ANTA	Australian National Training Authority
AQF	Australian Qualifications Framework
AVCC	Australian Vice Chancellor's Committee
BVET	Board of Vocational Education and Training
CAE	Council of Adult Education
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
DEETYA	Department of Employment, Education, Training and Youth Affairs
ELICOS	English Language Intensive Courses for Overseas Students
ESL	English as a second language
ESOS	Education Services for Overseas Students
HECS	Higher Education Contribution Scheme
ITABs	Industry Training Accreditation Boards
ITB	Industry Training Board
NFROT	National Framework for the Recognition of Training
OTFE	Office of Training and Further Education
STB	State Training Board
STS	State Training System
TE	Tertiary Education
U3A	University of the Third Age
UNE	Unified National System of Higher Education
VCE	Victorian Certificate of Education
VET	Vocational Education and Training
VETAB	Vocational Education and Training Accreditation Board
VETEC	Vocational Education, Training and Employment Commission

EXECUTIVE SUMMARY

1 Introduction

As agreed by the Council of Australian Governments, Victoria is committed to reviewing and reforming legislation so that it conforms to the guiding principle that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

This review examines the restrictions on competition contained in the *Vocational Education and Training Act 1990*, the *Adult, Community and Further Education Act 1991* and the *Tertiary Education Act 1993*.

Chapters 1 and 2 of this report consider Vocational Education and Training and Apprenticeships and Traineeships respectively. Chapter 3 discusses Adult, Community and Further Education and finally Chapter 4 examines the Tertiary Education sector.

Each Chapter contains background information on the relevant sector being considered, then follows the process established in the 'National Competition Policy: Guidelines for the Review of Legislative Restrictions on Competition' (1996). That is:

- the relevant market is defined and the legislative framework described;
- restrictions on competition are identified;
- the relationship between the identified restrictions and objectives of the legislation are discussed; and
- alternative means of achieving the objective without restricting competition are developed and cost-benefit analysis is conducted for the existing situation and the alternatives.

2 Recommendations

Vocational Education and Training Act

With respect to the *Vocational Education and Training Act 1990* the review recommends a series of reforms to processes for registration, approval to deliver, accreditation and endorsement, and the removal of restrictions on competition that could not be justified. The suggested reforms remove many points of regulation. The reforms involve:

- removing section 81(3)(r) of the VET Act that requires 'the demand for skills provided by the course' be considered by the STB when considering an application for registration (see section 1.3.2);

-
- removing the requirement that registered providers also require approval to deliver courses (see section 1.3.3);
 - maintaining the system of approved training agents so as to give registered providers the option to seek the power to self-accredit courses (see section 1.3.4);
 - giving registered providers the option to seek endorsement to deliver courses to overseas students as part of their registration, subject to agreement with the Commonwealth Government (see section 1.3.5).

The review notes that legislation, anticipating these recommendations, has been proposed for the next sittings of Parliament

In summary the review recommends the adoption of a reformed registration system that would give providers the ability to obtain registration status that incorporates any combination of the following elements:

- automatic authority to conduct or approval to deliver courses;
- the option to seek the power to self-accredit courses; and
- the option to seek the power to offer courses to overseas students.

The review considers that the registration fee setting process and the associated justification for the level of fees should be transparent (see section 1.3.2). It also noted the possibility of fees being set on a national basis.

In relation to accreditation, the review recommends that the criteria by which providers obtain the ability to self-accredit courses and the criteria by which approved training agents are determined should be transparent. (see section 1.3.4).

The review also notes that the criteria for registration, accreditation and endorsement differ

The review considers that the proposed alternative to existing endorsement arrangements, of abolishing State Guidelines if the Commonwealth Guidelines are extended, should be adopted. The STB would maintain its current role of administering endorsement on behalf of the Commonwealth. This system would still provide the benefits of endorsement and achieve the outcomes sought whilst reducing some of the compliance costs and confusion for providers. It would also broaden the scope of students covered while maintaining and protecting the welfare of all students (see section 1.3.5).

With respect to student fees and charges, the review considers that the current system of setting fees and charges should be maintained. The current system does restrict competition, however, the objectives of the legislation, of ensuring equitable access to VET, of influencing training mix and providing training places, and of ensuring that students contribute to the cost of their courses, can only be met by restricting competition (see section 1.3.1).

The review considered a number of restrictions on competition in relation to apprenticeship and traineeship arrangements. However, these restrictions will

be removed with the adoption of the current proposed legislative amendments (see Appendix 6 'National Competition Assessment of Reforms Proposed by the Minister for Tertiary Education and Training').

Adult Community and Further Education Act

The review considers that the recommended changes to the VET Act should also be made to the ACFE Act.

Tertiary Education Act

With respect to the *Tertiary Education Act 1993*, the review has made two recommendations relating to the approval of private universities.

First, that Ministerial Guidelines be developed to make the process of approval of private universities more transparent. Second, that section 10(3)(b) 'the need in Victoria for any course of study to be offered by the University' be removed from the Act (see section 4.3.4)

For institutions applying for approval to deliver and authority to conduct individual courses leading to higher education awards the review recommends the removal of the potentially anti-competitive provision section 11(4)(a) that requires applicants to demonstrate 'the need in Victoria for the course of study' (see section 4.3.5).

The review considers that the benefits of the prohibition on the delivery of higher education awards except by recognised Universities, outweigh the costs of the associated restrictions. Consequently, it is the recommendation of this review that the current system be maintained (see section 4.3.5).

The review considers that there may be opportunities for rationalising and streamlining the process by replacing endorsement of higher education courses for overseas students with endorsement of universities as providers (see section 4.3.6).

3 Conduct of the Review

The Terms of Reference for this review indicate that it was to be conducted as a Model 4 review as described in 'National Competition Policy: Guidelines for the Review of Legislative Restrictions on Competition' (1996).

The Department of Education Legislation Review Steering Committee, which oversaw the review, engaged the Office of Regulation Reform within the Department of State Development to assist in the conduct of the review. This facilitated the independent conduct of the review.

A Model 4 review does not specify a minimum consultation requirement. However, the Department of Education wrote to the following organisations advising them of the review and asking for comment:

- Australian Chamber of Manufactures;
- Victorian Employers' Chamber of Commerce and Industry;

-
- Association of Directors of Victorian TAFE Institutes;
 - Australian Council of Private Education and Training;
 - Victorian Students and Apprentices Network;
 - Victorian Universities;
 - Adult and Community Education Victoria; and
 - Association of Neighbourhood Houses and Learning Centres.

Five written submissions were received. These are attached as Appendix 1. Education providers were also contacted directly by the Office of Regulation Reform in the process of preparing this report.

The Terms of Reference for the review indicated that it was to be completed by 30 June 1997. However, the completion date was extended to 31 July to allow proposed legislative changes to the *Vocational Education and Training Act 1990* to be incorporated into the review process.

Legislative Review Steering Committee

The Department of Education's Legislative Review Steering Committee has oversight and monitoring responsibility for the review process and has been given the opportunity to consider the detailed approach prior to commencement, as well as an interim review report at a specific stage of the review's work. The Steering Committee will also approve the final review report prior to its submission to the Minister for Tertiary Education and Training.

Steering Committee Members

Chairperson

Dr Nigel Smart (Department of Education) until August 1997; and
Dr Ian Allen (Department of Education) from August 1997.

Steering Committee Members:

Mr Mike Collin (Department of Education);
Mr Peter Dedrick (Department of Education);
Ms Debbie Feben (Department of Education);
Ms Lesley Foster (Department of Premier and Cabinet);
Dr Ian Hind; (Department of Education);
Ms Wahdiah Hopper; (Department of Education);
Mr David Hughes (Department of Education);
Mr David Latina (Department of Premier and Cabinet);
Mr John Livi (Department of Education); and
Ms Jenny Melican (Department of Treasury and Finance).

Terms of Reference

The review of legislation in the Tertiary Education and Training portfolio has been commissioned by the Minister for Tertiary Education and Training in accordance with the Victorian Government Timetable for the Review and Reform of Legislation that Restricts Competition, determined in accordance with National Competition Policy.

Legislation to be reviewed

The review will examine the restrictions on competition contained in the legislation referred to in the attached Schedule, in accordance with the Victorian Government's Procedural and Methodological Guidelines for the Review of Legislative Restrictions on Competition.

In particular, the review will provide evidence and findings in its report in relation to the following:

- clarify the objectives of the legislation;
- identify the nature of the restrictions on competition;
- analyse the likely effect of the restriction on competition and on the economy in general
- assess and balance the costs and benefits of the restriction;
- consider alternative means of achieving the same result including non-legislative means.

Reform options

The review will specifically address the appropriateness of:

- restrictions on fees and charges for centrally-funded courses;
- criteria for endorsement of courses and providers.

The review of accreditation and endorsement processes will also consider the continued net benefit/cost of these systems in light of other options that may be identified in the course of the review.

Review arrangements

This review is to be established and conducted in accordance with the Model 4 process contained in the Guidelines.

Key dates

The review will report its findings and recommendations to the Minister by 30 June 1997.

Secretariat

The review secretariat will be located in the External Relations Branch, Office of the Secretary, Department of Education.

Part 1 - Training and Further Education

Title/Name of Legislation	Restriction on Competition
Adult, Community and Further Education Act 1991	(a) Accreditation of further education courses (b) Registration of bodies to provide further education courses
Vocational Education and Training Act 1990	(a) Declared vocations (b) Prohibition on conduct of training courses in declared vocations without approvals (c) Approval of training schemes (d) Accreditation of VET courses (e) Approval/Authority to provide courses (f) Registration of private providers of VET courses (g) Approval to deliver accredited courses (h) Endorsement of courses for overseas students
Guidelines for educational services to International Students under s.85 of the Vocational Education and Training Act 1990	(a) Endorsement of institutions and courses (b) Exemption of TAFE Institutes and registered private providers with Approval to Deliver from: -premises requirements -staffing requirements -resources
Ministerial Directions on fees and charges under Adult, Community and Further Education Act 1991	Restrictions on fees and charges for centrally-funded ACFE courses.
Ministerial Directions on fees and charges under the Vocational Education and Training Act 1990	Restrictions on fees for centrally-funded courses conducted by TAFE Institutes and University TAFE Divisions.
Private Provider Guidelines under s.81 of the Vocational Education and Training Act 1990	Registration of private providers of Vocational Education and Training.

Part 2 - Higher Education

Title/Name of Legislation	Restriction on Competition
Tertiary Education Act 1993	(a) Endorsement of higher education courses of study for overseas students (b) Approval of private universities (c) Prohibition on offering higher education awards (d) Accreditation by Minister of higher education courses

CHAPTER 1 Vocational Education and Training

1.1 Background

Vocational education is post-secondary education that is directly linked to the needs of business and industry and tends to focus on more 'practical' skill requirements. The programs offered by the Victorian State Training System (STS) are designed and updated with help from employers in each industry sector, to ensure that they are relevant and related to the needs of specific jobs. One characteristic of graduates of vocational education training (VET) courses is that the skills obtained while training are directly transferable to the work place.

The Commonwealth Government along with the State and Territory Governments established the Australian National Training Authority (ANTA) by agreement in 1992. ANTA is run by an industry based board which is responsible to a national Ministerial Council. ANTA is the national advisory and funding body for vocational education and training. All facets of the delivery of VET are the responsibility of State and Territory Governments. VET is delivered by public, private, industry and enterprise training providers.

Recent national VET reforms and changes include:

- greater flexibility and more emphasis on the relationship between training providers and clients, with user choice giving industry more choice in the selection of provider;
- increased emphasis on non-TAFE providers and delivery of VET to students in schools; and
- promotion of competition in the delivery of VET services through promotion of user choice and competitive tendering.

VET in Victoria is regulated by the *Vocational Education and Training Act 1990* which aims to create an environment for quality vocational training, that will lead to increasing level of skills in the Victorian workforce that reflect industry needs. The Victorian government as a provider of funds to VET has an interest in ensuring the standard of VET services is acceptable to the community.

Victoria's role in the VET system to date includes:

- the development of TAFE institutes as independent public sector enterprises competing in an open training market and obtaining an average of 25% of their funding from non-government sources;
- the development of a training market with over 600 registered private providers of VET; and
- the implementation of planning arrangements which ensure industry priorities are reflected in training delivery.

1.1.1 The State Training System

The STS encompasses all the public organisations that are involved in vocational education and training in Victoria,

as well as registered private providers of training. The STS includes the State Training Board (STB), the Office of Training and Further Education (OTFE), Industry Training Boards (ITBs), and accreditation bodies. The STS also consists of 24 TAFE Institutes and dual sector (TAFE and Higher Education) Universities, more than 700 private vocational education providers and over 560 adult, community and further education providers across the State. The STS is a system of vocational education and training at tertiary level. The organisation chart of the Victorian STS is attached in Appendix 7.

Courses and Qualifications

The Victorian STS offers a range of programs ranging from short courses of one or two days duration up to full Advanced Certificate or Associate Diploma programs of several years duration. Areas of study include:

- Business and Management
- Manufacturing Technology
- Building and Construction
- Food Processing and Technology
- Tourism and Hospitality
- Community Care and Social Studies
- Information Technology
- Textiles, Clothing and Footwear
- Social and Community Services
- Transport and Storage
- Wholesale and Personal Services
- Music, Visual Arts and Entertainment
- Hobby Courses, Personal Development and Leisure Courses
- Information Sources

1.1.2 The State Training Board

The STB is a statutory body established by the *VET Act*. It is the State Training Agency for Victoria under the ANTA agreement. The functions of the Board as set out in Section 9 of the Act are:

- to advise the Minister about matters relating to VET in Victoria that will ensure high quality services are provided to public and private sectors and complement economic and social development;
- to advise the Minister about curriculum and expenditure relating to VET;
- to identify VET issues, promote research in relation to VET and ensure consistency in the nomenclature of VET; and
- to advise the Minister about provision of adult, community and further education in TAFE institutes.

The STB is responsible for the processes by which:

- private providers of training are registered;
- courses are accredited; and
- approval for providers to deliver courses is granted.

Registration is formal recognition by the STB that a provider of accredited training is capable, responsible and ethical. Furthermore, on the grounds of accountability of public funds, the Government only subsidises courses from registered providers. The registration system is designed to assist those involved in the state training system to identify private providers and the courses they offer. It does not prevent those outside the system from providing courses. In 1997, there were over 700 private providers registered by the STB. However, registration does not guarantee providers approval from the Board to deliver accredited courses. This is a separate process which is undertaken by registered providers. Non-registered providers are again not subject to this process.

Accreditation is formal recognition that the content, delivery and assessment methods of a course are appropriate for its purpose and to the level of qualification to which it leads. The accreditation system aims to ensure quality of courses that lead to qualification and state-wide recognition. Only registered providers can provide accredited courses. In 1996, 382 courses were accredited by the STB. The Victorian Government purchased 127 courses and 76 courses were purchased by the Commonwealth Government.

The Victorian Department of Education advised that the profile of applicants who own their courses is varied and extensive but can be broadly categorised into six areas:

1. TAFE institutes;
2. private and community providers;
3. non-providers;
4. Department of Employment, Education, Training and Youth Affairs (DEETYA);
5. Australian Committee for Training Curriculum (ACTRAC); and
6. Victorian Crown Copyright.

Although TAFE institutes are able to own copyright to their own courses, they have the lowest number of owned courses. Private providers own more courses than both TAFE institutes and non-providers.

Other major functions of the STB include the funding of TAFE institutes and the allocation of a proportion of VET funds by competitive tendering. Currently, the STB allocates 10% of available VET funds to public and private providers by competitive tender. Only registered providers can participate in the competitive tendering process. In 1996, \$41.6m was allocated for competitive tender. The STB plans to increase the proportion of funds allocated by competitive tender to 20% by 2000, that is approximately \$120 million.¹

The STB's strategic directions for VET include:

- promoting a more open and competitive training market;
- developing more flexible delivery options, improved access, more diverse training mix and greater client involvement at the provider level;
- linking performance of providers with funding;

¹ State Training Board 1995-96 Annual Report

- establishing best practice and system-wide standards; and
- progressively devolving program and resource management to providers and other STS agencies with appropriate accountability measures.

