

# Submission

## Productivity Commission

Third annual review of

## Regulatory Burdens on Business

- *Social and Economic Infrastructure Services*

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## 1. Introduction

The Presiding Commissioner  
Productivity Commission  
Review of Regulatory Burdens  
- Social and economic infrastructure services.

The Australian Council for Private Education and Training (ACPET) is the national industry association for independent providers of post-compulsory education and training. ACPET represents more than 1,100 enterprises delivering a range of higher and vocational education across all States and Territories.

ACPET welcomes the opportunity to participate in this third Productivity Commission (PC) Review of Regulatory Burdens by contributing analysis of issues of policy, principle and operational regulation. Multiple reviews are underway in the education sector, but regulatory burdens are often not in focus. **ACPET members are concerned this PC Review closely considers significant regulatory challenges for private education providers in an industry dominated by publicly owned and funded institutions.**

Development of this input has involved distillation of many ACPET submissions to reviews in recent years, plus interactions with ACPET members. These appear to be fast-changing times, with early March seeing four Ministerial statements of intent affecting tertiary education. ACPET discusses these visions in parts below, and stresses that the streamlining of regulation vitally needed will require much hard work.

ACPET notes the PC Issue Paper point that, *'in the absence of submissions concerning a topic, it will be taken as prima facie evidence that no regulatory problem exists'*. The PC has actively sought inputs and ACPET sees this review as important for recording concerns with current and potential future, regulation regimes. Issues include application of competition principles through to particular rules and processes. **ACPET asks the PC not to assume 'change is happening', and to critically review issues ACPET raises.**

Evidence provided to back ACPET discussion of policy frameworks, regulations and practices, includes extracts from statements and papers plus notes on experiences from ACPET members. As PC reports acknowledge, quantitative evidence of burdens is difficult to collect. This is, in part, because businesses in competitive circumstances cannot stop to cost different ways they would operate as rules change.

ACPET, representing independent education providers, looks forward to the Commission's active review of concerns ACPET raises, against policy frameworks and good regulatory practice criteria. ACPET would be pleased to further discuss key regulatory objectives and issues in practice.

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13 March 2009

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## 2. Tertiary Education – reviews, regulation and change

The context of these PC Reviews of Regulatory Burdens on Business is important. Their continuation confirms these exercises as key frontlines of the Federal productivity agenda and of Council of Australian Governments (COAG) commitments to reduce regulation impeding productive and competitive business operation, investment and innovation.

As stated in the PC Issues Paper, these reviews are part of a range of activities ‘by the Australian Government and by COAG to consider the extent to which the regulatory burden on businesses should be reduced or removed’. The COAG Business and Competition Working Group formed in December 2007 are to work ‘to accelerate and broaden the reduction of regulatory burden on businesses.

In May 2008, Prime Minister Rudd stressed ‘the new Australian Government is committed to renewing the ... economic reform project’, based on reform directions that opened Australia’s economy.<sup>1</sup> This followed the Mr Rudd’s criticisms in 2007 of regulatory load on all types of businesses (‘it throws sand in the engine of economic growth’) and his commitment to ‘systematically ... reducing the level of over-regulation of the ... business community’.<sup>2</sup> These imperatives were reinforced recently, with links to education, by the Minister Assisting the Finance Minister on Deregulation.<sup>3</sup>

New growth theories, identifying education and innovation as the pre-eminent sources of prosperity, hold promise. Combine them with the open, competitive model and you have competition driven imperatives for the rapid adoption and adaption of the best new technologies from across the world. ... A new framework for public policymaking should include rewarding effort and innovative risk-taking, extending competition and mutual obligation and, above all, providing an excellent education to all young people ....

**COAG has progressively increased emphasis on productivity at meetings from 2006 into 2009.**<sup>4</sup> Various statements also acknowledge the need to reinforce key regulatory reforms pursued over the 1980s and 1990s to keep the economy open to market signals and competitive innovation. These include:

- Shifting a range of services and operations from public to commercial sectors to achieve efficiencies and responsiveness. This occurred through Government Business Enterprises (GBEs), plus privatisation, and progressively opening fields to competition moderated by development of Trade Practices law, plus
- National Competition Policy (NCP) implemented from 1995 and now an ongoing policy across sectors, including the NCP Competitive Neutrality principles, plus
- Continuing efforts to review and streamline industry, sector and business regulation.

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<sup>1</sup> Prime Minister, *Preparing Australia for Global Competitiveness in the 21st Century*, Address to Future Summit, 11 May 2008.

<sup>2</sup> Kevin Rudd, Federal Labor Leader, Address to National Press Club, *Facing the Future*, 17 April 2007.

<sup>3</sup> Craig Emerson, Education essential to reform - What should be the intellectual basis of public policymaking in market economies such as Australia's? *The Australian* January 24, 2009. Federal Minister for Small Business, Independent Contractors and the Service Economy, Minister Assisting the Finance Minister on Deregulation.

<sup>4</sup> COAG Communiqués from 10 February 2006 on the National Reform Agenda including Human Capital plans.