Table 1 Funding for VET 1995-96

VET	1995-96	1994-95
State Appropriation - Recurrent	373,194,379	382,234,712
State Appropriation - Works	25,838,999	25,642,382
ANTA Grants - Recurrent	126,706,344	109,205,152
ANTA Grants - Works	58,375,343	64,018,000
Other Agency Grants	1,564,600	2,371,278
Interest and Other Income	829,257	315,171
Resources Received Free of Charge	2,389,047	2,102,657
Trust Fund Income - State	6,206,952	
Trust Fund Income - Commonwealth	31,808,602	
Trust Fund Income - Total		44,268,469
	626,913,523	630,157,821

Source: State Training Board Annual Report (1996)

1.1.3 The Office of Training and Further Education

The OTFE administers programs and services for the provision of VET and of adult, community and further education. The OTFE is responsible for the management of regulated training, curriculum development, accreditation, registration of private providers and international operations. It is also responsible for managing organisational arrangements within the STS, including relationships with TAFE institutes and ITBs.

1.1.4 Industry Training Boards

Industry Training Boards provide advice to the STB on the training needs of industry and promote training within their own industry sectors. They also contribute to the accreditation process through representation on Industry Training Accreditation Boards (ITABs).

1.1.5 Providers of VET

TAFE institutes

TAFE institutes provide vocational education and training and adult, community and further education. They are self-governing bodies that are funded partly by Government and partly by their own commercial activities. In August 1995, there were 315,190 students in TAFE institutes, and 374,927 course enrolments in Victoria.

A recent initiative has seen the development of the program known as 'Pathways', which links Victorian TAFE courses to secondary schools and universities. The Pathways program allows students to gain course credits for entry to TAFE courses by secondary students and related university degrees by TAFE students.

Private Providers

Private providers deliver vocational education and training within the STS. They can be either registered or non-registered providers. Registered providers can deliver either or both accredited and non-accredited courses, whilst non-registered providers can only deliver non-accredited courses.

Private provider categories include enterprises, industry groups, commercial training companies, non-profit community organisations and secondary colleges.

1.2. The Market for Vocational Education and Training

The review considers that the relevant market is a broad market for educational services which provide individuals with vocational qualifications and skills. This market has many sub-markets defined by field of study or vocational area. For example, there is a sub-market for tourism training courses. There is substitution within each sub-market with more limited substitution between sub-markets.

1.2.1 Purchasers and providers in the market

Providers within this broad market include TAFE institutes, commercial training and enterprise training institutions. TAFE institutes are the largest providers within the market, around two to three times the combined size of competing private sector providers within the STS.

Community based providers also offer accredited and non-accredited VET and are recognised under the *ACFE Act*. Community based providers are non-profit organisations which offer a broad range of educational services. The provision of VET by community-based providers is considered in this section under the *VET Act*.

Providers in this market for educational services are either registered under the *VET Act* or non-registered. The review considers that providers make a business decision as to whether they are registered or not. The incentive to apply for registration includes gaining government endorsement as a marketing advantage, being eligible to apply for approval to deliver State accredited courses and access to government funding.

The STB advised that there have been no formal rejections of applications by private providers to be registered. This is partly attributed to the Board providing assistance to the potential providers in addressing any deficiencies in their initial applications for registration. Alternatively, providers may decide not to pursue registration once they become aware of the cost of meeting registration requirements. Hence these providers would make a business decision not to proceed with registration. They may however still act as providers of non-accredited courses.

There are a number of purchasers in this market, including both the State and Commonwealth governments, enterprises and individuals. Generally, the State government is the largest purchaser. The Commonwealth Government makes a substantial contribution to State providers through the VET program and other labour market programs.

1.2.2 Products

The products of the market are the skills recognised in qualifications or gained in unrecognised courses which contribute to the skill pool of Victorian industry.

1.2.3 Services in the market

The review considers that the degree of substitutability in the product market is determined by provider and course characteristics. First, some training providers choose to be registered. Under the *VET Act*, registered providers can choose to deliver accredited courses, non-accredited courses, or both accredited and non-accredited courses. Providers that are not registered can only deliver non-accredited courses. Both registered and non-registered providers can vary the type of course, in terms of both level and subject, they deliver. However, to deliver accredited courses providers must be both registered and obtain authority to conduct the course.

A distinguishing feature within the market is the price charged for services. All government funded courses, delivered by either a TAFE institute or a private provider, are offered to students at a subsidised price. Training providers that are not registered cannot access government funds. Non-government funded courses are offered at market prices by both registered and non-registered training providers.

Table 3 best illustrates the structure of the market as described above.

Table 3 The VET Market

	Segment 1	Segment 2	Segment 3	Segment 4
Registration status of Provider	Registered private providers and TAFE institutes	Registered private providers and TAFE institutes	Registered private providers and TAFE institutes	Non-registered providers
Recognition of VET Course	Providing accredited courses	Providing accredited courses	Providing non-accredited courses	Providing non-accredited courses
Price	Subsidised Price (Government is primary purchaser)	Market Price	Market Price	Market Price

Segment 1 is largely serviced by TAFE institutes. Both TAFE institutes, community based providers and private providers compete to win government funds for VET courses by competitive tendering. TAFE also operates to deliver accredited courses at a market price in competition with other registered providers in Segment 2. Both TAFE and private providers offer non-accredited courses in Segment 3.

The first three segments represent the scope of the STS. The Department of Education has advised that there are no readily available estimates of the size of the fourth segment.

Registered providers in Segments 1 and 2 generally will deliver accredited courses that provide the student with a nationally recognised qualification. Accredited courses normally involve some assessment or examination. Registered providers in Segment 3 and non-registered providers in Segment 4 provide courses that are either modified versions of accredited courses and non-accredited courses

1.2.4 Interaction in the market

The review considers that Segments 1 and 2 compete with each other in offering accredited courses within this broad market; Segments 3 and 4 compete with each other in offering non-accredited courses; and Segments 1 and 2 compete with Segments 3 and 4 in delivering courses in general. Consumers are able to move within these segments, choosing to be in either one or more of these segments. Whereas providers can move down through the segments easily but to move up through the segments is more difficult as they would need to go through the registration and/or accreditation processes.

1.2.5 Geographic dimension of the market

The review has defined the geographic dimension of the market for VET services as being within Victoria, whilst acknowledging the important national linkages. This is because participants in the market predominantly operate within Victoria. For example while students can elect to study in other states or territories without restriction, in reality their mobility would be low. The national dimension of the market arises from VET in Victoria being part of the national program of VET under the ANTA agreement. One outcome of this is that VET courses in Victoria provide students with nationally recognised qualifications. Furthermore, there is inter-State interaction at the provider level, as TAFE and private providers deliver VET in other States and purchase courses from other States to deliver in Victoria.

In addition, some providers have international operations. In August 1995, four TAFE institutes were involved in overseas activities. Overseas export type activities included developing and assisting with training projects. For example:

- the Casey Institute of TAFE in Melbourne assisted with plastics industry training at the Rajamangala Institute of Technology in Bangkok, Thailand;
- the Melbourne Institute of Textiles assisted in the development and growth of the Footwear Design and Development Institute of India; and
- the Northern Melbourne Institute of TAFE and the Western Melbourne Institute of TAFE were involved in three hospitality training programs in Cambodia.

Education and training programs developed by Victorian TAFE Institutes are also being delivered in countries such as China, Fiji, Indonesia, Japan, Korea, Laos, Malaysia, New Zealand, Papua New Guinea, Pakistan, the Philippines, Taiwan and Vanuatu.

1.2.6 Legislative framework

The VET market in Victoria is regulated under the *VET Act*. Appendix 3 outlines the structure of the *VET Act*. Administration of the *VET Act* is carried out by the STB, ITBs, the Vocational Education and Training Board (VETAB) and ITABs.

The legislative restrictions on competition being considered in this section of the review relate to the powers of the STB in regard to the registration of

providers, the accreditation of and authority to conduct courses, Ministerial directions on fees and charges and endorsement of courses for overseas students.

Proposed future arrangements

The regulation of VET across States and Territories is undergoing change. It was agreed in May 1996 by Commonwealth, State and Territory Ministers with responsibility for vocational education and training that a system be created that:

- puts decisions about the provision of training in the hands of industry;
- expands training opportunities;
- provides for national competency standards and qualifications; and
- reduces the points of central regulation in the system of training recognition.

It was also agreed that States and Territories withdraw as soon as practicable from the central accreditation of courses and shift their regulatory focus to provider recognition and that legislation be introduced to ensure reciprocal recognition of providers and courses.

The Victorian Department of Education has put forward new legislative proposals that relate to these decisions. These proposals and their impact on competition policy are discussed in Appendix 6 'National Competition Assessment of Reforms proposed by the Minister for Tertiary Education and Training'.

1.3 Restrictions on Competition, Government Objectives and Market failures

This section assesses how the legislative restrictions identified in the Terms of Reference affect the VET market. Restrictions on competition may affect, for example, the level of industry concentration, create barriers to entry or exit, increase the costs of operating in a market or limit product or service innovation and differentiation thereby limiting consumer choice. It then outlines the objectives of the legislation and considers whether the restrictions on competition achieve their objectives. Alternative means of meeting the objectives are considered. Finally the costs and benefits of the existing arrangements and the proposed alternative arrangements are assessed.

The areas identified include restrictions on fees and charges, approval to deliver courses, registration and accreditation procedures and endorsement of institutions and courses as suitable for overseas students. The provisions are assessed in this order.

1.3.1 Fees and Charges

The Ministerial Directions on fees and charges only apply to government-funded courses. The Ministerial Directions impose restrictions on fees and charges that may be imposed on students by TAFE institutes and the TAFE Divisions of RMIT, Swinburne Institute of Technology and the Victoria University of Technology. The Directions:

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- require providers to calculate students' tuition fees on the basis of \$1.00 per student contact hour;
 - require providers to charge students a minimum tuition fee of \$40.00 in respect of all enrolments in any year;
 - limit the tuition fee that a provider may charge a student in respect of enrolments in any year to \$500.00;
 - limit other fees and charges that may be imposed; and
 - specify exemptions and concessions to be granted in cases of hardship and in other cases.

These Directions reflect Government policy that students should contribute to the cost of providing government-funded training. This is not dissimilar to the rationale of the Higher Education Contribution Scheme (HECS).

The Directions do not apply to private providers. Subject to gaining approval to deliver under section 83 of the *VET Act*, a registered private provider may charge a market fee to domestic students enrolled in accredited courses. Private providers of VET are however subject to the same fee restrictions when they are in receipt of government funding under the terms of their performance and funding agreements with the STB. These funding agreements are contractual arrangements only and are not mirrored in legislation.

The Ministerial Directions are a mechanism for subsidising prices where TAFE institutes are in receipt of government funding. Similarly, the funding agreement between the STB and a private provider is the mechanism for subsidising prices where private institutions are in receipt of government funding. In the case of private providers, funding arrangements are essentially a condition of contract between the STB (the purchaser) and the provider.

Restriction on competition

The existing arrangements restrict TAFE institutes from charging less or more than the prescribed fees, and this restriction is mirrored for private providers in receipt of government funding.

A further restriction is that registered private providers delivering accredited courses that are similar to those offered at TAFE institutes, could be at a competitive disadvantage given that TAFE institutes charge students subsidised fees.

The review suggests that the Ministerial Directions applying to TAFE institutes are akin to the agreements between private providers and the STB and hence may not be a significant restriction on competition. This is discussed below.

Government Objectives

The review suggests that the objectives of the existing arrangements are:

- to ensure that there is equitable access to vocational education and training by providing education at a reasonable cost;

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- to ensure government funding is directed to delivering the appropriate range of courses. This will result in a highly skilled workforce that is able to meet the needs of industry;
 - to support government policy of influencing the training mix and of providing training places; and
 - to support government policy that students should contribute to the cost of their education.

Market Failure

In a pure market situation where providers of VET are allowed to charge fees at their discretion, disadvantaged students may not be able to have access to vocational education.

In the short-term a free market situation may also result in a lack of training in a particular field of study. While market mechanisms may prevail in the long-run, the government may choose to attempt to avoid skill shortages by funding training in specific fields of study.

Link restriction on competition to objectives of legislation

The prescribed fees ensure that providers do not charge fees beyond a level that would make VET inaccessible to students. The restriction allows Government as a purchaser of courses to meet the objective of making courses accessible to students.

Government as a provider of VET funding has an interest in ensuring that its expenditure is directed to providing training places that meet the needs of the community and industry. Prescribing fees for certain courses is consistent with this objective.

Subsidising the cost of VET education as opposed to fully funding is based on a government policy decision that students should contribute to the cost of their education. The existing fees system implements this policy decision.

Costs

- Imposes costs in complying with the prescribed fees;
- Limits freedom of providers to set fees at full cost recovery;
- Creates the potential for budgetary pressures for providers;
- Artificially distinguishes between the delivery of subsidised and non-subsidised training places that deliver the same outcome; and
- Creates distortions in the market for provision of training, given the restrictions attached to the delivery of government funded training.

Benefits

- Provides for uniformity of fees for government funded places;
- Government influences training mix;
- Makes VET accessible to all students for government funded places; and

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- It is an effective mechanism in recovering fees.

Costs vs Benefits

The review considers that the benefits of the existing arrangement outweigh its costs.

Alternatives

(1) Voucher system: entitles holder of a voucher to redeem it at an authorised provider for VET up to a specified monetary value

The voucher system would put the student in the role of the purchaser of their education. A cash voucher, which would cover part or full cost of a course, would be distributed to young people before they left school and would only be valid for a certain period after they left school. The student would use the voucher to purchase a course and the provider would redeem the voucher with the issuing government body.

Costs

- Potential for financial instability for providers as providers may not attract enough enrolments year in year out and will be unable to manage or plan their provision of courses;
- Administratively complex as there would need to be mechanisms to determine who receives the vouchers, the value of vouchers for different courses, the relative value of vouchers and the pricing of courses and parts of courses;
- Increases transaction costs for students as they have to find the provider that offers value for money; and
- It would be inconsistent with the Government desire to influence the quality and type of training delivered in the VET system.

Benefits

- Puts the choice into the hands of the consumers as the primary consumers of VET;
- Fosters competition amongst providers as they seek to attract students with vouchers;
- Reduces administrative costs for providers in complying with the prescribed fees;
- Introduces accessibility of VET to all students; and
- If the voucher only covers part of the cost of the course and students have to pay the remaining cost, it complements government policy that students pay for further education.

Costs vs Benefits

The costs of implementing this system appear to outweigh its benefits. Although it meets the objectives of providing equal access to students but fails to meet the policy objective of government being able to identify the skills

required by industry and then ensure that these skills are delivered via funding arrangements.

(2) Introduce a course subsidy scheme similar to that of HECS

Costs

- Administratively complex as requires a tax structure or a bank willing to enter into a student deferred loan arrangement;
- In the event that the taxation system was used, it would require State and Commonwealth interaction to facilitate the transfer of funds which would be resource-intensive;
- Increases transaction costs for students; and
- Removes the ability of Government to determine the type of courses made available.

Benefits

- Removes budgetary pressures for providers as they are able to claim full cost recovery;
- Provides uniformity in fees;
- Provides access to VET for consumers;
- Provides students with the choice of determining courses; and
- Complements government policy that students make a direct financial contribution for further education.

Costs vs Benefits

This alternative has also been considered by the Commonwealth Government, as seen in the article in Appendix 8. The review notes that this alternative, although at present is administratively complex, is one that may be considered in the future through State and Commonwealth co-operation. Again, this alternative would need to be considered in the context of whether government wished to move from a policy objective of being able to determine courses offered or moving the decision onto consumers.

(3) Deregulate fees and charges

Costs

- The fees charged by providers may make courses inaccessible to disadvantaged students and therefore not meet the government objective of equitable access to further education;
- Providers may charge high prices for government funded places in high demand courses, again making courses inaccessible to disadvantaged students;
- Providers may become less willing to provide government funded places given the limited profit potential relative to delivering non-government funded places; and
- Providers may collude to benefit themselves rather than the community.

Benefits

- Providers are in full competition with each other creating incentives to be more efficient in delivering courses so that they are more competitive;
- Improvement in allocation due to the removal of incentive for over-consumption of the subsidised service;
- Gives providers autonomy in setting of fees and running of their business from a fiscal point of view;
- Minimises the potential for government funding to 'crowd-out' private funding of training; and
- Complements government policy where students are expected to pay for courses.

Costs vs Benefits

This alternative has costs greater than benefits. This is essentially due to the potential exclusion of students from VET because of high fees. This alternative does not meet the government's objective of having a VET system that offers equitable access to all members of the community.

Preferred Option

The review considers that the current system of setting fees and charges is the preferred option. The current system does restrict competition, however, the objectives of the legislation, of ensuring equitable access to VET, of government determining training mix and providing training places, and ensuring that students contribute to the cost of their courses, can only be met by restricting competition.

1.3.2 Registration of Private Providers

Registration is formal recognition by the training authority that a provider is competent and ethical. Section 81 of the *VET Act* empowers the STB to register private providers (commercial providers, enterprises, community providers) of VET. TAFE institutes are not required to be registered as they are listed in Schedule 1 of the *VET Act*. At the end of 1997, there were 700 providers registered under section 81. As noted in section 1.2.1, the STB advised the review that there have been no formal rejections of applications for registration.

Section 81 also makes provisions for non-refundable fees for applications for registration which are set at full cost recovery and are currently \$300. Registration fees are currently \$4,000 for three years registration. However, OTFE advise that fee collections are under review and it is proposed that they will be \$4000 for 3 years with the first \$2000 in the first year, and \$1000 annually thereafter.

There are also ad hoc fees for extensions to a provider's 'scope of registration'. ('Scope of registration' lists which courses a provider is registered to provide). These fees are \$400 for the first additional course and then \$300 for additional

courses thereafter within the one application. If there are many courses that the provider wishes to add, OTFE advise that they can negotiate a discount on the cost.

OTFE also advise that providers will be able to apply for registration through a panel of approved training recognition consultants. They assist and prepare the application of the provider for registration and recommend the provider to the OTFE. OTFE will accept the recommendations from the consultants. Under this system, a reduced fee of \$1000 is charged to providers who also negotiate the costs of the consultants. No additional fees are charged for adding courses to the 'scope of registration', only those charged by the consultants need be paid.

Section 81(3) sets out the matters to which the Board may have regard in assessing an application for registration. Section 81(3) includes reference to matters such as financial resources, planning, staffing, facilities, previous experience and the demand for skills provided by the course. The Department advises that this provision has not been used in an anti-competitive manner. It is nevertheless possible that section 81(3)(r) could be used to protect incumbent providers in a particular area of study as it requires providers to demonstrate that there is a demand for the skills provided by the course. In addition to meeting those requirements, providers are audited regularly and reassessed against those requirements, imposing additional compliance costs for providers.

Section 81(4) states that the Board may issues Guidelines in relation to these matters. The Guidelines aim to ensure registered providers meet standards as set by the Board regarding:

- curriculum proposed to be offered;
- financial and other resources;
- training environment;
- marketing;
- provisions for refunds and protection of students fees where paid in advance; and
- student selection procedures.

Restriction on competition

Registration could be considered to affect the distribution of providers across the four market segments. The incentives to apply for registration include:

- being able to access government funding to deliver courses;
- gaining government endorsement that can be used in marketing courses; and
- being eligible to apply for approval to deliver State accredited courses.

However, some providers may see registration as a burden and opt to provide non-accredited courses that are close substitutes to those provided by registered providers.

As noted, section 81(3)(r) of the *VET Act* could be used to protect incumbent providers in a particular area of study. The review considers that section 81(3)(r) of the *VET Act* is a significant restriction.

This review finds that registration is not a barrier to providing vocational education in the broad VET market. However, it is a significant barrier to competing for government funds and to delivering accredited courses.

Consultations with registered providers revealed that providers do not see registration as an undesirable barrier. However, there were two different reasons for this belief: one college indicated that registration is one of the factors ensuring quality of provision of services and was more a prerequisite to achieve this quality. However, a second college claimed if well maintained, registration does assist in providing consumer confidence in the training being delivered but that at present registration is too easily obtained and should be better scrutinised.

In regard to fees, the registration fees are a barrier to entry for providers that may prefer to allocate this money to other areas within their organisation. However, the fees appear to be a fee for service and given the proposed changes to the fee structure, providers are given more flexibility in payment of fees and are even able to negotiate in some circumstances.

Government Objectives

The policy objectives relating to provider registration are:

- to ensure private providers are viable and quality providers;
- to enable students of private institutions to obtain access to nationally recognised qualifications;
- to ensure students receive quality instruction that leads to a quality skills pool for Victoria; and
- to promote informed user choice.

Market failure

The VET market is characterised by information problems where the student purchases a service, the quality of which can really only be ascertained after purchase. Registration is designed to remedy these perceived information asymmetries in the VET market.

Link restriction on competition to objectives of legislation

As noted, registration is formal recognition of the quality of the provider. A registered provider therefore has the marketing advantage of being government endorsed. Registration complements the system of accreditation by ensuring that the provider has the necessary resources to deliver an accredited course.

Registration, though not strictly compulsory for the delivery of VET courses, is required for the delivery of accredited VET courses. The Guidelines for registration - which refer to matters in section 81(3) - focus on resources, staffing and other quality based criteria, and the review would suggest that, in

the absence of government failure, it serves the objectives of the legislation. In particular, as registered providers are allowed to compete for government funds, a system of quality assurance in private providers assists the government to be accountable in how public funding is allocated.

Costs

- Creates administration and financial costs for providers which may be passed on to consumers;
- Administration costs for government in maintaining a register, leading to registration fees that are passed onto consumers by providers paying the fee;
- Distorts the operation of the market as registration is linked to government funding, accreditation, and endorsement to deliver to overseas students;
- Limits choice of courses able to be provided by providers that are not registered, in effect imposing a restriction on those participants in the market that do not apply to be registered;
- Limits ability of non-registered providers to compete for government funding;
- Restricts supply of services as section 81 (3) requires a minimum level of experience;
- Limits the choice to consumers that seek recognised qualifications as they can only use registered providers.

Benefits

- Provides State and National recognition through the National Register and the CRICOS (required to enrol full-fee paying overseas students);
- Provides student and community confidence in the qualifications achieved and in the training organisation;
- Reduces the potential for opportunistic providers;
- Provides a signalling device in the market for students and the community given information asymmetries, that is, consumers are able to make more informed choices;
- Assists in maintaining accredited competency-based training courses at a consistently high standard; and
- Provides a quality assurance mechanism for the allocation of government funds.

Costs vs Benefits

Registration on the whole appears to have benefits that outweigh its costs as it provides recognition for providers and signals to consumers that a provider will provide quality service. It therefore meets the objectives of the legislation as outlined above. Furthermore, registration does not restrict entrants into the VET market but rather creates segmentation of the market. Competition still occurs amongst all participants and although it involves some administrative and financial costs, which the review considers are not significant, providers can move through the segments if they so choose.

Also, under existing arrangements, providers have to obtain registration and approval to deliver. Registration does not guarantee approval to deliver, rather it lists providers that have passed quality based criteria.

It could be argued registration assists in excluding incompetent or dishonest providers at the outset rather than dealing with the consequences of their actions later, thereby protecting the industry's reputation and consumers.

Alternatives

(1) Abolish registration

Costs

- There would be a requirement for a replacement system to be developed to allow Victorian VET providers to gain National recognition through the National Register and CRICOS. The abolition of registration has the potential to limit national operation of providers;
- Introduces the potential for opportunistic providers;
- Courses may be delivered inconsistently;
- Removes the mechanism by which government can be assured public funding is being appropriately allocated to approved providers; and
- Removes the information signalling device in the market and introduces transaction costs for consumers that wish to locate competent service providers.

Benefits

- Removes the distinction between registered and non-registered providers thereby creating a level playing field and fostering competition;
- Reduces government administrative costs and those faced by providers, allowing more competitive prices to be offered to consumers;
- Introduces choice of providers for consumers; and
- Removes any hurdles for providers in providing courses.

Costs vs Benefits

The benefits of this alternative are outweighed by its costs because even though it may open the market up to more competition, the transaction costs for students, the removal of Victoria from the national system of recognised qualifications and the inability of government to ensure public funding is directed to appropriate institutions is too great a cost compared to the benefits of open competition.

Preferred Option

The review has recommended a series of reforms based around registration. These are discussed in section 1.3.6 below.

The review recommends that the registration of providers remain and be the focus of a series of other reforms outlined below. It also considers that the

registration fee setting process and the associated justification for the level of fees should be transparent.

1.3.3 Approval to Deliver and Authority to Conduct

Under section 83, registered private providers require 'approval to deliver' a course that is registered as accredited under section 78A. Under section 79, TAFE institutes require 'authority to conduct' a course where they are in receipt of government funds. Generally, the application for approval to deliver a course is made in conjunction with the application for registration.

Registration gives providers the authority to issue qualifications against accredited courses. As discussed above, providers are registered to deliver a given number and type of accredited courses, which is referred to as the 'scope of registration'. Where providers intend to deliver additional courses not considered in their original application for registration, they need to make an application to extend their 'scope of registration'. If successful, the provider will be able to deliver additional courses and issue qualifications against those additional courses.

Where a private provider intends to extend its scope of registration, it must provide OTFE with information that demonstrates its capacity to deliver the course or courses against the Conditions of Registration discussed above. Under section 79, TAFE institutes self assess their capacity to deliver a course or series of courses. In contrast, under section 83, the assessment of a private provider's capacity to deliver a course is undertaken by OTFE on the documentation given by the provider.

Restriction on Competition

Although the assessment of capacity to deliver is undertaken against the same criteria, TAFE institutes may be at an advantage over private providers as they have the authority to self assess. The Department has argued that historically, the close association between TAFE institutes and the Department of Education justified delegating the authority to self assess to the TAFE institutes.

The 'approval to deliver' requirement is a further hurdle to registered private providers wanting to extend their business operations and offer new services, whether in receipt of government funds or not. The Swinburne University of Technology has argued in its submission to this review that:

"[C]entral allocation of authority to conduct courses allows a very efficient allocation of public resources. This is particularly important in the case of areas such as engineering which requires a very high investment of public funds in infrastructure. The disadvantage of the unregulated approach can clearly be seen in higher education, where all universities aspire to offer prestige professional courses such as engineering and medicine. The result is that there are more engineering courses at Australian universities that are required and public money is wasted in duplicating infrastructure." (p. 3)

This argument may be appropriate for government funded providers but it may not be seen as government's role to determine which courses are delivered by providers operating on market fees.

Government Objective

The primary objective of section 83 is to ensure that private providers deliver all accredited courses to a given standard as their businesses grow and the services they offer change. Section 79 works as a check in the system to ensure that TAFE institutes only spend government funds according to their funding agreements, whilst approval and authorisation applications satisfy the Department that copyright clearance issues have been resolved.

Secondary objectives are:

- to ensure students receive quality instruction for the fees charged that leads to a quality skills pool for Victoria; and
- to ensure the quality of the provider's ability to deliver an accredited course is a priority over fee-collecting and that the quality of the delivery is not compromised by profit-making goals.

Market Failure

Authorisation and approval are designed to complement the current registration system and address the perceived information problems in the VET market. Registration is designed to signal to potential purchasers of VET that the provider is of a recognised quality and has the capacity to deliver a set of courses as accredited. From time to time, the scope of registration may need to be widened and approval acts to ensure that the registration status of a provider remains relevant.

In regard to the secondary objectives, in a free market there would be increased potential for discrepancies between the fee charged for a course and the quality of the service delivered.

Link Restriction on Competition to the Objectives of the Legislation

The restriction satisfies the objectives of the legislation by providing a mechanism which allows a provider's scope of registration to be updated at regular intervals, and provides quality assurance for allocation of government funding. It therefore supports the overall objectives of the registration scheme.

Before granting approval to deliver or authority to conduct an accredited course, OTFE requires that where the curriculum copyright lies with a TAFE institute or with a private provider or other business, an agreement has been reached to allow use of the curriculum. In these cases, the copyright owner commonly charges a licence fee to deliver the course. The role of OTFE in this instance is limited to providing the contact details of the copyright owner to the provider intending to deliver the course. This process ensures copyright issues are resolved without onerous or direct intervention by the Department.

In relation to the secondary objectives, the prerequisite of having approval to deliver a course prior to being able to charge fees sets minimum standards for all providers prior to them imposing any economic charge onto the community. The restriction becomes an incentive for providers to maintain quality standards as they will not be able to charge fees unless they do, rendering them financially unviable. A free market would separate the efficient and quality providers from those that are not. However, the cost to the students in the market process of 'sifting out the good from the bad' may be too high as the fees would not be refundable or the students would not be compensated. As the objective is to ensure that students receive quality education with the aim of contributing to the skills pool of Victoria, the free market may limit the ability of students to educate themselves and compete with other students in the labour market if they are locked out of the market through financial loss or poor provision of education.

Costs

- Incremental costs of administration and financial costs for providers of applying to extend the 'Scope of Registration', which may be passed on to consumers;
- Limits choice of courses able to be provided by providers that are not given approval (in conjunction with registration), in effect imposing a restriction on those participants in the market that do not apply to be registered;
- Involves compliance costs of having to meet quality standards as set out in the Guidelines;
- Restricts supply of services as section 81(3) requires a minimum level of experience;
- Protects incumbent providers as section 81(3)(r) requires providers to demonstrate the demand for skills offered by the course;
- Creates distortion in the market as TAFE institutes are able to self-assess their capacity to deliver a course whereas private providers are assessed by OTFE;
- Limits the choice to consumers that seek recognised qualifications as they can only use approved (registered) providers; and
- Providers that are able to charge market fees once approval is gained, may charge fees at their discretion, limiting equitable access to courses as they may charge higher fees for courses with higher demand.

Benefits

- Provides a mechanism of ensuring that a provider's 'scope of registration' remains relevant over time, complementing changing needs of industry;
- Provides student and community confidence in the qualifications achieved and in the training organisation;
- Reduces the level of opportunistic providers;
- Provides a signalling device in the market for students and the community given information asymmetries, that is, consumers are able to make more informed choices;
- Assists in maintaining that accredited competency-based training courses are delivered at a consistently high standard;

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- Provides a quality assurance mechanism for the allocation of government funds;
 - Assists in ensuring quality services are delivered if fees are to be charged; and
 - Provides incentive for provision of quality services in order to be able to charge market fees.

Costs vs Benefits

The review considers that the benefits overall of approval and authorisation outweigh the costs of the process.

Alternatives

(1) Make approval to deliver part of registration

The alternative will require that the selection criterion contained in section 81(3)(r) of the VET Act be repealed, providers can self-assess their approval to deliver, and the approval to deliver process will be part of the registration process. Therefore approval to deliver as a separate clause should be repealed.

Costs

- Incremental costs of administration and financial costs for providers of applying to extend the 'Scope of Registration', which may be passed on to consumers;
- Limits choice of courses able to be provided by providers that are not registered, in effect imposing a restriction on those participants in the market that do not apply to be registered;
- Limits the choice to consumers that seek recognised qualifications as they can only use registered providers; and
- Providers that are able to charge market fees once registered, may charge fees at their discretion, limiting equitable access to courses as they may charge higher fees for courses with higher demand.

Benefits

- Provides a mechanism of ensuring that a provider's 'Scope of Registration' remains relevant over time, complementing changing needs of industry;
- Provides student and community confidence in the qualifications achieved and in the training organisation;
- Reduces the level of opportunistic providers;
- Provides a signalling device in the market for students and the community given information asymmetries, that is, consumers are able to make more informed choices;
- Assists in maintaining that accredited competency-based training courses are delivered at a consistently high standard;
- Provides a quality assurance mechanism for the allocation of government funds;

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- Assists in ensuring quality services are delivered if fees are to be charged; and
 - Provides incentive for provision of quality services in order to be able to charge market fees.

Costs vs Benefits

The review considers the benefits exceed the costs as discussed above but with the additional benefit of one less point of regulation for providers.