**All education providers face productivity and competition pressures.** ACPET members are private sector tertiary providers and are not backed by public funds. Like other types of businesses, they develop and deliver important services in highly competitive Australian and international marketplaces. *All Australian policymakers and agencies should be concerned, in principle and practice, that these businesses do not carry any more regulatory costs than essential for effective, sustainable performance.*

Governments (and industries) grappling with productivity demands, need to face up to the challenge of reducing rule costs and restrictions, and of securing the public benefits claimed of regulatory systems. Regulation effects on productivity include the substantial private and public sector effort diverted to 'compliance management' rather than productive work.<sup>5</sup> Impacts are proportionately higher on SMEs.<sup>6</sup>

A baseline requirement on those proposing business regulation to show clear public benefits has also been reinforced in COAG statements since the April 2007 COAG *National Reform Agenda* Communiqué, and there are regular references to the COAG Principles of Good Regulatory process.<sup>7</sup> These principles flow into the Federal Government 'Deregulation Agenda' and best practice regulation frameworks.<sup>8</sup>

**ACPET expects these COAG principles and best practices will be applied in PC reviews and in ongoing development of policy and regulatory regimes, including detailed rules, by agencies and regulators.**

ACPET is also concerned that commitments by Federal and State leaders and policymakers to reinforce competition policy and decrease regulatory burdens be recognised as crucial even as economies slow. Genuine streamlining of regulation can deliver sizeable improvements in competition, productivity and international cost competitiveness. However, achieving results in any area will require a shift from 'review' to making changes. Action needs to extend more deeply than principles, papers and discussion.

ACPET therefore reads that this PC review should be strongly oriented to action on regulations.

The Government's objective is to ensure that the current stock of regulation is efficient and effective and to identify priority areas where regulation needs to be improved, consolidated or removed in order to raise productivity. The Commission is required to identify regulatory and non-regulatory options that will lower costs for industry while having regard for the underlying policy objectives — broadly, to improve the cost effectiveness of regulations. *PC Issues Paper p8*

<sup>5</sup> The possibility of gain through favourable regulation is a strong incentive to spend time and resources seeking 'good results', and countering interest lobbies, rather than producing goods and services: Pearce, Stoeckel & Harris, 1993, *What's Holding Business Back?* CIE Canberra. Expansion of regulation also reinforces the advantage of skilled rule-handling in managing business operations and competition: Day, Shoemaker, 2005, Scanning the Periphery, *Harvard Business Review*, 83, 11, 135.

<sup>6</sup> SMEs lack the resilience and resources to be strategic on regulations and/or to explore less costly options. Studies have shown Government regulation imposes greater proportional cost on SMEs, although enforcement or civil litigation tends to focus on larger entities: *National Small Business Summit, Charter of Principles on Regulation*, 1996; *Small Business Deregulation Task Force Report* (Bell Report) 1996; *Industry Commission, Reducing the Regulatory Burden – Does Firm Size Matter?* 1997

<sup>7</sup> COAG endorsed eight principles for 'Maximising the Efficiency of Regulation' in the COAG National Reform Agenda, *Regulatory Reform Plan*, April 2007. These add to the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* refined by COAG since 1995, current 2008-09.

<sup>8</sup> Minister for Finance and Deregulation, *Relieving the burden on business - Labor's deregulation agenda*, Speech 26 Feb 2008. Also: Office of Best Practice Regulation (OBPR) *Best Practice Regulation Handbook* 2007 and associated documents.

**The PC Issues paper emphasises, and ACPET agrees, that regulation takes multiple forms, including:**

- laws or other government ‘rules’ that influence or control ways people and businesses behave
- legislation, formal regulation, quasi-regulation (eg. codes of conduct, advisory instruments, notes)
- government involvement in voluntary, self-regulatory, industry-based schemes, guidelines
- regulatory aspects of international treaties to which Australia is a signatory, and
- the way particular laws and rules are administered and enforced.

The Commission’s focus is Commonwealth regulation (and logically, national regulation schemes) plus duplication or overlap of regulatory responsibilities between Commonwealth and other jurisdictions, and particularly *‘regulation that is unnecessarily burdensome, complex or redundant’*.

The PC lists indicate potential burdens on businesses in terms of different types of ‘costs’, including:

- costs of dealing with regulators and keeping up-to-date with compliance/reporting requirements
- costs of setting up compliance systems, collecting information, preparing and checking reports
- limits placed on the activities of a business, such as restrictions on the products or services it can supply and so the markets it can enter with opportunities missed, and
- limits on the capacity of businesses to respond to changing technologies or market circumstances.

-- All these types of burdens and costs are discussed at points in this ACPET submission.

The PC observes, and ACPET agrees, that the complexity of the regulation and the degree of compulsion involved can affect the level of these costs’ and poorly designed regulations and/or those implemented with a heavy-hand, can impose greater costs than needed to achieve their underlying objectives.

-- Many aspects of current tertiary education regulation epitomise poor design, with associated effects.

As indicated by the Issues Paper [p12-13], the PC is seeking details on regulatory issues, including articulation of structural and implementation concerns with problematic rules. The PC is also interested in quantitative information particularly in cost form, to indicate the size of the burden.

-- ACPET considers it is important that regulation streamlining not be held back by calls for data on costs of regulatory activity and potential savings from changes. Costs are difficult to quantify, especially as businesses must move fast to keep up with rule changes and cannot run duplicate systems to compare. However, regulatory costs are undisputedly real and affect investment, innovation and productivity.<sup>9</sup>

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<sup>9</sup> Many OECD and other studies have confirmed that ‘red tape’ impacts on businesses in multiple ways - higher running costs, constrained choices and decisions, and deterrence to innovation, invention and development investment. These effects reduce productivity and competitiveness, especially where firms must compete with others operating in less regulated, or publicly supported environments. ACPET can provide references, but anticipates the PC has access to these many reports.

Or, as put by the NSW IPART in October 2006, as a result of systemic failures to adopt good regulatory practice in Australia, 'existing regulations commonly impose unnecessary burdens on business and the community' because they lead to uncertainty, unintended consequences, inconsistency and duplication, regulatory creep, excessive requirements, and delays.<sup>10</sup>

ACPET agrees with the general position on *purpose* and *effect* regulation as stated by IPART and other reviews. Regulation will always increase business costs, so expected public benefits must be secured.

Effective regulation is essential to a well-functioning economy and helps create a safe and just society. Regulations provide governments with a powerful means of achieving social, environmental and economic goals. However, regulation also imposes administrative and compliance burdens on business, consumers, government and the wider community. *IPART 2006*

**International recognition that regulation routinely adds costs to businesses** stands **behind the key National Competition Policy test** – that regulations are to be taken to be 'restrictive in principle'. Under NCP the onus is placed on those wanting to keep a law or rule, to prove there is a net public benefit, and '*only where better alternatives do not exist and there are net public benefits for the whole of Australia should legislation be retained*'.<sup>11</sup>

**Review after review has since found Australian business regulation to be increasingly complex** and burdensome, as have reports from the OECD and findings of review tribunals in, for instance, the UK.

A Federal Regulation Reform Taskforce headed by the PC Chair reported in January 2006. The taskforce confirmed the sizeable costs of business regulation of all types across many industries to the national economy and that this was, in part, a result of deficiencies in regulatory process.<sup>12</sup>

The Taskforce became convinced that the problems we observed and that were brought to our attention were not *aberrations*, but the inevitable outcome of how regulations were being made and administered. They included regulations that were (among other things) overly prescriptive, poorly targeted, duplicative, mutually inconsistent, excessive in their coverage of firms and unduly onerous in the reporting and other obligations on the firms affected.<sup>13</sup>

In April 2007, the Victorian Competition and Efficiency Commission (VCEC) issued a general indictment on regulation. Businesses are 'buried in a mountain of red tape' through 32,000 pages of legislation administered by 72 agencies with an administrative cost to the state of \$2 billion across industries.

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<sup>10</sup> Independent Pricing and Regulatory Tribunal, NSW, *Investigation into the burden of regulation in NSW and improving regulatory efficiency*, Final report Oct 2006.

<sup>11</sup> National Competition Council, *Guidelines for NCP Legislation Reviews*, 1999. [ncc.gov.au/activity.asp?activityID=38](http://ncc.gov.au/activity.asp?activityID=38) [2.2009]

<sup>12</sup> Regulation Taskforce, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*. 2006, Report to the Prime Minister and the Treasurer, Canberra. Recommendations were made on rules relating to health, labour market, consumers, environment & building, financial and corporate, tax, superannuation, trade, and to regulation-making (reducing burdens across government, underlying causes of over-regulation). The Panel also saw 'changing needs and expectations of society' with increasing risk aversion as reasons behind regulatory expansion.

<sup>13</sup> Banks G, 2006, Tackling the underlying causes of over-regulation: an update. [pc.gov.au/speeches/index.html](http://pc.gov.au/speeches/index.html).

VCEC estimated that regulations created by the Victorian Government in 2005-2006 (notwithstanding commitments to control regulation) would cost businesses and individuals \$280 million over 10 years. VCEC concluded that to improve regulatory approach continued to be a major challenge for Victorian regulators with large gaps in their performance and reporting.<sup>14 15</sup>

**These and other reports provide important evidence on costs and effects of regulation, to back points made by ACPET in this submission. Business should not need to prove costs.** Experiences reported by ACPET members, while anecdotal, confirm that regulatory structures, tangles and implementation issues are similar to those in many other industries including policy-regulator-jurisdiction interactions. *The onus should be with agencies and regulators to continually verify their basis for costly regulatory structures.*

However, it is true to say that independent tertiary education providers have not been as vocal about regulatory issues as some other sectors. In wide-cast reviews, such as IPART 2006 and Banks 2005-2006, regulation of education is barely mentioned, likely as it had not been raised by businesses. This reflects the fast evolving circumstances of tertiary education provision [2.a], market-linked expansion of private enterprise, and rising competitive pressures, public/private, and local/international.

ACPET and private tertiary providers support appropriate levels of regulation. Consistent, reasonable and effective standards add stability to the sector and assist ongoing operation in some markets.