Preferred Option

The review recommends that the approval and authorising processes be reformed to become part of the registration process (see section 1.3.6 below). The above alternative is preferred as it provides the benefits of the approval process but removes the extra hurdle faced by providers by incorporating the process at the point of registration.

1.3.4 Accreditation of Courses

Accreditation is formal recognition that a course has been assessed as meeting specified quality criteria. Accreditation under section 73A of the *VET Act* is based on the following criteria:

- the contents and standard of the course are appropriate to the qualification (if any) to which it leads;
- the course and the methods adopted in delivering it are likely to achieve the purposes of the course; and
- consistency with national standards for accreditation.

As discussed in section 1.2.6 the process of course accreditation is currently subject to legislative change.

Restriction on competition

Accreditation creates barriers to entry in the development and adoption of courses. This is because private providers have to apply to have their courses accredited whilst TAFE institutes can be declared qualified to recommend that their courses (that are not State-wide courses) be accredited under section 77 of the *VET Act*. However, no TAFE institutes have been declared.

However, the new legislative proposals for the *VET Act*, as outlined in Appendix 6, suggest that private providers registered under section 81, and the corresponding section of the *ACFE Act*, who meet quality standards set by the STB or ACFEB, should be able to be declared to recommend that their courses be accredited.

The existing arrangement for accreditation could also be seen to distort the provision of accredited and non-accredited courses in the market. If the process is seen as too costly and onerous, providers may diverge from

accredited courses towards non-accredited courses. A registered commercial provider, the Victoria College, advised that they are moving more towards non-accredited courses in order to compete effectively with registered and non-registered providers who are offering non-accredited courses that are similar to those with accreditation but at a lower cost.

A registered community based provider, the Wangaratta Centre for Continuing Education Inc., provides accredited and non-accredited courses. The Centre advised that their non-accredited courses tended to be introductory type courses that did not meet the requirements for accreditation as they were simplified and customised versions of accredited courses. The Centre tends to view these courses as 'stepping stones' into accredited courses.

The Department of Education, on the other hand, advised that generally non-accredited courses were provided because there was a demand for courses such as cooking classes or self-help courses or craft classes, that do not involve extensive assessment and examinations.

Accreditation excludes the entry of non-registered providers from Segments 1, 2, and 3 of the market described in Section 1.2. This has the effect of excluding non-registered providers from competing for STB funds. This becomes an issue for competition policy as some registered providers also deliver non-accredited courses as well as accredited courses. They are able to gain a financial and marketing advantage over non-registered providers if they seek government funding.

Accreditation also could be seen to impose a restriction in terms of innovation and entry into the market for those participants that only develop courses but are not providers of the courses. There have been claims that accreditation can lead to the development of 'TAFE course clones'.

Government Objectives

The objectives of accreditation are to:

- ensure quality of a course that leads to a recognised qualification;
- promote informed user choice;
- ensure students receive quality instruction that leads to a quality skills pool for Victoria; and
- provide state-wide and nationally recognised qualifications.

Market failure

Accreditation acts to remedy market failure where students have less information than the provider regarding the quality of the course, the transferability of the skills and its industry recognition. As accredited courses are delivered only by registered providers, the registration requirements surrounding information disclosure and responsible marketing assist to correct this market failure.

Link restriction on competition to objectives of legislation

Accreditation provides for quality assurance of courses that will be recognised nationally and state-wide whilst providing a signalling device for participants in the market.

Costs

- Increases costs of providers;
- Inhibits innovation leading to 'clones' of already accredited courses;
- Administration costs for government in maintaining a register of accredited courses, leading to fees that are passed onto consumers by providers paying the fee;
- Distorts the operation of providers in the market as accreditation is linked to government funding;
- Limits choice of courses able to be provided by non-registered providers as they are not able to provide accredited courses;
- Limits the choice to consumers that seek recognised qualifications as they can only achieve recognition through accredited courses;
- Provides TAFE institutes with a potential cost advantage as they are able to be declared. This allows them to recommend that their courses be accredited, thereby lessening the degree of competition between public and private providers.

Benefits

- Provides recognition of qualifications state-wide and nationally;
- Provides student and community confidence in the qualifications achieved;
- Reduces the level of opportunistic developers of courses;
- Provides a signalling device in the market for students and the community given information asymmetries, that is, consumers are able to make more informed choices;
- Lowers transaction costs for consumers by providing a signalling device for all courses;
- Assists in meeting industry needs;
- Assists in meeting the demand for competency based training; and
- Provides for portability of training.

Costs vs Benefits

Accreditation on the whole appears to have benefits that outweigh its costs as it provides recognition of qualifications for consumers and signals to consumers the quality of a course. It therefore meets the objectives of the legislation as outlined above.

The review acknowledges that the existing system of accreditation does advantage public providers over private providers and registered over non-registered providers. Therefore alternatives addressing these additional problems are considered below.

Alternatives

(1) 4-level Accreditation process

All courses delivered by registered or non-registered providers are accredited, with different criteria set that are appropriate to the level of course being offered. For example, a 4 year degree would be required to meet level 4 criteria whilst an introductory course will be required to meet level 1.

Costs

- Increased administration and financial costs for providers;
- Increased workload for government accreditation boards;
- Could limit the incentive to innovate; and
- Could still exclude some courses.

Benefits

- All providers would be able to provide accredited courses, fostering competition which could benefit consumers in the form of lower prices;
- Provides for national and state-wide recognition of qualifications at all levels of study;
- Increases choice for consumers;
- Lowers transaction costs for consumers by providing a signalling device for all courses;
- Assists in meeting industry needs;
- Assists in meeting the demand for competency based training; and
- Provides for portability of training.

Costs vs Benefits

The review considers that although this system has merits in terms of competition, it may be administratively complex to implement and may still have some elements of restrictions on competition.

(2) Devolution of accreditation

The review notes the legislative changes currently proposed by the Department of Education, that involve the STB withdrawing entirely from the accreditation of courses where national training packages, based on industry-developed national competency standards, have been endorsed by Ministers. In the absence of national training packages, the Board devolves powers to training agents that meet appropriate quality standards to allow them to accredit their own courses or courses developed by others.

In conjunction with the legislative changes proposed by the Department of Education, the review considers the alternative of extending to appropriate individual training providers the right to self-accredit courses.

This option is currently available to TAFE Institutes under section 77 of the *VET Act*. The alternative could be most effectively implemented by extending section 77 to apply to registered private providers as well as TAFE Institutes. Appropriate registered private providers in the ACFE sector should also have the ability to self-accredit their courses.

The assessment would be conducted as part of the registration process whereby providers submit their interest in accrediting their own courses. This would be part of their 'scope of registration'. This is because the criteria for registration and accreditation differ.

Costs

- Distorts the operation of providers in the market as accreditation is linked to government funding;
- Limits choice of courses able to be provided by non-registered providers as they are not able to provide accredited courses; and
- Limits the choice to consumers that seek recognised qualifications as they can only achieve recognition through accredited courses.

Benefits

- Provides recognition of qualifications state-wide and nationally;
- Provides student and community confidence in the qualifications achieved;
- Reduces the level of opportunistic developers of courses;
- Reduces the cost of administration for government as accreditation will be part of one system;
- Provides a signalling device in the market for students and the community given information asymmetries, that is, consumers are able to make more informed choices;
- Lowers transaction costs for consumers by providing a signalling device for all courses;
- Assists in meeting industry needs;
- Assists in meeting the demand for competency based training; and
- Provides for portability of training.

Costs vs Benefits

The review considers that the benefits of devolving accreditation exceed the costs as it provides the benefits of accreditation through the self-accreditation process whilst reducing the restriction on competition.

Preferred Option

The preferred option is to devolve the accreditation process directly to institutions.
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The review acknowledges that in the event that the reformed registration system is adopted, a 'stand-alone' accreditation system will still be required to allow non-registered training providers and businesses solely concerned with developing courses of training to develop accredited curriculum. The review also supports the continued use of approved training agents to act as regional delegates of the STB.

However, the review recommends that the criteria by which providers obtain the ability to self-accredit courses and the criteria by which approved training agents are determined should be transparent. (see Section 1.3.6 below).

1.3.5 Endorsement of Courses for Overseas Students

Educational providers wishing to offer courses to overseas students on a Student Visa must comply with both the Commonwealth's *Education Service for Overseas Students (Registration of Providers and Financial Regulations) Act 1991 (ESOS Act)* and the State legislation (*VET Act*). Where the legislative requirements of the Commonwealth and the State are not consistent, providers must comply with the more stringent legislation to ensure that the requirements of all authorities are met. Under the provisions of the *ESOS Act*, all providers must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) in respect of each course offered to overseas students, ensure that ethical practices are observed, enrol overseas students in accordance with correct procedures, and those not exempt must comply with the financial requirements of the *ESOS Act*.

CRICOS is a list of providers and courses to be offered to overseas students and is used by visa issuing officers to ensure persons seeking student visas are enrolled in registered courses. Both providers and their courses must be accredited and approved by the STB. Once registered on CRICOS, providers can recruit and enrol overseas students.

Section 85 of the *VET Act* empowers the STB to endorse courses offered by either public or private providers as suitable for overseas students. Section 85 ties in with the Commonwealth *ESOS Act*. Approval by the STB under the Victorian legislation operates as approval for the purposes of the Commonwealth legislation.

Guidelines issued under section 85 set out matters to which the Board will have regard in the registration process. The guidelines apply to Victorian education institutions providing VET courses to overseas students, which include business colleges, special studies providers and English Language Intensive Courses for Overseas Students (ELICOS) centres. TAFE institutes are also subject to the Guidelines except that some of the requirements in the Guidelines do not apply to TAFE institutes and other public institutions exempt under the *ESOS Act*.

The Guidelines recognise that some of the registration requirements under section 81 of the *VET Act* fulfil many of the requirements for endorsement

under section 85. Additional requirements in the Guidelines include for example safeguards for fees paid in advance, provisions for student fee refunds and information provision. Endorsement under the *VET Act* remains in force for three years from the date of endorsement unless sooner suspended or cancelled.

The Commonwealth Guidelines for Providers of Education and Training Services to Overseas Students set out detailed requirements in addition to those set out in the Victorian Guidelines relating to trust accounts and tuition assurance schemes.

Application fees under section 85 are \$4,000 for three years' registration. Applications for section 85 endorsement must be supported by information relating to:

- curriculum proposed to be offered by the provider;
- financial and other resources provided by the provider;
- appropriate staff;
- records to be kept;
- marketing;
- provisions for refunds and protection of students' fees paid in advance; and
- student selection and grievance procedures.

Restriction on competition

The review notes that although the requirements are aimed at ensuring providers meet appropriate quality standards, these stringent requirements and the associated fees may create a barrier to entry into the market for the provision of vocational educational services to overseas students.

TAFE institutes are exempt from the financial requirements under the Guidelines. Both TAFE institutes and registered private providers are exempt from the staffing and premises requirements. These both represent restrictions on competition.

Consultations with endorsed providers have indicated that the process of endorsement is not difficult but the fees and the stringent requirements could be seen as a barrier to entry for new providers in the market. The cost of complying with two sets of legislation is also seen as a problem. Furthermore, providers' understanding of the legislation is that Commonwealth legislation only covers students on student visas whilst students on tourist visas (in 3 month non-accredited courses) must follow State legislation. Therefore they must maintain two separate trust accounts and there is no tuition assurance scheme for the short stay students.

Government Objective

The objectives of endorsement are to:

- protect the welfare of students;

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- ensure providers maintain high professional standards in both course delivery and student welfare;
 - protect the rights of students; and
 - protect the reputation of Victoria as a provider of quality educational services.

Market Failure

The purpose behind endorsement of courses for overseas students is to remedy what is perceived as a risk to the reputation and profile of Australian educational institutions. It is perceived, and argued in several submissions, that if an institution were to offer a sub-standard service, default on pre-paid fees or otherwise act unethically, the costs would be borne by the entire industry in terms of damaged reputation. It also attempts to remedy the information asymmetry that overseas students encounter as they would not be able to readily discern whether a provider is competent and whether the courses are of quality. Section 85 endorsement provisions attempt to avert these risks by specifying standards that must be attained prior to providing the service.

Link restriction on competition to objectives of legislation

In aiming to ensure that only quality providers deliver quality courses and that the welfare of overseas students is protected, endorsement and the Guidelines associated with endorsement could be argued to meet the objectives. The need to have a restriction arises from the argument that it is better to prevent poor providers from entering the market rather than risk the reputation of the industry.

Costs

- Unnecessary administrative costs for providers;
- Costs in complying with two pieces of legislation;
- Reduces choice of courses offered to students;
- Prevents non-registered providers from delivering courses to overseas students as endorsement is linked to registration and accreditation; and
- Provides TAFE institutes and other public providers with advantages over private providers as they have less compliance costs under both Commonwealth and State Guidelines.

Benefits

- Assurance to overseas students of the quality of courses;
- Protection for the reputation of Victoria as a provider of overseas student education; and
- Reduces transaction costs for overseas students in finding a competent provider offering quality courses.

Costs vs Benefits

The review considers that the protection of the reputation of Australia as a quality provider of VET outweighs the costs of restricting providers from the market. The service is made specialised by requiring endorsement of courses and the review considers that providers would make a business decision as to whether to enter this part of the market. Endorsement does not pose a significant restriction on providers as the first hurdle is ultimately registration not endorsement. As already argued above, the benefit of protecting student welfare also outweighs the cost of restricting providers.

Alternative

(1) Abolish State Guidelines and extend national legislation

Recommend to the Commonwealth that its guidelines be extended to cover issues of State concern and have one piece of legislation for provision of courses to overseas students on any visa. The STB would still be responsible for administering the extended Commonwealth legislation.

The review suggests that registered providers be declared qualified to deliver their accredited courses to overseas students subject to meeting the national legislation requirements. The assessment would be conducted as part of the registration process whereby providers submit their interest in offering courses to overseas students. This would be part of their 'scope of registration' (see section 1.3.6).

Costs

- More co-operation required between Commonwealth and Victoria;
- Maintains the restriction on providers that are not registered from offering courses to overseas students; and
- Reduces choice for overseas students.

Benefits

- Reduces the risks of unethical, poor quality or unviable providers, thereby protecting the reputation of the industry on an international scale;
- Reduces compliance costs of meeting two sets of legislative requirements;
- Reduces compliance costs of passing through another point of regulation by being assessed at the point of registration;
- Would cover all students, those on student or tourist visas; and
- Reduces transaction costs for overseas students in finding a competent provider offering quality courses.

Preferred Option

The review considers that the proposed alternative to existing endorsement arrangements, of abolishing State Guidelines once the Commonwealth Guidelines have been extended, is the preferred option. The STB would maintain their current role of administering endorsement on behalf of the Commonwealth.

This system would still provide the benefits of endorsement and achieve the outcomes sought whilst reducing some of the compliance costs and confusion for providers. It would also broaden the scope of students covered, and maintain and protect the welfare of all students.

The review also recommends that assessment for endorsement be conducted as part of the registration process as an option for their 'scope of registration' (see section 1.3.6).

1.3.6 The 'one-stop-shop' approach to registration, approval to conduct, accreditation and endorsement

The review proposes the following 'one-stop-shop' approach (in so far as possible) to registration, approval to deliver, accreditation and endorsement. This approach is based on allowing providers to apply for different levels of registration. The level of registration can incorporate a providers right to have automatic approval to deliver courses, the option to self-accredit courses and the option to endorse courses for overseas students. The review notes that for a provider to obtain registration that would allow them to self-accredit or endorse courses they would need to satisfy additional criteria compared to a provider who was seeking registration alone.

The review acknowledges that in the event that the following approach is adopted, 'stand-alone' processes for accreditation and endorsement will still be required. The stand-alone process for accreditation will facilitate non-registered training providers and businesses solely concerned with developing courses of training to develop accredited curriculum. While the stand-alone endorsement process will allow the operation of institutions who are in the business of providing VET for overseas students only.

The 'one-stop-shop' approach would involve:

- (A) Reforming registration by removing section 81(3)(r). As registration is linked to approval to deliver, section 81(3)(r) should not be used as a criterion for assessing an application for either approval to deliver or authority to conduct;
- (B) Making registration synonymous with approval to deliver that is, if registered, have approval to deliver also, and therefore remove approval to deliver; and
- (C) Conducting the assessment for endorsement as an option for a provider's 'scope of registration' (as described in the preferred option under **Endorsement**).

This approach removes many points of existing regulation by introducing one system through which providers can operate. The review notes that the criteria registration, accreditation and endorsement differ.

Costs

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- Administration costs for government in maintaining a register, leading to registration fees that are passed onto consumers by providers paying the fee;
 - Distorts the operation of the market as registration is linked to government funding, accreditation, and endorsement to deliver to overseas students;
 - Non-registered providers cannot compete for government funds; and
 - Limits the choice to consumers that seek recognised qualifications as they can only use registered providers.

Benefits

- Simplifies administrative processes making registration more accessible to providers;
- Reduces compliance costs for providers as they would only have to go through one point of regulation;
- Providers can choose to be registered for marketing advantages;
- Increases choice for consumers;
- Provides State and National recognition through the National Register and the CRICOS;
- Maintains student and community confidence in the qualifications achieved and in the training organisation;
- Discourages entry of opportunistic providers to the market;
- Provides a signalling device in the market for students and the community given information asymmetries, that is, consumers are able to make more informed choices;
- Assists in maintaining that accredited competency-based training courses are delivered at a consistently high standard; and
- Provides a quality assurance mechanism for the allocation of government funds.

Costs vs Benefits

This alternative has benefits that outweigh its costs as it provides the benefits of registration whilst simplifying the system for providers.

Preferred Option

In summary the review recommends the adoption of a reformed registration system that would give providers the ability to obtain registration status that incorporates any combination of the following elements:

- automatic authority to conduct or approval to deliver courses;
- the option to seek the power to self-accredit courses; and
- the option to seek the power to offer courses to overseas students.

This option achieves the objectives of the legislation whilst removing some of the unnecessary administrative burdens of the current system and removing restrictions on competition that cannot be justified.



CHAPTER 2 Apprenticeships and Traineeships

2.1 Background

Both apprenticeships and traineeships involve a formal contract of training or a training agreements, being established between an employer and employee.

Apprenticeships have traditionally provided a means of regulating some entry level training positions. The objective of this regulation is to establish incentives for employers and employees to enter into formal employment arrangements that involve components of both on- and off-the-job training.

The role of the employer in an apprenticeship system is to employ unskilled typically young people and provide them with paid employment while they develop their skills through both on- and off-the-job training. Apprenticeships have traditionally been for a fixed length of time, usually four years, and involved the payment of relatively low wages (see Table 4).

Table 4 Minimum wage rates for apprentices

<i>Age</i>	<i>Weekly rate of pay</i>	<i>Annual rate of pay</i>
16 years	\$128	\$6656
17 years	\$158	\$8216
18 years and over	\$195	\$10140

Source: Kemp 1996

The advantage to an employer of employing an apprentice is typically thought of as occurring in the final period of an apprenticeship when the apprentice is highly skilled but still being paid the apprentice wage. This is in contrast to the early stages of an apprenticeship when the apprentice will need a significant amount of guidance on-the-job. In this way the employer obtains a return on the investment they make in training in the latter part of the apprenticeship.

The incentives to undertake an apprenticeship involve trading off relatively low wages for the period of the apprenticeship in return for acquiring skills and a trade qualification.

Apprenticeships are currently only available in vocations that have been 'declared' apprenticeship vocations. The 'declaration' process has been a key element in strengthening the incentives of the apprenticeship system because the *VET Act* states that people under 21 years of age cannot be employed in a 'declared' vocation unless they are an apprentice. In Victoria the *VET Act* sets out the requirement for declaration. Appendix 9 lists the 'declared' vocations in Victoria. For apprentices, there is a three month probationary period from the time the apprentice begins work in which a contract of training can be terminated.

The historical development of the apprenticeship system has resulted in apprenticeship vocations tending to be in the manufacturing and construction industries. Traineeships were established in Australia in the 1980s to extend the availability of contracts of training to a wider range of vocations and so make contracts of training available to a larger proportion of the workforce.

Like apprenticeships, traineeships involve a contract of training between an employer and an employee, in this case called a trainee. Traineeships have traditionally been for a fixed period of time, generally between 9 and 36 months and involved a trainee receiving a relatively low wage in return for on- and off-the-job training. Traineeships can only be undertaken in 'approved' vocations. Appendix 10 lists the 'approved' vocations in Victoria.

Unlike apprenticeships, people under 21 can work in approved traineeship vocations, without being party to a contract of training. For trainees, there is a one month probationary period from the time the trainee begins work in which the training agreement can be terminated. Generally, the regulations governing the conduct of traineeships are less demanding than those governing apprenticeships.

2.1.1 Contracts of training in Victoria

There are approximately 60 declared apprenticeship vocations and 160 approved traineeship vocations in Victoria. Apprenticeships result in a qualification of Certificate Level 3 being awarded while traineeships qualifications range from Certificate Level 1 to 4.

The on-going development and implementation of a competency based training system, rather than a 'time-served' system, means that the actual time taken to complete an apprenticeship or traineeship will depend on the rate at which skills are acquired. For example, an individual apprentice may take less or more than the traditional four years to complete their apprenticeship.

At 31 December 1996, there were approximately 42 000 people employed in apprenticeship or traineeship positions in Victoria (see Table 5). Of the people who commenced contracts of training in Victoria in the December Quarter 1996, 80 per cent were employed in the private sector and half were under 21 years of age (NCVER, 1997). The OTFE advised this review that in April 1997, approximately 70 per cent of Victorian contracts of training were in the form of apprenticeships, with 30 per cent being traineeships.

Table 5 People in Contracts of training in Victoria at 31 December 1996 by ASCO Group

<i>Type of training by ASCO Group^a</i>	<i>Commence-ments</i>	<i>Comple-tions</i>	<i>Number in training</i>
Managers & Administrators	151	50	1252
Professionals	1	0	6
Para-professionals	39	1	177
Tradespersons (not further classified)	0	0	0
Metal Fitting & Machining	126	74	2788
Other Metal	6	72	1995
Electrical & Electronics	92	93	3342
Building	228	299	6465
Printing	15	30	1019
Vehicle	177	172	5295
Food	190	143	3926
Horticultural	66	38	1161
Miscellaneous	188	186	4263
Clerks	555	128	2463
Salespersons & Personal Service Workers	1270	321	4504
Plant/Machinery Operators & Drivers	324	11	818
Labourers & Related Workers	446	96	2887
Total	3874	1714	42361

Source: NCVET, 1997

2.1.2 Recent Government Policy Initiatives

The administration of VET in Australia is the responsibility of the relevant State or Territory government. However, VET policy is determined within a national framework by a Ministerial Council whose members are the Ministers from State, Territory and Commonwealth Governments with responsibility for VET.

A key objective of VET policy of the Howard Government has been to encourage the uptake of training, particularly contracts of training, by making training more flexible and responsive to business needs. Apprenticeships and traineeships, as contracts of training, have a key role to play in achieving this objective.

Meetings between the Commonwealth and State Ministers responsible for VET have resulted in decisions being taken to decrease the differences between apprenticeships and traineeships. These emerging apprenticeship and traineeship structures are now referred to as 'New Apprenticeships'.

Two objectives of the 'New Apprenticeship' model are:

- to give contracts of training (apprenticeships and traineeships) a national character, that is to enable apprenticeships and traineeships to be captured under mutual recognition provisions that apply to other forms of training; and
- to facilitate contracts of training as an option for employment in all vocations.

The development of 'New Apprenticeships' based on three key regulatory elements. These are:

- the endorsement of Training Packages;
- the registration of training providers; and
- signing of a training agreement between employer and apprentice or trainee (Australian Training, p. 7 April 1997).

Training Packages will replace existing competency standards and accredited courses. Training Packages will be developed by national Industry Training Advisory Bodies and will obtain national endorsement from the National Training Framework Committee, which is part of ANTA.

Training Packages will have two key components. The first component will contain the information necessary to lead to a formal nationally recognised qualification including: the national industry competency standards upon which training is based; qualification levels and titles; and assessment guidelines. The second component will relate to training materials. Each training package must include: learning strategies (these replace existing accredited curriculum); professional development materials that assist in the development of training programs; and assessment materials that include assessment tasks, instructions and materials.

The changes required to adopt Training Packages are expected to be introduced in 1997.

In the 1997-98 Victorian Budget, the Government identified the implementation of the New Apprenticeship Scheme as one of its key priorities and has set January 1998 as the date by which it is to be implemented.

2.2 The Market for apprenticeships and traineeships

Apprenticeships and traineeships form part of Segment 1 of the market for vocational education and training described in section 1.2 of this review. All training is delivered by recognised institutions and is accredited. Unlike other participants in Segment 1 of the market, the relationship between the employee (apprentice or trainee) and employer is governed by a formal agreement. The agreement requires that apprentices and trainees enrol and attend an accredited course delivered by a recognised provider. It also requires employers to permit apprentices and trainees to attend these courses during regular work hours.

2.2.1 Participants in the market

Participants in the market are employers providing the entry level training positions, the people competing for and employed in these positions and training providers.

2.2.2 Geographic dimension of the market

At present, neither apprentices nor trainees can transfer their contracts of training between employers. This effectively limits the geographic dimension of the market to Victoria.

2.2.3 Anticipated legislative changes

The market is undergoing significant change associated with changes in national policy agenda. A 'New Apprenticeships' scheme has been agreed to by Commonwealth, State and Territory Ministers responsible for VET (see section 2.1.2). The implementation of the New Apprenticeships scheme in Victoria will require a number of amendments to the VET Act. The proposed amendments relate to special provisions that currently apply to the conduct of apprenticeships. These provisions include:

- limiting the specific vocations (trades) in which apprenticeships may be conducted to those declared by executive council;
- prohibiting persons who are under the age of 21 from obtaining employment in declared vocations outside of an apprenticeship;
- establishing a probationary period of three to six months for new apprentices; and
- stipulating that contracts of training between apprentices and employers may only be terminated by mutual consent, or with the approval of the State Training Board.

The net effect of this amendment is to remove the features which distinguish apprenticeship training from traineeships, such as:

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- trades will no longer be declared, consequently it will not be an offence to employ a person under 21 years of age in a previously declared vocation without a contract of training; and
 - training agreements may be unilaterally terminated, consequently restrictions on termination of contracts and the probationary provisions will no longer apply.

It is expected that legislative changes will be made to the *VET Act* in the Spring Session of Parliament 1997 to reflect these new policy directions. Appendix 6 discusses these proposed legislative changes in the context of a Competition Test for New Legislative Proposals.

Of particular note is the potential these changes have to extend the geographical dimension of the market from Victoria, as currently described, to Australia, to remove restrictions on competition and to reduce administration requirements associated with apprenticeships and traineeships.

2.2.4 Legislative framework

The *VET Act* establishes the legislative framework that applies to apprenticeships and traineeships. Generally, arrangements for apprenticeships and traineeships are contained in the Part V of the Act, while training wage arrangements for traineeships are contained in Schedule 3 to the Act. Appendix 3 outlines the structure of the *VET Act*.

2.3 Restrictions on competition, Government Objectives and Market Failure

The Terms of Reference for this review identified three elements of the *VET Act* relating to apprenticeships and traineeships that are restrictions on competition. These are:

- declared vocations;
- prohibition on conduct of training courses in declared vocations without approvals; and
- approval of training schemes.

In addition to these restrictions identified in the Terms of Reference, this review has considered the range of administrative provisions contained in Part V of the Act with respect to their impact on competition in the market.

2.3.1 Objectives of legislation and market failures

The key objective of having regulated contracts of training is to put in place incentives for employers and employees to enter into contracts of training. Apprenticeships and traineeships are designed to assist people entering the workforce, who traditionally have been young people finishing courses of schooling or education. Consequently, one objective of establishing contracts of training has been to provide some protection for new, typically young entrants to the workforce. The *VET Act* sets out to achieve this by specifying the rights and responsibilities of both employer and employee engaged in contracts of training. It is in this way that the government acts to ensure that

young people employed as apprentices or trainees are provided with the on- and off-the-job training that has been agreed to.

Employers entering into contracts of training agree to devote resources to on-the-job training. The employer makes a significant 'up-front' investment in an apprentice or trainee at the beginning of a contract of training. The return on this investment occurs over time, as the employee becomes competent in the skills of the job. Consequently, contracts of training and training agreements provide a level of certainty for the employers by increasing the likelihood that an employer will obtain a return on their investment.

This system of training is important not only for the employers and apprentices or trainees but also for society as a whole, given the important role played by contracts of training in developing the skills base in the Australian workforce.

Also, governments require mechanisms by which they can be accountable for the funds they spend. Government as a provider of funding to the VET sector has an interest in ensuring that its expenditure is directed to delivering a particular type and minimum standard of service.

2.3.2 Declared vocations

Section 49 'Declaration of vocations' of the *VET Act* provides for the Governor in Council to specify that certain vocations be 'declared', allowing employers and employees to enter into contracts of training for apprenticeships. The process of declaration identifies those vocations in which an apprenticeship can be undertaken. It does not restrict employers and employees establishing private contracts of training, consequently, this section in itself does not restrict competition.

However, a restriction on competition results from the interaction of section 49 and section 54 'Employment under a contract of training'. This section specifies that people under 21 can only be employed in declared vocations as an apprentice. This effectively limits entry into these vocations for people under 21 years of age who do not wish to be party to a contract of training. It also restricts the ability of employers to use different combinations of labour in their enterprise.

The proposed legislative changes associated with the introduction of 'New Apprenticeships' referred to above, will abolish the current practice of declaring vocations and remove the prohibition on people under 21 years of age working in declared vocations without a contract of training. Consequently, the restriction on competition associated with the process will be removed.

The role of the declaration process will become one of providing information to potential employees. That is, the existence of an apprenticeship signals that for specific vocations an apprenticeship is an appropriate means of obtaining the skills and qualification necessary for a career in that vocation.

Given the proposed legislative changes to the *VET Act* that remove the restriction on competition associated with the declaration of vocations, the process of declaration is not considered further in this review.

2.3.3 Prohibition on conduct of training courses in declared vocations without approvals

Section 50 'Board's approval required to conduct training programs' establishes penalties for individuals and institutions that deliver off-the-job training to apprentices without the approval of the STB. Individuals must also be registered under section 81 of the Act. The associated issues of provider registration, 'authority to conduct courses' and 'approval to deliver' courses are discussed in Chapter 1.

Under the proposed legislative amendments discussed in section 2.3.2 above, section 50 of the *VET Act* is expected to be repealed.

Given the proposed legislative changes to the *VET Act* that remove any restriction on competition associated with the prohibition on the conduct of training courses in declared vocations without approvals, this prohibition is not considered further in this review.

2.3.4 Approval of training schemes

Section 51 'Training Schemes' requires that STB approve any training scheme prior to individuals entering into traineeship arrangements. When making a determination relating to an approved training scheme, the STB may consider:

- the duration of an approved training scheme;
- nature and syllabus of an approved training scheme;
- a requirement for practical placement;
- requirements relating to age, education, experience of the person undertaking training;
- standards of skill and knowledge required by the trainee at completion of traineeship;
- assessment methods;
- establish appropriate recognition of prior learning; and
- requirements associated with entering into a training agreement.

The effect on the market is to establish barriers to entry to the provision of off-the-job training and potentially limit the choice of training provider for employees.

Do the restrictions on competition meet the objectives?

There is a need for government to have a mechanism that indicates that funding is being allocated to training institutions and organisations that are capable of delivering courses. To the extent that the process of authority to conduct courses ensures appropriate course material is delivered and that there are appropriate resources available to deliver these courses the requirement to obtain approval for a traineeship scheme meets this objective.