**However, regulation impacting on tertiary providers extends more deeply than generally recognised.**

In its reviews, ACPET has identified over-arching issues of regulatory principle and practice, including:

- There are few signs of a 'minimum effective regulation' a modern regulation system, operating in Australian education areas. Provider registration and course accreditation involves multiple, duplicative rules, and centralised, costly processes structured with command and control features.
- Regulation regimes are not applied in a common way, ie. Based on performance as tested on modern criteria, across types of providers or jurisdictions. Public universities and TAFEs stand aside from blocks of regulation. There are no special policy arguments for public entities to be given such priority or advantage in providing tertiary education.<sup>16</sup>
- Australia cannot afford direct and indirect costs of artificial barriers to innovation and enterprise in education - as it cannot in other areas. Such inefficiencies are arising through unquestioned traditions, unclear purposes and protections, outmoded types of regulations and practices not up to speed with the knowledge economy, or with what communities or clients expect.

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<sup>14</sup> VCEC (2007) *The Victorian Regulatory System*. Victorian Competition and Efficiency Commission, April.

<sup>15</sup> In the same timeframe, a report on administrative requirements of complying with regulation ('one component of the overall compliance burden'), estimated State based regulation as 'approximately 44 per cent of the total administrative burden' and Commonwealth regulation about 56 per cent, PriceWaterhouseCoopers, Report to Department of Treasury and Finance, *Analysis of Administrative Burden of Victorian State Regulation*, Apr 2007.

<sup>16</sup> Rather, there is evidence that the focus, responsiveness and enterprise of private providers are vital to developing population capacities and skills as socio-economic pressures intensify. King, *The Rise and Regulation of For-Profit Higher Education*, Observatory on Borderless Higher Education, Dec 2003



### **a) Independent education providers and industry regulation**

Established in 1992, ACPET is the national industry association for private providers of post-compulsory education and training. ACPET now represents over 1,100 organisations nationally delivering a full range of higher and vocational education and training (VET) and English language courses across Australia.

**The Australian private tertiary provider segment has grown by offering student-focussed learning paths to meet needs of student clients** (the message stressed by Minister Gillard in recent addresses).<sup>17</sup> Innovative private providers have developed education services, even with public dominance of education and efforts required by costly rule regimes criticised by most education groups in Australia.<sup>18</sup>

- The private education sector delivers the greatest number of post compulsory education courses in Australia across all regions. It is the provider of choice to over 2 million Australians and 70% of international students. It also provides over 15,000 jobs in teaching and administrative positions.
- Private providers now account for over 9% of Australia's higher education EFTSL (equivalent full time student load). In 2008, an arms-length estimation of private provision, cross-checked by ACPET, conservatively indicates that of a national higher education EFTSL about 340,000, private providers are educating more than 37,000 EFTSL, or over 9% of students as EFTSL in recent years.
- Despite a limited competitive national market for VET, private enterprises (predominately small-medium enterprises, SMEs) have managed to develop a significant share of the training market – around 25% of domestic clients and 70% of the international student VET market.
- Private providers deliver all nationally accredited AQF qualifications, from apprenticeships to traineeships to professional doctorates across diverse areas (eg. business, administration, IT, design, community services, natural medicine, the creative arts and tourism and hospitality). Many private providers work across jurisdictions.

Delivery of courses by independent providers can now be discussed in real performance terms rather than 'in the abstract' of new players and what they 'might' do. Structural changes to policy and statutes opened opportunities for this in higher education. The challenge has been taken up by innovators.

[A] Number of new institutions [are] being registered to deliver higher education courses; ... NSAs [non-self accrediting institutions] growing by over a third (35%) in the three years from 2005-2007. This growth can be ascribed to a number of factors including; a more clearly defined and facilitative regulatory process; broadening of government fee support for students ... and consumer demand for specific courses delivered by niche providers in a practical format in a variety of study modes.<sup>19</sup>

<sup>17</sup> Minister Gillard, speeches: Universities Australia Conference 4 Mar 2009; Big Skills Conference 5 Mar 2009.

<sup>18</sup> *Higher Education Review Discussion paper*, Jun 2008 s3.9; AVCC-PhillipsKPA, *University Reporting Requirements* May 2006.

<sup>19</sup> ACPET–Ryan, *On the Joint Committee on Higher Education inquiry into the desirability of a national higher education accreditation body* Mar 2008; and ACPET, *To Victorian Government Better Regulation Project* Nov 2007. In 2008, of 145 non-self accrediting higher education institutions, 66 were private entities, 15 professional associations, 42 faith-based, 18 were government entities, and 4 private arms of universities. Of the 145, 65 (45%) had gained Federal Higher Education Provider (HEP) approval to offer FEE-HELP support to students since Mar 2005.. Over half (81) are also RTOs, 61% offer postgraduate courses, 14% offer research degrees, 63% are approved to deliver courses to overseas students. *P Ryan data Jun 2008*

Australia has multi-layered, over-lapping, duplicative, complex and expensive tertiary education regulation, almost all run by government entities. Key elements of the policy and regulatory system are:

- **The Australian Qualifications Framework (AQF).** A structure of 15 national qualifications across upper high school, VET and higher education. The AQF, introduced across Australia from 1995, was developed under instruction of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) and the linked Ministerial Council for Vocational and Technical Education (MCVTE). An AQF Council provides Ministers with advice to ensure the AQF 'is nationally and internationally robust and supports flexible cross-sectoral linkages and pathways'. [www.aqf.edu.au/](http://www.aqf.edu.au/)
- **MCEETYA National Protocols for Higher Education Approval Processes** (the 'National Protocols') outline a national quality assurance framework for Australian higher education. They set criteria for registration of a university or higher education institution. Revised 2007 National Protocols are now operative through Federal and State legislation. [mceetya.edu.au/mceetya/national\\_protocols ...](http://mceetya.edu.au/mceetya/national_protocols...)
- **The Higher Education Support Act 2003 (Cth)** – HESA is the legislation for Australian Government higher education funding and enacts National Protocol and Australian Universities Quality Agency (AUQA) audit requirements. HESA's goals include supporting a higher education system that ... is characterised by quality, diversity and equity of access and appropriating to meet Australia's social and economic needs for a highly educated and skilled population. The HESA details Federal funding and associated requirements. Eligibility for public funding is determined by the Table (A, B or C) to which a provider is allocated within the HESA. [dest.gov.au/sectors/higher\\_education/ 2.2009](http://dest.gov.au/sectors/higher_education/2.2009)
- A **higher education provider (HEP)** is either a *university*, a *self-accrediting institution* (SAI), or a *non self-accrediting institution* (NSAI). Providers in HESA Table a (public universities and institutes) are eligible for all Federal grants and their students can receive all forms of assistance. Table B providers are eligible for some grants and students can receive FEE-HELP for tuition fees. Since 2005, private providers completing Federal processes and audit may offer FEE-HELP to students. This was partially extended through VET FEE-HELP in 2007-08. [deewr.gov.au](http://deewr.gov.au)
- **Australia operates a National Training System (NTS)** with numerous parts that primarily steers, co-ordinates and manages provision of eight AQF vocational qualifications (Certificates 1 to IV, Diploma, Advanced Diploma, Vocational Graduate Diploma and Advanced Diploma). The NTS involves a number of regulatory bodies and instruments, including AQTF and Training Packages.
- **Australian Quality Training Framework (AQTF)**, national standards and procedures/guidelines for registration and auditing of training providers (registered training organisations RTOs), and for accreditation of courses, and for operations of state/territory registering authorities. AQTF 2007 standards have applied from 1 July 2007. These build on AQTF 2002, to implement key elements of the 2005–08 Commonwealth-State Agreement for Skilling Australia's Workforce.
- **The AQTF is overseen by the National Quality Council (NQC)**, a committee of the MCVTE. Authority and funding flow through the *Skilling Australia's Workforce Act 2005* (Cth) and related State acts. TVET Australia (a company owned by MCTVE members) services the NQC and the **National Industry Skills Committee**, and manages an emerging **National Audit and Registration Agency** (NARA). A new independent statutory body, **Skills Australia**, is to provide advice to the Federal Minister on current, emerging and future skills and workforce development needs.

- **AQTF standards and publications** (all or most, in auditing practice, will be rules and performance regulations) *include*: The Essential Standards for Registration of an RTO, Guide to the Essential Standards for Registration, Excellence Criteria for Registered Training Organisations, Users Guide for Registered Training Organisations Excellence Criteria, plus Evidence Guide, as well as Standards for State and Territory Registering Bodies, and AQTF 2007 Standards for Accredited Courses (for course design where no training package) and User's Guide to Standards for Accredited Courses.
- **Training Packages (TP)** are the other key part of the National Training System. A Training Package is an integrated set of nationally endorsed competency standards, assessment guidelines and AQF qualifications *for a specific industry, industry sector or enterprise*. TPs cover most industries. They are mainly developed by committee through Industry Skills Councils (ISCs). Many rules are located deeply in instruments and guides. For instance, it is a hard rule (arguably 'unnecessarily burdensome' and redundant, see part 4) that tailored VET courses will not be accredited 'where the outcomes appear able to be attained through customisation of a Training Package'.<sup>20</sup>
- **ESOS-CRICOS-NEAS are international education regulation.** DEEWR, through its arm, Australian Education International (AEI), regulates education and training industry services for overseas students studying in Australia on student visas. AEI is also regulatory authority for the *Education Services for Overseas Students* (ESOS) legislative framework (Act, regulations, National Code of Practice including 15 Standards, plus Explanatory Guide). Providers must be approved for CRICOS (Commonwealth Register of Institutions and Courses for Overseas Students). English Language Intensive Courses for Overseas Students (ELICOS) providers are also regulated through registration with NEAS (National ELT Accreditation Scheme). NEAS originated as industry self-regulation.

**ACPET's issues with these regulatory arrangements are discussed in later sections of this submission.**

This written outline does not do justice to the complexity of the regulatory regimes and the burden of various rules as implemented through agencies within and across jurisdictions. One diagram is provided with the discussion of problems in practice [see 5.j]. ACPET also understands DEEWR has endeavoured to map the regulations from framework to audit operation, and may provide this material.