Costs

- Incremental costs of administration and financial costs for providers, which may be passed on to consumers;

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- Limits choice of courses able to be delivered by non-registered providers;
 - Involves compliance costs of having to meet quality standards including the cost of employing qualified and experienced staff;
 - Creates distortion in the market as TAFE institutes are able to be declared to self-assess their capacity to deliver a course whereas private providers have to go through the system; and
 - Limits the choice to consumers that seek recognised qualifications as they can only use approved providers.

Benefits

- Provides a mechanism of ensuring that a providers' courses remains relevant over time, complementing changing needs of industry;
- Provides student and community confidence in the qualifications achieved and in the training organisation;
- Reduces the level of opportunistic providers;
- Provides a signalling device in the market for students and the community given information asymmetries that is, consumers are able to make more informed choices;
- Assists in maintaining consistently high standard in delivery of accredited competency-based training courses; and
- Provides a quality assurance mechanism for the allocation of government funds.

Conclusion

The review considers that the overall benefits of approval and authorisation outweigh the costs of the process.

2.3.5 Administrative provisions

Part 5 of the *VET Act* contains many administrative provisions that relate to the conduct of contracts of training. For example, section 57 'Employer's obligations under a contract of training', section 58 'Trainee's obligations under a contract of training' and section 64 'Board to determine grievances in certain circumstances'.

To the extent that these provisions place bounds on employee and employer behaviour they impact on the way in which the market operates. Administrative provisions assist in meeting not only training related objectives, but also broader social objectives such as the payment of minimum wages. The examination of these objectives are outside the scope of this review.

Do the restrictions on competition meet the objectives?

Administrative provisions governing the behaviour of the parties to the contract of training assist in meeting the objective of creating incentives for people to enter into these arrangements. These incentives are a result of the degree of certainty that the administrative provisions provide. It is possible that these provisions if too prescriptive may discourage people from entering into

contracts of training. This possibility has encouraged recent government initiatives to simplify administrative arrangements.

Costs

There are likely to be significant compliance costs to business associated with meeting the administrative provisions related to the employment of apprentices and trainees.

Benefits

It is via the administrative provisions in the Act that the terms of the relationship between the employer and employee are established. This creates a sense of certainty about the employment relationship and encourages employers and employees to enter into these arrangements.

Conclusion

Contracts of training have broader objectives than for example, employment contracts. They are designed to facilitate both on and off-the-job training. Consequently, they can be expected to have more detailed administrative arrangements than a general employment contract. There has been recognition at the national level that the administrative burden associated with the current arrangements associated with contracts of training may have discouraged people from employing apprentices. Further, there has been agreement at the national level to reduce the administrative burden traditionally associated with contracts of training.

CHAPTER 3 Adult Community and Further Education

3.1 Background

Adult, community and further education involves general education programs, adult literacy and basic education, Victorian Certificate of Education (VCE) for adults, general access and bridging programs, English as a second language (ESL), and VET programs offered through community based providers.

ACFE organisations include the Adult Community Further Education Board (ACFEB), the Regional Councils of ACFE, and the providers of ACFE.

3.1.1 Adult, Community and Further Education Board

The ACFEB's main responsibility is to support the development of adult, community and further education. It works with the STB to plan the direction and delivery of this level of education. ACFEB is funded by government and the funds are used to provide a range of courses and to support ACFE programs.

The main functions of ACFEB are the accreditation of ACFE courses, the registration of ACFE providers and the authority to approve the delivery of courses.

The ACFEB goals for adult, community and further education (in 1996) are to develop the adult and community education sector so that it can compete in the training market and meet client needs; to develop policies and improved systems for more transparent and equitable allocation of government resources; and to raise the status and facilitate continuous improvement in the sector.

3.1.2 Regional Councils

The role of Regional Councils of ACFE is to develop regional plans and policies, promote, support, resource and evaluate adult education provision. They also work together with ACFEB, as they form an essential network for ACFE, to plan and provide resources to the sector. They allocate government funds to ACFE providers under delegation from the ACFEB.

3.1.3 Providers of ACFE

Community based providers of ACFE programs are non-profit organisations managed by independent, autonomous local management committees and they include neighbourhood houses, adult learning centres, and branches of the University of the Third Age. ACFE is also provided by the Council of Adult Education, the Adult Migrant Education Services and TAFE institutes.

Council of Education (CAE)

The CAE delivers ACFE mainly in the metropolitan areas and provides education and support services to other providers.

Adult Multicultural Education Services (AMES)

AMES provides English language programs and related services for non-English speaking adult migrants in migrant centres, community centres and workplaces.

University of the Third Age (U3A)

U3A's purpose is to provide communication between, and services for, U3As in Victoria.

TAFE Institutes

TAFE Institutes provide ACFE across Victoria. Government funding for ACFE programs is through the STB.

3.2 The Market for Adult Community and Further Education

The market for adult community and further education (ACFE) is the Victorian market for the supply of adult community and further education courses for adults. This market falls within the broader definition of the VET market.

3.2.1 Purchasers and providers

The participants involved in the provision of further education include more than 560 community based providers, neighbourhood houses, adult learning centres, and branches of the University of the Third Age. Providers also include the CAE, the AMES and TAFE institutes.

Government funds to community based providers the CAE and AMES are used to provide access and vocational courses, and to support the development of adult education programs. Students pay fees to cover the direct costs of general adult education. In 1996, community based providers allocation on a competitive tendering basis was approximately \$1.5 million with the remained being allocated on the basis of submissions.

Purchasers in the market are State and Commonwealth governments, community groups and individuals.

3.2.2 Services

The services characteristic of ACFE include courses for personal development, literacy and numeracy, ESL, VCE for adults, general access and vocational courses, arts and performance.

3.2.3 Legislative Framework

Provision of ACFE is regulated under the *Adult, Community and Further Education Act 1991*. Administration of the Act is carried out by the ACFEB. Appendix 4 describes the structure of the *ACFE Act*.

The *ACFE Act* differs from the *VET Act* in that it makes provisions for the administration of ACFE across all regions through the establishment of Regional Councils.

3.3 Test for Restrictions on Competition

Although there are differences in the relevant market, including market participants, for ACFE and VET, the legislative issues under consideration in this review are the same. Consequently, when appropriate, the reader is referred back to the analysis of restrictions on competition, discussion of alternatives and cost-benefit analysis in Chapter 1.

3.3.1 Restrictions on Fees and Charges

Ministerial Directions on fees and charges under the *ACFE Act* require Regional Councils of Adult, Community and Further Education to include in performance and funding agreements with ACFE providers, restrictions on the fees and charges that the providers may impose on their students. The Ministerial Directions apply only to government funded courses, that is, those courses funded by or through Victorian Government. The Directions, which are based on Ministerial Directions under the *VET Act* (see section 1.3.1):

- (a) require providers to calculate students' tuition fees on the basis of \$1.00 per student contact hour;
- (b) require providers to charge students a minimum tuition fee of \$40.00 in respect of all enrolments in any year;
- (c) limit the tuition fee that a provider may charge a student in respect of enrolments in any year to \$500.00;
- (d) limit other fees and charges that may be imposed; and
- (e) specify concessions to be granted in cases of hardship and in other cases.

Restriction on competition

The existing arrangements restrict ACFE providers from charging less or more than the prescribed fees for courses funded by government. This may impact on a provider's ability to recover the full costs of training. Thus the restriction lessens competition within the market by reducing the ability of providers to charge cost recovery or market fees for government funded courses.

The restrictions on fees and charges are similar to that in Chapter 1. The review considers that section 1.3.1 in Chapter 1 can be applied here in terms discussion of objectives, provision of alternatives and cost-benefit analysis. Consequently, for the reasons outlined in Chapter 1, the review recommends that the preferred option is to maintain the current system of fees and charges.

3.3.2 Registration

Section 13D of the *ACFE Act* empowers ACFEB to register community based providers which provide or propose to provide accredited further education courses. The matters to which the Board may have regard are set out in section 13D(3) of the Act and mirror those to which the STB may have regard in registering private providers of vocational education and training. The Board

may charge reasonable fees for registration. No fees are currently charged. There are currently 140 registered community based providers to deliver accredited further education courses.

Restriction on competition

Registration could be considered to affect the distribution of providers in the differing segments outlined in section 1.2. The incentive to apply for registration includes being eligible to apply for approval to deliver State accredited courses under Section 13(E). However, some providers may see registration as a burden and opt to provide non-accredited courses that are close substitutes to those provided by registered providers.

Section 13D(3)(p) is a further restriction similar to that in registration under VET, which is the criterion that requires providers to demonstrate that there is a demand for the skills provided by the course.

This review finds that registration is not a barrier to providing ACFE. However, it is a prerequisite to delivering accredited courses and as non-registered providers compete with registered providers, it precludes non-registered providers delivering accredited courses.

Registration poses a 'prima facie' barrier to entry similar to that discussed in Chapter 1. The restrictions identified in this section are the same as those for registration under the *VET Act*. The review suggests that section 1.3.2 relating to registration can be applied similarly under this section. Therefore the review recommends that the preferred alternative be mirrored for the *ACFE Act*.

3.3.3 Approval to Deliver Courses

Section 13E of the *ACFE Act* empowers ACFEB to approve a registered provider under section 13D to provide accredited courses. Generally the approval to deliver application is made in conjunction with registration.

Restriction on Competition

Although the assessment of capacity to deliver is undertaken against the same criteria as registration, TAFE institutes may be at an advantage over community based providers as they potentially have the ability to self assess. The 'approval to deliver' requirement is a further hurdle to registered community based providers wanting to extend their business operations and offer new services.

Approval to deliver poses a barrier to entry similar to that discussed in Chapter 1. It follows that section 1.3.3 in Chapter 1, relating to 'approval to deliver' can be considered applicable to this provision in the *ACFE Act*. The review recommends the preferred option for the *VET Act* under Chapter 1 be mirrored for the *ACFE Act*.

3.3.4 Accreditation

Section 13C of the *ACFE Act* provides for the ACFEB to accredit further education courses which meet similar criteria as those described under the *VET Act*. Forty further education courses have been accredited by the

ACFEB. In 1996, six Crown owned and four privately owned courses were accredited. Prior to 1 January 1997, no fees were charged for accreditation applications. Since that date, fees of \$1000 per course and \$500 per short course apply.

Restriction on Competition

Accreditation creates entry barriers for the development of courses as private providers have to apply to have their courses accredited whilst TAFE institutes can recommend that their courses be accredited under section 77 of the *VET Act*. However, new legislative proposals for the *VET Act* suggest that private providers registered under section 81, and the community based providers under the corresponding section of the *ACFE Act*, who meet quality standards set by the STB or ACFEB, should also be able to recommend that their courses be accredited.

The existing arrangement for accreditation could also be seen to distort the provision of accredited and non-accredited courses in the market. If the process is seen as too costly and onerous, providers may diverge from accredited courses towards non-accredited courses.

In summary, accreditation under the *ACFE Act* poses similar restrictions to accreditation under the *VET Act*. It follows that section 1.3.4 in Chapter 1 relating to accreditation can be adapted to the *ACFE Act*. The review recommends the preferred option for the *VET Act* under Chapter 1 be mirrored for the *ACFE Act*.

CHAPTER 4 Tertiary Education

4.1 Background

The Commonwealth Government is primarily responsible for the development and implementation of policy and funding for higher education in Australia. State governments are responsible for establishing the appropriate administrative mechanisms by which higher education institutions operate.

In the late 1980s, Australia's higher education sector was the subject of a number of government reviews. A key result of these reviews was the introduction of the Unified National System of Higher Education (UNE) which resulted in a significant change in the structure of the Australian higher education sector. Prior to 1989 higher education in Australia was delivered by 46 Colleges of Advanced Education and 19 Universities. As a result of adopting the UNE in 1989, higher education in Australia is now delivered by 36 public universities, two private universities and four Commonwealth funded colleges. Table 6 shows the significant increase in university participation rates in Australia since the mid-1970s, with the expected jump in participation rates associated with the move to the UNE.

Table 6 University Participation Rates per 1000 head of 17-64 population cohort

Year	Participation Rate
1975	33
1985	37
1988	40
1992	50
1996	55

Source: AVCC, 1997.

The higher education funding process has also been subject to significant change since the late 1980s. In 1989, the Higher Education Contribution Scheme (HECS) was introduced. It requires university students to pay for part of the cost of their education. Payment of HECS can be deferred and collected through the taxation system, or a discounted amount paid at the time of enrolment. Initially HECS was charged at the same annual rate for all courses. However, the 1997-98 Commonwealth Budget introduced a three tiered system of charges, with the HECS fee reflecting the relative cost of the course. Another recent change that will have effect from 1998 is the ability of Australian universities to accept up to 25 per cent of course enrolments from full-fee paying Australian students.

In 1995 the Commonwealth Government provided approximately 57 per cent of university funding. Other sources of funding included: HECS (12%); fees and charges (11.7%); Investment Income (4%); and State Governments (1.4%) (AVCC, 1997).

Change in the higher education sector has been on-going throughout the 1990s. In 1995 the Higher Education Management Review (the Hoare Report) was established with the view to making recommendations that would lead to the development of excellence in the management and accountability of the

higher education sector. In 1996, the Review of Higher Education Financing and Policy (the West Committee) was initiated. It is to report by December 1997 on issues including the regulatory and administrative framework for higher education.

International students have been enrolling in Australian universities on a full-fee paying basis since the early 1980s. The Australian Vice Chancellor's Committee (1997) estimated that in 1983 there were 10 000 privately funded overseas students enrolled in Australian universities and CAEs. By 1995, international student enrolments in universities had increased to approximately 57 000 (AVCC, 1997). Back, Davis and Olsen (1996) report that in 1995 enrolments of international students in Australian universities represented 8.4 per cent of total university enrolments and provided 6.6 per cent of total university income. It is of note that in 1995, international enrolments at Monash University and RMIT represented 13.25 per cent, and 17.8 per cent of total university enrolments respectively (Back, et al 1996).

In addition to enrolling international students, seven universities have offshore campuses, 27 universities have 'twinning' arrangements with overseas institutions and 24 universities enrolled students residing outside Australia in distance education programs (Back, et al 1996).

The 1997-98 Commonwealth Budget allocates \$4186.4 million to Higher Education (Costello, 1997).

4.1.1 The higher education sector in Victoria

In Victoria, higher education is governed by the *Tertiary Education Act 1993* (*TE Act*) and individual Acts pertaining to each university. In commenting on the roles of the Commonwealth and State Governments in higher education, the Hon. Haddon Storey, QC MLC, the then Minister for Tertiary Education and Training stated:

'These arrangements give the States particular responsibility for institutional accountability, links with other sectors of education, and State strategic planning within a national framework.' (Victoria Hansard, Second Reading Speech, Tertiary Education Bill, 11 May 1993, p. 623)

Higher education awards are defined by the *TE Act* as: a degree, associate degree, higher degree, graduate diploma or certificate or post-graduate diploma or certificate (other than a graduate certificate or post-graduate certificate if the course of study relating to that certificate is included in the State Register of Accredited Courses established under section 71A of the *VET Act*). The Act restricts the conferring of higher education awards other than by recognised universities to institutions authorised to conduct accredited higher education courses and other universities which have the relevant approval of the Minister.

There are currently nine public universities operating in Victoria. They are: The University of Melbourne; Monash University; La Trobe University; Deakin University; Victoria University of Technology; Australian Catholic University Limited; Swinburne University of Technology; Royal Melbourne Institute of Technology; and the University of Ballarat. There are no approved private universities operating in Victoria. In 1996, there were approximately 174 000

students enrolled in Victorian universities, representing almost 28 per cent of total Australian university enrolments (see Table 7).

A number of private institutions have also been authorised to conduct courses leading to a higher education award in Victoria (see Table 8).

Table 7 Students enrolled in higher education award courses, at Victorian public universities, 1996

<i>Institution/Award</i>	<i>Higher Degree</i>	<i>Other Post-grad courses</i>	<i>Bachelor Degree</i>	<i>Other under-grad courses</i>	<i>Total</i>
Deakin University	2079	3968	20163	1708	27918
La Trobe University	1948	2258	16506	56	20768
Monash University	4872	3306	30384	340	38902
RMIT	4004	2114	20377	4	26499
Swinburne University of Technology	852	1236	7685	0	9773
University of Ballarat	197	369	3557	3	4126
University of Melbourne	4772	3889	21614	1212	31487
Victoria University of Technology	1158	1773	10732	494	14157
Total Victoria	19882	18913	131018	3817	173716
Victorian enrolments as % of total Australian enrolments	25.2	35.3	27.6	22.5	27.8
Australia	78934	53561	474754	16961	624210

Notes: There are also 1322 students enrolled in enabling courses and non-award courses in Victorian universities.

DEETYA does not collect figures on a State by State basis for the Australian Catholic University. It has a number of campus' in Victoria.

Source: DEETYA, Selected Higher Education Student Statistics 1996.

Table 8 Institutions authorised to conduct accredited higher education courses in Victoria

<i>Institution</i>	<i>Higher Degree</i>	<i>Bach. Degree</i>	<i>Grad. Dip.</i>	<i>Grad. Cert.</i>
Australian College of Theology - Associated Colleges:				
Bible College of Victoria	✓	✓	✓	
Presbyterian Theological College		✓	✓	
Reformed Theological College		✓		
Ridley College	✓	✓	✓	
Australian Society of Certified Practicing Accountants (Vic)			✓	
Bureau of Meteorology Training Centre (Vic)			✓	
Harvest Bible College (Vic)		✓		
Institution of Engineers Australia (Vic)			✓	
Kingsley College (Vic)		✓		✓
Kollel Beth HaTalmud (Vic)		✓		
Mount Eliza - Australian Management College (Vic)	✓		✓	✓
Open Polytechnical New Zealand		✓		
Royal Australian College of General Practitioners (Vic)			✓	
Securities Institute of Australia (NSW)			✓	
Tabor College (Vic)		✓	✓	

Notes: Higher Degree includes Doctorate, Masters and MBA courses.

Source: Information provided by OTFE.

4.2 The Market for tertiary education

This review has been conducted by considering the market for higher education awards to be the market for the supply and attainment of specific knowledge and general abilities gained by undertaking a course of study, that results in the conferring of a higher education award in Australia. The characteristics, of specific knowledge and general abilities, are reflected in the type and level of award conferred.

For three key reasons, the geographical dimension of the market is considered to be Australia, rather than Victoria. First, Victorian students can be accepted into university courses at any university in Australia. Second, upon completion of a university course in Victoria there is national recognition of the qualification. Also, there is an increasingly important international dimension in the Victorian higher education sector as Victorian universities enrol full-fee paying students from overseas. In this situation Victorian universities are competing with inter-State and intra-State universities to attract overseas enrolments.

Participants in the market included students and potential students and institutions providing higher education awards, including public universities and non-university institutions. Employers also play a significant, if secondary role in the market, as it is the labour market that initially determines the value of a higher education award.

This market is subject to change with the recent amendments to pricing practices for courses introduced by the Commonwealth Government, specifically the introduction of a graduated HECS charge and the ability to accept up to 25 per cent of course enrolments from full-fee paying Australian students.

The market could also be expected to alter as a result of recommendations made to the Commonwealth Minister by the West Committee in December 1997.

4.2.1 Legislative Framework

There are six Parts to the Victorian *Tertiary Education Act 1993*. Appendix 5 describes the structure of the *TE Act*.

4.3 Market failure, Government Objectives and Restrictions on Competition

The terms of reference for this review identify four restrictions on competition, all contained in Part 3 of the *TE Act*. These are:

- a) Prohibition on offering higher education awards;
- b) Approval of private universities;
- c) Accreditation by Minister of higher education courses; and
- d) Endorsement of higher education courses of study for overseas students.

The requirement to obtain Authorisation to conduct courses from the Minister has also been considered as it operates in conjunction with accreditation requirements.

4.3.1 Market failure

Government involvement in the tertiary education sector is justified by the failure of the market with respect to the provision of information and the presence of positive externalities.

Education is an experience good. It is not possible for a consumer, in this case the student, to determine the quality of education without directly experiencing it. Consequently, students make enrolment decisions about courses and institutions without full-information. This is in contrast to the providers of the education who have full-information prior to delivering the course. Students make a significant investment, in terms of both time and money when undertaking a higher education course. If the quality of the product is unsatisfactory or not what the student expected they have no recourse. Recent changes to Australia's higher education sector, most notably the introduction of HECS, have encouraged a greater flow of information between students and higher education institutions. However, education remains an experience good.

The extent of the market failure with respect to the provision of information differs for domestic and overseas students. Overseas students will potentially experience increased difficulties in obtaining information about institutions and courses. They have less opportunity to obtain information through informal networks, that can be an important source of information for domestic students. Also, the costs incurred by an overseas student in undertaking a higher education course in Australia will be greater than the costs faced by domestic students.

The notion that education generates positive externalities in a community is a second market failure and provides the second reason for Government involvement in higher education. Positive externalities result from having a workforce that is able to meet the changing needs of industry and a society that is able to understand and participate in social and political processes. If individuals simply completed the level of education to the point where their anticipated benefits of obtaining the education were a direct reflection of the costs of obtaining it then the social benefits that are also available from education would not necessarily be realised.

To capture these social benefits, the Commonwealth Government funds higher education institutions. This allows Australian students to undertake higher education courses at a subsidised price. This form of involvement by the Government makes them a participant in the higher education market. It means that they have a responsibility to ensure that they are accountable for the funds they direct into the higher education sector.

4.3.2 Government objectives

The objective of government regulation of the higher education sector is to have an innovative, growing sector that can respond to the changing demands of Australian society. The terms of reference for the West Review provide an insight into the broad Commonwealth Government objectives for the higher education sector. The Review Terms of Reference state:

... higher education will become an increasingly vital component of the economic and social fabric of advanced industrial societies. A diverse, high quality higher education sector will be one of Australia's most important comparative competitive advantages as manufacturing processes and capital become more mobile.

The West Review has been asked to make recommendations that will ensure:

...universities meet Australia's economic and social needs in the long term, and are able to respond to the challenges and opportunities posed by their increasingly competitive environment.

It is reasonable to assume that the Victorian Government has similar broad objectives. As noted above, the State Government's particular responsibilities relate to institutional accountability, links with other sectors and strategic planning in the national framework. In this context, the State Government appears to be strongly focused on the objective of institutional accountability.

In the Second Reading Speech of the Tertiary Education Bill, The Hon. Haddon Storey, QC, MLC, then Minister for Tertiary Education and Training stated that:

'Victorian universities have an enviable reputation within Australia and in the international academic community, and it is essential that this reputation be maintained and strengthened'. (Victoria Hansard, Second Reading Speech, Tertiary Education Bill, 11 May 1993, p. 623.)

Government objectives in regulating the higher education market can be related to three key issues:

- the need for government to be accountable for the funds it directs to higher education;
- the need for an understanding in the broader community, but particularly employers, of the qualifications delivered by the higher education sector; and
- the need to provide students with a level of certainty about the standard of course in which they enrol, given that education is an experience good.

These issues are considered in turn.

First, governments require mechanisms by which they can be accountable for the funds they spend. Government as a provider of funding to the higher education sector has an interest in ensuring that its expenditure is directed to delivering a particular standard of service. The system of restricting the right to confer higher education awards to institutions that have established their ability to deliver high quality products provides this mechanism.

In a letter to this review the University of Melbourne supported the concept of regulation providing an accountability mechanism for Government stating that:

'... the public is dependent upon Government for some regulation of minimum standards, but that is not in itself a limitation on legitimate competition. Courses paid for by Government (or anyone else) must be capable of having the conditions of delivery determined by that purchaser.' (p.1)

Second, by effectively establishing a minimum standard in higher education awards, employers and the community in general, are able to easily attach consistent meaning to the various higher education awards. The current system provides employers with a benchmark against which to compare prospective employees who have attended different universities but graduate with the same level qualification. The restriction effectively reduces the cost to the community of obtaining information on and so understanding higher education qualifications. This consistency is important at a national level also.

In their submission to this review, the Victoria University of Technology commented:

'The prohibition on offering higher education awards by bodies other than those approved by government, provides the public with certainty and a guarantee of quality in tertiary awards. ... A lack of control and quality assurance in the issuing of awards has huge hidden costs for the community. ... A proliferation of academic awards with no quality controls or guarantees will not serve the interests of any sector of the community.' (p. 3)

Third, students, as consumers of education services, have some level of certainty about the minimum standard of a course in which they enrol. Without regulation, students would face difficulties judging the quality of a particular course unless they enrol in it. This would be a potentially costly exercise for students, in terms of time and money and may discourage people from enrolling in courses in general. As universities compete more vigorously for students, and students pay increased fees for their courses there are strong incentives for universities to provide information and foster realistic expectations about courses and for students to demand this information. While this flow of information can be expected to develop, education still remains an experience good - that is it is not possible to determine the quality of the product without purchasing it.

Also, with the increasing importance of international student enrolments governments are concerned to provide prospective overseas students with assurances on the standard of course they are enrolling in. In a recent press release, the current Victorian Minister for Tertiary Education and Training the Hon. Phil Honeywood, MP, stated:

'Overseas students inject over \$2 billion a year into Australia, \$514 million in Victoria alone and that is due to our reputation as honest providers.' (Honeywood 1997)

Overseas students face higher costs than domestic students in obtaining information on different courses and institutions. It is the objective of the endorsement process to provide protection to potentially less informed overseas students and to provide a mechanism to ensure that particular courses satisfy the requirements of a student visa.

4.3.3 Prohibition on offering higher education awards

Section 11 of the *TE Act* prohibits institutions other than recognised Universities from conducting courses leading to higher education awards unless:

- the institution has been granted university status by the Minister under section 10 of the Act; or
- the institution has obtained course accreditation and the authority to conduct a course under section 11(1)(e).

Restriction on competition

Section 11 of the *TE Act* restricts competition by putting in place a barrier to entry to the market for the supply of higher education awards. This restriction affects all potential entrants to the Victorian market for higher education services. It acts to maintain the existing structure of the market, with nine recognised universities.

Do the restrictions on competition meet the objectives?

The prohibition on offering higher education awards underpins each of the other identified restrictions on competition.

By establishing restrictions on entry to the market for the provision of higher education awards, the Government can allocate funds to universities with knowledge that these institutions will supply higher education services at or above a minimum standard. The competitive nature of the higher education sector encourages universities to exceed this minimum standard.

The prohibition and the associated minimum standard also provides information to prospective students and to the general community. It is a relatively simple message to convey that with few exceptions, Universities are the institutions responsible for conferring higher education awards, and that similar requirements must be met to achieve the same level of award. The element of consistency across levels of award is a feature of the national higher education sector. This is not to say that all Bachelor degrees are the same. Indeed, Universities use many strategies to differentiate the courses they offer and trade strongly on their reputations.

Costs

A possible consequence of this restriction is that consumers of higher education courses face a more limited choice, in terms of type, location and level of course than they would if this restriction did not exist. This provision creates a barrier to entry to the market and so reduces the likelihood of new entrants to the market. The restriction has the potential to impose costs by reducing competitive pressures and allowing existing market participants to operate in ways that may be inefficient.

The review has not been presented with direct evidence on the size of these possible costs. Given that students enrolling in higher education courses in Victoria have the choice of courses offered by nine public universities and 12 approved institutions and universities appear to compete strongly for students and research funds then it seems likely that the costs resulting from this restriction are small.

Benefits

The prohibition on offering higher education awards on all institutions except recognised Universities or approved institutions results in benefits for students, the community and government as a provider of funds to higher education.

Students primarily benefit from the knowledge that the institution they are attending will deliver a course of at least the minimum standard required to

obtain a nationally recognised qualification that is comparable to the same level qualification issued by other recognised universities.

Having a system of nationally consistent levels of award, achieved by restricting the right to confer higher education awards, facilitates understanding of the different levels of qualifications within the community. This particularly assists employers when making an employment decision in which a higher education award is a relevant factor.

For government as a provider of funds to the higher education sector, restricting the right to confer higher education awards provides a mechanism by which they can allocate funds to all universities and have a degree of certainty that a minimum standard of education service will be provided.

Conclusion

On balance, the benefits arising from the prohibition on offering higher education awards appear to outweigh the costs resulting from this restriction.

4.3.4 Approval of universities

Any institution wishing to begin operating as a university in Victoria must obtain the approval of the Minister as required in section 10 of the *TE Act*. This requirement is relevant to both private and public institutions that may wish to establish a university, or part of a university, in Victoria.

When making a determination on an application for an institution to become a university in Victoria, the Act directs that the following factors are considered:

- if the applicant is an overseas based institution, that it is determined by the relevant authority in that country to be a recognised university;
- the need in Victoria for the courses of study offered by the university;
- the views or recommendations of relevant professional bodies or associations;
- the standard of the courses being offered; and
- the institutions academic, financial and staffing resources in Victoria.

The Minister may also issue guidelines to assist persons or institutions applying to become a university in Victoria. At present no guidelines have been issued.

No institutions have been approved to operate as universities in Victoria under this section of the *TE Act*.

Restriction on competition

This section of the Act restricts competition by putting in place barriers to entry to the market for the supply of higher education awards. It acts to maintain the existing structure of the market with nine recognised universities.

Potential entrants to the market who would be effected by this restriction include: private universities and non-university institutions that are currently able to offer individual courses leading to higher education awards.

The absence of Ministerial Guidelines makes it difficult to assess the extent of the restriction on competition imposed by the approvals process. Establishing Ministerial Guidelines would improve the transparency of the process. However, even in the absence of Ministerial Guidelines the requirement of section 10(3)(b) that applicants demonstrate “the need in Victoria for the courses of study offered by the university” is a significant restriction. This requirement could potentially prevent the entry of a new university that intends to compete directly with established universities by offering similar courses.

Do the restrictions meet the objectives?

The provisions that facilitate the entry of new universities in Victoria assists in meeting the government objective of having a competitive, innovative and flexible higher education sector that is able to meet the changing needs of students and society.

The statement made in the Second Reading Speech of the Tertiary Education Bill, The Hon. Haddon Storey, QC, MLC, the then Minister for Tertiary Education and Training noted the Government’s commitment to use these provisions to facilitate the development of the market:

‘... the government has made clear its willingness to provide for recognition of new public and private universities ...

Section 10(3)(b) that requires applicants to demonstrate “the need in Victoria for the courses of study to be offered by the University” is a restriction that does not meet the objectives of the Act.

Costs

At present there is no fee associated with lodging an application for assessment to be approved as a new university. The cost to applicants would be in the preparation of the application.

There is a potential cost associated with the existing application process in that it is not particularly detailed, and at least one requirement has the potential to be used in an anti-competitive manner. Due to these potential costs two recommendations have been made.

Benefits

The benefits of this provision are that there is a process that allows institutions to obtain the necessary Ministerial approval to operate as a university in Victoria. This ‘threatened entry’ of new universities provides incentives for existing universities to be responsive to the demands of their students.

For the Victorian community, new universities can be established and would potentially offer increased choice for students. The process of approving new universities includes provisions to control for the quality of the course of study and the resources available in the delivery of courses.

Recommendations

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- 1 That Ministerial Guidelines be prepared to provide potential applicants with more detail on the requirements that they must meet to establish a university or part of a university in Victoria. This will result in a more transparent process than exists at present.
 - 2 That the requirement for applicants to demonstrate 'the need in Victoria for the courses of study offered by the university' be removed as it has the potential to be used in an anti-competitive manner by preventing the entry of a new university that wants to compete directly with established universities by offering similar courses.

4.3.5 Accreditation of courses and authorisation of institutions

Institutions that do not wish to operate as universities, but still wish to provide courses leading to a higher education qualification can do so if they obtain both course accreditation and the authority to conduct the course from the Minister or the delegate of the Minister². Accreditation relates to academic recognition and authorisation and is a judgment on whether a provider can deliver the course as accredited. Course accreditation and the authority to conduct courses are issued for up to five years. There are 12 non-university institutions in Victoria that can deliver courses leading to higher education awards (see Table 8).

For a non-university institution wanting to obtain course accreditation the *TE Act* directs that the following information be considered:

- the equivalence in standard (in type and level) to an existing university course;
- student selection procedures, numbers, class sizes and contact hours;
- course curriculum;
- adequacy of resources including premises, equipment and materials;
- course nomenclature; and
- qualifications and experience of staff.