**Overall, tertiary education regulations are particularly onerous for non-university and commercial providers.** Public institutions stand aside from key parts of the regulatory system. The competitive and commercial advantage for public institutions (particularly universities and also TAFE's with delegated accrediting authority from their own departments), has become clearer as enterprising providers move to innovate. Some rules do not cover public entities; other exemptions appear to be custom and practice:

All Australian universities extensively breach the Australian Qualifications Framework. That's not news, as universities mostly ignore the [AQF]. But it demonstrates a systemic failure of quality assurance and the lack of national maintenance of standards in higher education. ... [AUQA] has consistently declined to assess the standard of Australian degrees or even the relative standards of the Australian higher education system ... The state bodies accredit non self-accrediting higher education institutions, most of which are private. These institutions are required to ... which puts them at a clear disadvantage vis-a-vis the self-accrediting but non-complying universities. *Moodie, The Australian 19 Nov 2008*

<sup>20</sup> For a useful exposition of these agencies, frameworks and regulatory regimes see: Innovation and Business Skills Australia, *General Information on Training Packages FAQs*. [www.ibsa.org.au/downloads/FAQs\\_General\\_Trng\\_Pkgs\\_FINAL.pdf](http://www.ibsa.org.au/downloads/FAQs_General_Trng_Pkgs_FINAL.pdf) This states the AQTF rule of primacy of training packages. This powerful regulation appears in the *Guidelines for Course Developers - A guide to developing VET courses for accreditation under [AQTF]*, 2002 p2. Also: *AQTF Standards for Accredited Courses 2007*, p2.

## ***b) Education industry reviews - ACPET inputs and key positions***

At any given time, some elements of Australian tertiary education arrangements are under review. Occasionally there is a general review of education policy and systems – although these are usually by ‘sector’, an unfortunate adherence to traditional education structures and jurisdictional divisions. Other regimes, such as Migration policy and rules are also vital to successful operation of education businesses.

**In recent years ACPET has provided considered inputs to many reviews and exercises, including:**

- 2008: Australian Government Review of Higher Education; COAG Discussion Paper: Skills and Workforce Development; Victoria - Training Recognition Consultants; Skilling Australia for the Future Discussion paper; Future Governance of the National VET System; Migration assessment policy; DEEWR, International Education Group; JCHE, national higher education accreditation body; Immigration, Transitional International Students; DEEWR, ESOS Annual Registration Charge
- 2007: Victoria, Better regulations review; School Based Apprentices Case Study; DIAC, Review of Migration Agents; 2006: DEST, Industry Consultation National Code of Practice for Registered Authorities and Providers of Education and Training to Overseas Students;
- 2005: Victoria VET Inquiry; Productivity Commission, National Competition Policy; Transnational Education quality strategy; Victoria Education white paper; DIMIA on Client Services; 2004: Traineeship and Apprenticeship Futures Project; DIMIA on regulating Migration agents; High level review of Training packages; Private Education providers/NSW economy; NSW Traineeship System; ESOS Act review; 2003: Review of the Higher Education Act; 2002: Crossroads Review.

Private education providers, ACPET members, have long operated to meet vocational training needs for domestic and international students. With partial opening of the higher education system in 2003, a range of enterprising providers have expanded offerings in associate degrees and degrees. Uptake grew with removal of barriers through extension of government fee loans to all types of students in 2005.

**Commensurate with increasing weight of private providers in tertiary education, ACPET is focussing as much on policy and structural issues with a long term view, as it does on detail of regulatory practices.**

The 2008 Higher Education Review (HER) particularly provided opportunity for ACPET to contribute strong inputs on Australia’s tertiary education structures and arrangements – from policy to systems and particular rules and practices. The HER Bradley panel reported in December 2008. A partial Federal Government response was provided by the Minister on 4 and 5 of March 2009. The following ACPET issues and arguments are discussed in the context of commitments announced by Ministers.

The HER was conducted in a positive manner with the Panel making substantial recommendations, many of which ACPET would directly support. ACPET has flagged significant concerns with a smaller although important number of the proposed changes. These concerns especially relate to potential for ‘unintended consequences’, including more anti-competitive situations [part 3, below].

The depth of evidenced argument in ACPET's original submission was noted by the Review Panel.<sup>21</sup>

Taking into account experiences of all types of private education providers ACPET presented cases for:

- one Australian tertiary education system with one mission - to develop capacities, skills and knowledge across the diverse population, and a continuum of qualifications plus removal of artificial sectoral barriers to tailoring and delivering innovative courses utilising both academic and vocational education strengths;
- one Australian tertiary system in which, aligned with national policy, productivity and competition objectives, institutions are not delineated on public or private/commercial business models – the key test should be provider performance in student outcomes;
- close examination of student-demand based funding models because all types of students warrant choice to suit their needs and interests, and equivalent public support through the range of institutions and courses they select;
- recognising realities in Australia and internationally by using strength of scholarship as the key test for specialist university and university college in National Protocols; and
- streamlined, best-practice regulation and all facets of administration in a single tertiary education system and removal of anti-competitive elements from regulations and processes.

**Regulatory arrangements and concerns flow through these issue areas.** Positive changes would involve reform of multiple rule structures, as discussed in later sections of this submission.

ACPET also reiterated support for initiatives to improve living assistance for students, to open tertiary education paths for people of all backgrounds and interests and for ensuring international students are recognised as clients, potential citizens and important cultural links. In addition, ACPET suggested that large increases in government funding should not be assumed. Australia needs to come to grips with university cost structures, including costs of the research nexus embedded in regulatory protocols.

The HER Report (like many) is university-centric, although the industry has changed, as noted at points by the Panel [1.a]. ACPET is looking to be closely involved in all facets of development of a modern Australian tertiary education system, including a functional qualifications continuum, useful academic and teaching standards, monitoring performance and quality, modernising regulation, and strengthening services for a local and international students – to continue an Australian export education success story.

As the Panel says [p141], **Australia needs to 'nurture, support and reward those who produce new ideas and new ways of doing things to prepare us to compete more effectively as the global race for talent intensifies'**. This must apply as much for education providers – public, independent, commercial, general and specialist – as it does for students, academics or researchers.

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<sup>21</sup> See the HER website for the *Higher Education Review Report* Dec 2008; *Discussion Paper* Jun 2008, and the ACPET submission.

### 3. Competition principles, regulatory practices, burdens

Prime Minister Rudd has confirmed the importance of pro-competition policy to Australia's future:

**Productivity growth ... is the aggregation of efficiency gains industry by industry, market by market, and sector by sector.** Australia needs to revive its microeconomic reform agenda if we are to arrest the recent slide in our productivity performance ... to maximise its future competitiveness in the global economy, we need the best possible regulatory environment. We need to 'get the rules right' so that Australian businesses have wasteful regulation taken off their backs and face appropriate rewards for hard work and enterprise. This means we need to restart the competition policy agenda. We need to press ahead with deregulation. And we need to create an environment that supports risk taking and innovation.

*Prime Minister, Preparing Australia for Global Competitiveness in the 21st Century, Summit May 2008*

National Competition Policy (NCP) activity extended over ten years from the historic 1995 Competition Principles Agreement and actions programs, through many reviews, to evaluations of progress in 2005. These included calls to extend competition policy across all parts of the Australian economy.<sup>22</sup> In April 2007, COAG confirmed the Competition Principles Agreement and amended elements to regulate for competition in major national markets and business access to nationally significant infrastructure.

**As the National Competition Council website confirms, competition principles continue in legislation and in heightened community expectations of competitive industries with attendant benefits.**

The NCC identifies key elements of competition policy reform to include: *removal of regulation* as anti-competitive and inefficient unless public benefit is shown (the public interest test), *third-party access* to facilities and systems, *structural reform* (of government business areas 'by introducing competition or, at a minimum, removing barriers to new businesses competing in the market'), and *competitive neutrality*.

In recent years, competition policy attention has been focussed on nominated 'regulated industries'.<sup>23</sup> Features of these industries include a substantial presence of large public providers, and/or former public entities with ongoing strong positions and considerable assets acquired during public ownership. The *Trade Practices Act* Part IIIA enables regulated access to the infrastructure of some such industries, and potentially other industries where 'it would promote a material increase in competition in at least one other market, and not be contrary to the public interest.

Over 1995 to 2005, the Australian education industry and its sectors were strongly dominated by public providers, and 'education' was not listed for examination in formal NCP programs. The PC's 2005 review of NCP reforms noted that 'provision of key human services such as health, education and aged care, and natural resource management (other than water), has been largely outside the purview of NCP'.

<sup>22</sup> 'National Competition Council calls for renewed commitment to economy-wide reform', Media release 12 Dec 2005, plus NCC report: *Assessment of governments' progress in implementing the National Competition Policy and related reforms*.

<sup>23</sup> This is indicated on the NCC website. The Australian Competition and Consumer Commission (ACCC) identifies 'regulated industries' as: Aviation and airports, Communications, Electricity, Fertilisers, Gas, Insurance, Postal Services, Petrol, Rail, Water. Waterfront and Shipping, Wheat Exports. [www.accc.gov.au/content/index.phtml/tag/ForRegulatedIndustries/](http://www.accc.gov.au/content/index.phtml/tag/ForRegulatedIndustries/) [2.09]



The Commission indicated this reflected importance of ‘non-economic objectives’ in these areas, and ‘the role of cooperation between providers in enhancing service quality and promoting equitable access to services’. However, the PC also said ‘it is clear that these areas will need to feature prominently on future reform agendas aimed at enhancing productivity and sustainability’. A ‘range of strategies will be required to deliver better outcomes’, including competition-related reform to boost productivity and sustainability.<sup>24</sup>

**The PC pointed to evidence of positive outcomes by ‘harnessing competition to improve human service delivery’**, including through better incentives for both non-public and public providers ‘to improve their efficiency and to deliver the levels and quality of service required by users’.

**‘Harnessing competition’ brings with it a need to recognise that enterprises (commercial, independent or public) that enter, invest and work to deliver these services – in health, aged care, education – will reasonably expect that they would be in an open competitive environment, on even ground.**

This provides context to the Commission’s conclusion that while healthcare, is ‘the human service area that currently offers the largest potential benefits from a nationally coordinated reform approach’, Governments need to take collective action to energise vocational education reform. The PC noted ‘the university sector’ had just been subject to changes and these should be monitored.