Ministerial Guidelines have been issued that provide some detail on the information institutions need to provide when applying for course accreditation. For example, the guidelines suggest institutions provide the following information relating to the equivalence in standard (in type and level) to an existing University course:

- 'documentary evidence that the course has been judged by another Australian accrediting authority as equivalent in standard to a University course at the same level;
- documentary evidence that a recognised University under the Act has granted credit for studies undertaken in the course for which the application is being made; and
- advice from present or former academic staff in recognised universities with experience in the planning, delivery and/or approval of a course of study of a similar kind'.

The factors that are considered when making a determination on an application to authorise an institution to deliver courses are generally related to the teaching, administration or standards of the proposed course of study. Specifically, when an institution is applying for authorisation to conduct a course, the Act directs that the following factors are considered:

- the need for the course of study in Victoria;
- the views of relevant professional associations on the course;
- the standard of the course;

² The Minister has delegated authority to accredit courses to the Higher Education Accreditation Committee and the authority to authorise courses to the Director, Policy and Planning Division.

-
- the accreditation status of the course;
 - appropriate methods of delivery; and
 - adequacy of academic, financial and staffing resources of institution.

Ministerial Guidelines have been issued that provide some detail on the information institutions need to provide when applying for authority to conduct a course. For example, the guidelines suggest institutions demonstrate the need for the course of study in Victoria by providing evidence that:

- 'the conduct of the course of study will meet specific needs for higher education in Victoria; and
- the value to the community of having additional higher education courses of study of the type proposed.'

Appendix 11 contains the schedule of fees payable to have applications assessed to gain authorisation to conduct higher education courses and accreditation of courses.

Restriction on competition

Universities self-accredit the courses they offer. The system of requiring course accreditation and authority to conduct courses only applies to non-university institutions wanting to provide courses that result in a higher education qualification. Consequently, it creates a barrier to entry to the market for the provision of higher education services. It encourages the maintenance of the existing industry structure.

Also, the requirement for applicants to demonstrate "the need in Victoria for the course of study" (s. 11(4)(a)) is a significant restriction. This requirement could potentially prevent the entry of an institution that intended to compete directly with universities by offering similar courses.

Do the restrictions on competition meet the objectives?

These provisions that allow non-university institutions to confer higher education awards assist the objective of having a competitive, innovative and flexible higher education sector that is able to meet the changing needs of students and society.

In their submission to this review, Swinburne University commented on the potential for problems to emerge if the requirements for accreditation of courses and authorisation of institutions, that allow non-university institutions to confer higher education awards, were removed:

'If the hard-won reputation of Victoria's higher education courses is not to be devalued, it is essential that the Minister retain the power to grant or refuse accreditation to non-university courses. The restriction on competition is not great. Any college which can demonstrate that its courses are of sufficient quality may still have them approved. It is a small price to pay to ensure that we retain a higher education sector of consistent quality.'
(p. 5)

Given the restriction on competition due to the prohibition on offering higher education awards the processes of accreditation of courses and authorisation

of institutions can be considered factors that encourage the development of competition in the market while allowing the objective of accountability to be achieved.

Section 11(4)(a) that requires applicants to demonstrate “the need in Victoria for the course of study” is a restriction that does not meet the objectives of the Act.

Costs

Financial costs associated with applying for course accreditation range from \$2550 for an Associate Degree to \$4000 for Masters and Doctoral level courses (see Appendix 11). While the costs of application fee for authorisation to conduct courses ranges from \$2500 to \$4450 for Masters and Doctoral level courses³.

In addition to the direct financial cost, any institution applying for accreditation or authorisation will incur costs in gathering information necessary for inclusion in the application, for example, in documenting the academic and work qualifications of teaching staff.

It is likely that students attending these non-university institutions providing higher education awards would bear these costs in tuition or administration fees. However, the costs incurred by non-university institutions offering higher education awards are spread over entire course enrolments, making the per unit cost relatively small. It is worth noting that all higher education institutions will have administration fees. Universities must devote resources to their self-accreditation process, and students will bear the cost of this, through fees, or lower level services.

Section 11(4)(a) has the potential to prevent institutions that are capable of delivering a university award course from entering the market and so has the potential to limit the choice of courses available to students.

Benefits

The processes of accreditation and authority to conduct courses permit the delivery of courses that result in a higher education award for the student by institutions other than universities. The processes also provide a mechanism by which the level of qualification is consistent with courses of similar level qualifications offered by recognised Universities.

The courses offered by non-university institutions tend to be niche areas that are less likely to be offered in the recognised Universities. For example the Bureau of Meteorology offers a Graduate Diploma in Meteorology and Kollel Beth HaTalmud offers a Bachelor of Talmudic Jurisprudence. Consequently, the processes of accreditation and authorisation allows students who are interested in pursuing higher education studies in particular niche areas to

³ There is a separate schedule of fees if applications for accreditation of courses and authorisation to conduct courses are lodged together. These fees are lower than the sum of fees if the applications are lodged separately.

pursue further education and receive a nationally recognised higher education award.

Conclusion

The administration fees and other costs associated with obtaining course accreditation and authority to conduct courses are likely to be small in per unit terms. There is a significant benefit in having a system that facilitates the pursuit of higher education awards in a wider range of subject areas than would be available if recognised universities were the sole providers of higher education awards. While overall the benefits of this restriction are greater than the costs the review recommends the removal of the potentially anti-competitive provision in the Act section 11(4)(a).

Recommendation

That the requirement for applicants to demonstrate 'the need in Victoria for the course of study' be removed as it has the potential to be used in an anti-competitive manner by preventing the entry of an institution that wants to compete directly with universities by offering similar courses.

Alternative

(1) Removal of the prohibition on offering higher education awards

The prohibition on offering higher education awards by institutions other than recognised universities in Victoria could be removed. The result would be a deregulated market for the delivery of courses leading to higher education awards in Victoria. In effect, any institution or organisation could offer courses leading to higher education awards. The value of the higher education award would be determined by the reputation of the institution conferring the award.

Removing this restriction would make the processes of approval of new universities (s.10) and accreditation and authority to conduct courses (s.11) redundant.

The method of funding of higher education is determined by the Commonwealth Government. The costs and benefits of this alternative have been developed in the context of existing funding arrangements where the Commonwealth Government directs funds to institutions, rather than students.

Costs

A key cost in a deregulated system for higher education awards concerns information. First, prospective students would face much higher costs in obtaining information about the value of individual awards conferred by institutions, both in absolute terms and relative to other providers. Second, students would also have to make judgments about the ability of the institution to maintain its financial viability. This is important in the short term to ensure that a complete course is delivered and in the long term to ensure that the

qualification issued by a particular institution maintains some value in the employment market.

A deregulated system provides the opportunity for 'hit-and-run' competition in the market for higher education services. With no checks on financial viability or the ability of institutions to deliver proposed courses there is greater potential for businesses to fail. The result of failure of a business delivering higher education courses is students not being able to complete courses in which they are enrolled and potentially incurring significant financial loss. The possibility of such occurrences have the potential to damage the reputation of the higher education sector with significant costs in terms of reduced attractiveness of the Victorian higher education sector to both domestic and overseas students.

The process of having individual institutions offer their own awards could remove Victoria from the national system of higher education qualifications. For students, the process of transferring courses either inter-State or intra-State would become more difficult. For employers and the community generally there would be increased costs associated with assessing the relative merit of graduates from different institutions.

Removing the prohibition on offering of higher education awards would dismantle the processes used by the Commonwealth Government to determine those institutions to which it directs funding for the provision of higher education places. Consequently, providers of higher education services in a deregulated Victorian market would need to develop and implement quality assurance mechanisms, acceptable to the Commonwealth Government, as a means of ensuring that they were allocating public funding to appropriate institutions.

Benefits

Deregulating the market for higher education awards would be likely to lead to an increase in the number of institutions offering higher education courses and consequently provide students with an increased choice of course and provider.

The established institutions and recognised universities would have incentives to maintain the quality of their operations and trade on their reputation. They would be able to charge a premium to overseas and some domestic students wishing to enrol in their courses. In comparison, new institutions entering the market would have to establish their reputation in the community.

Institutions would also have strong incentives to develop innovative courses and modes of delivery to meet the changing needs of students.

Conclusion

A deregulated higher education system has significant costs that would be borne by students, institutions delivering higher education awards and society. The benefits seem relatively small. This alternative would have considerable difficulty operating with the current system of funding. The costs of this system appear to be greater than the benefits.

Preferred option

The review considers that the benefits of the existing system - that has a prohibition on the delivery of higher education awards except by recognised Universities, but allows the entry of new universities and allows non-university institutions to deliver higher education awards - outweigh the costs of the associated restrictions. Consequently, it is the recommendation of this review that the current system be maintained.

4.3.6 Endorsement of Courses of Study for Overseas Students

Section 6 of the *TE Act* requires that all providers of higher education awards for overseas students have endorsement from the Minister or the delegate of the Minister⁴ to provide these courses. However, all institutions must comply with the provisions of the Commonwealth *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*. The Commonwealth Minister must be notified of any endorsement made by the Victorian Minister.

The endorsement requirements contained in the *TE Act* differ for university and non-university institutions. Endorsements remain in force for up to 3 years.

Universities wanting endorsement must meet criteria based on the following factors:

- the practices used to recruit and select students, including marketing and promotional materials used;
- student services including welfare, accommodation and housing, arrival and attendance monitoring and grievance procedures;
- contracts with respect to students - including compliance with the minimum fee set by the Commonwealth; and
- the number of students proposed for the course of study.

Those institutions that are not recognised Universities and want to offer higher education courses for overseas students must satisfy criteria based on the following factors:

- financial planning, including the financial viability of the institution and management of students fees;
- practices used to recruit students including marketing and promotional materials used and the role of agents;
- student services including welfare, accommodation and housing, arrival and attendance monitoring and grievance procedures;
- contracts with respect to students;
- student numbers, class sizes and contact hours;
- course curriculum;
- adequacy of resources including premises, equipment and materials;
- course nomenclature; and
- qualifications and experience of staff.

Appendix 12 contains the schedule of fees payable to have applications assessed to obtain endorsement of higher education courses of study for overseas students.

Restriction on competition

⁴ The Minister has delegated authority to accredit courses to the Director, Policy and Planning Division.

The requirement that institutions obtain endorsement creates barriers to entry to the market for the provision of higher education services to students from overseas.

Do the restrictions on competition meet the objectives?

The requirement to obtain endorsement of courses of study for overseas students provides a mechanism to ensure that a minimum level of service is being provided for overseas students. As explained in section 4.3.1, these additional provisions are necessary given the difficulty overseas students may have in obtaining information about Australian courses and institutions and due to the nature of the financial arrangements between universities and full-fee paying overseas students. Senator Vanstone (1996) described the role of the Commonwealth *ESOS Act* as:

'... a safety net to protect the interests of international students.' (p. 3)

In their submission to this review, The Victoria University of Technology stated that:

'Government endorsement of education and training provision for overseas students is highly desirable and should continue. All providers, both public and private support regulation of providers of educational services to international students as a keystone in being able to guarantee quality in a highly competitive international marketplace.' (p. 1)

Costs

The financial costs associated with applying for endorsement of higher education courses for overseas students are \$1000 for Masters and Doctoral level courses and \$950 for all other courses (see Appendix 12).

The endorsement criteria that universities must meet is not as rigorous as the criteria that non-universities delivering higher education awards are required to meet. This potentially gives recognised universities an advantage over non-university institutions in attracting overseas students.

The *TE Act* requires that the Commonwealth Minister be notified of all courses endorsed for overseas students in Victoria. These courses are also required to comply with the Commonwealth *ESOS Act*. While there are some costs for providers of higher education associated with complying with the Commonwealth Act, it is beyond the scope of this review to consider these. The review notes however, that the Commonwealth Act will also be subject to a competition policy legislative review.

Unlike the VET sector, providers in the higher education sector do not experience the additional costs associated with enrolling students on tourist visas. All overseas students enrolled in higher education courses must enter Australia on student visas.

Benefits

The requirement to obtain endorsement provides an indication about the standard of the course in which overseas students are enrolling. The requirement for endorsement should also assist the development and

maintenance of a good reputation of Victorian higher education providers in overseas markets.

The different requirements for recognised universities and non-university institutions offering higher education awards reflect the fact that universities self-accredit their courses while non-university institutions must obtain course accreditation and authority to conduct courses. Again, this requirement is directed at maintaining the standard of education delivered to overseas students and to encourage the development of a good reputation of all Victorian higher education providers in overseas markets.

Costs v Benefits

The benefits of the process of endorsement outweigh its costs. This process achieves the government objective of providing a mechanism to safeguard both the welfare of overseas students and the reputation of providers of higher education in Victoria.

Alternative

(1) Remove requirement that recognised universities meet the endorsement provisions in the Victorian Tertiary Education Act

The requirements that recognised universities obtain endorsement under the *TE Act* could be removed for all universities that are signatories to the AVCC 'Code of Ethical Practice in the provision of Education to International Students by Australian Higher Education Institutions' (1994). All other institutions offering higher education awards in Victoria would remain subject to existing endorsement provisions. All recognised universities in Victoria are signatories to the AVCC Code of Conduct. This Code addresses similar issues to those included in section 6 'Endorsement of courses of study for overseas students' in the *TE Act* and the associated Ministerial Guidelines.

The Code of Conduct states:

'1.2 The offering of fee courses for international students by Australian higher education institutions brings with it the ethical business commitment that value for money be provided. Furthermore, it must be recognised that by accepting a place, international students have taken a major step in their lives; they may leave their home countries for long periods, travel considerable distances and undertake considerable expense. The Code has been formulated with these basic considerations in mind.' (AVCC 1994)

As noted in section 4.1 the higher education sector in Australia, and particularly Victoria, has developed a significant international dimension. Overseas student enrolments and revenue from these enrolments have become an integral part of university operations. Consequently, universities have strong incentives to act in ways that encourage the continued enrolment of overseas students. Victorian universities face competition from inter-State and overseas universities when attracting overseas students. There are strong incentives to maintain the quality of courses and provide student welfare services in addition to services available for domestic students, for example assistance in finding accommodation.

Financial arrangements associated with enrolling overseas students would still be subject to the Commonwealth *ESOS Act 1991*.

Costs

Under the Commonwealth *ESOS Act* the Victorian Minister is required to notify the Commonwealth Government of courses that it has endorsed. This notification is used by the Commonwealth to enter courses on CRICOS. Immigration will only issue student visas to individuals who are enrolled in a course on this Register.

If Victoria were to remove the requirement to obtain endorsement for recognised universities, it would be necessary to develop a new mechanism whereby the States notify the Commonwealth of courses to include on CRICOS.

There would be no mechanism by which the appropriateness of courses entered into the CRICOS system were checked by an entity outside the recognised university. In the current system the Department of Education ensures that courses are appropriate for entry onto the register, that is, that they meet the requirements for a person to obtain a student visa. For example, it ensures that the course is offered on a full-time basis, that in the event that practical placements are required to complete a qualification, there are an adequate number of placements available for domestic and overseas students, that any joint arrangements between universities or a university and other education providers are appropriate for delivery to overseas students. In this way the Department of Education meets the objective of protecting the welfare of overseas students who can face deportation if not in compliance with student visa requirements.

Benefits

Adopting this alternative would remove the costs associated with universities applying for endorsement. These costs involve submitting to the Department of Education the same information required under the Commonwealth *ESOS Act* with an additional statement of ethical intent signed by the Vice Chancellor.

Conclusion

If this alternative were adopted it would be necessary for the Victorian Government to develop an alternative mechanism whereby the Victorian Minister notified the Commonwealth Minister of courses for entry onto CRICOS. There would be less consideration given to the welfare of overseas students. It appears that the benefits of this course of action are less than the potential costs.

(2) Replace endorsement of courses with endorsement of providers

The review believes this option may merit further consideration.

Preferred Option

The review considers that there may be opportunities for rationalising and streamlining the process by replacing endorsement of higher education courses for overseas students with endorsement of universities as providers.