That enterprising businesses have entered the field is important to Australia’s economy and human capital development. Student and employer markets have supported the ‘opening-up’, as seen in growth of private providers [2.a], and to the extent that the HE Review panel observed:

Higher education has changed dramatically over the last 30 years or so. It once comprised a small number of publicly-funded institutions. This is no longer the case. There are now 37 public universities, two private universities and 150 or so other providers of higher education. The public universities derive significant proportions of their income from non-government sources and some private providers receive government subsidies. **The public-private divide is no longer a sensible distinction.** *HER report p xi*

**A range of rules, and practices harking from public ownership traditions, have anti-competitive effects. These rules are both ‘unnecessarily burdensome’ and ‘redundant’ under Australian policy** -- unless public interest and benefit is clearly demonstrated by proponents. ACPET pointed to a number of anti-competitive practices in its submission, and as a point of principle at the top level, the Panel agreed:

It is inappropriate and anti-competitive for a whole class of institutions to be completely exempt from the requirement to demonstrate at some regular interval ... they continue to meet the requirements to operate.

Within current tertiary education regulatory arrangements, there are many other anti-competitive rules, structures and practices. Further, as discussed in the following sections, there is potential for more to develop, if implementation of future changes is not carefully considered and managed.

<sup>24</sup> Productivity Commission 2005, *Review of National Competition Policy Reforms*, Report no. 33, Canberra. xxxiii-iv.

### **c) Public-private level playing fields; competitive neutrality**

A key strength of the private training sector is its purposeful responsiveness to students and potential flexibility to address skills shortages and meet industry needs. Support from student and employer clients is evidence of this. However, commercial education enterprises would be able to finetune as 'fast response' businesses and adapt more quickly to meet complex skill development needs and particular skills shortages, ***if they could operate on a 'level playing field'.***

The ALP Platform provides a general descriptor of a level playing field - a '*dynamic, mixed economy, which drives economic growth by fostering enterprise, innovation, and competition...*' Put another way:

This is not about picking winners it is about creating a platform from which our industries can compete. We'll level the playing field and, then it's up to those industries to compete on their merits. And enhancing competition and creating competitive markets is a fundamental pillar of the Rudd Government's economic agenda. That's why we are concentrating on revitalising competition policy.  
*Assistant Federal Treasurer Chris Bowen, The Rudd Government's Economic Agenda, Address to CEDA, 5 June 2008.*

The National Competition Council describes the drivers and objectives of 'competitive neutrality', using the past tense as though governments have long removed the multiple unfair advantages government entities have in competing directly or indirectly with private sector businesses. The NCC website says:

In the past, many government business activities were able to obtain certain advantages over their private sector rivals as a result of their public ownership. These advantages included exemption from taxes, lower costs of finance due to government guarantees and exemption from regulations affecting private sector activity. Such advantages gave unfair advantage to government owned businesses and encouraged resources to flow to them regardless of their efficiency.

National Competition Policy (NCP) competitive neutrality principles aim to remove this unfair advantage. The principles also remove the impediment to efficient resource allocation that had arisen from the regulatory advantage of government owned businesses. They ensure these businesses face the same costs and commercial pressures that face their private sector competitors. Clause 3 of the Competition Principles Agreement obliges all Australian governments to apply competitive neutrality principles to the business activities of significant publicly owned entities where this is in the public interest. *NCC website 2.2009*

**Publicly owned entities still dominate tertiary education in Australia, and at the least, competitive neutrality principles should apply routinely.** Public universities and TAFEs carry out community activities for which they receive funding, but in the main they are large business corporations behaving in highly competitive ways to all around them. For instance, a substantial proportion of the Australian export education industry has been developed by private sector enterprises, through innovation, investment and performance – but this has been done in competition with commercial business arms (as they need to be seen) of advantaged Australian public universities and TAFEs.

Current regulatory structures differentiate significantly between NSAI (non-self accrediting institutions) and the group of universities, all self-accrediting. Many ACPET members express high frustration and concern about the costs and 'red tape' of current registration (entity) and accreditation (courses) regulations and their implementation in each State. A lot of these rules do not apply to public entities.



To these are added Federal approvals for Fee-Help and VET-Fee-Help and for provision of services to overseas students (ESOS Act). As discussed in parts 4-6, the non-level playing field (with its competitive non-neutrality) has multiple dimensions, including:

- overall system burden - multiplicity of registration, accreditation, audit and supervision
- need for a performance-based assurance and audit system
- registration and accreditation processes including timeframes, panels
- across-jurisdictions – issues of mutual recognition and national accreditation
- distribution of public funding at tertiary levels (support for students or institutions?).

**All these issues areas arise from regulatory regimes. From legislation, regulations, protocols, rules, instruments and guides, plus implementation practices.** Private providers are also required to step through these processes multiple times – for each course, each location, and each change – again in sharp contrast with public education entities. In addition to action to reduce the overall burden [see part 5], examples of detailed changes ACPET would put forward to ‘level the playing field’, include:

- For re-registration and re-accreditation, or change approvals, the primary path should be desk inspection using the provider’s application book plus testimonials. The onus should rest with agencies to explain any need for panels or audits.
- Where a Panel is appointed for registration or accreditation, the Panel should receive induction in policy, process and regulatory good practice from the government agency, including features of anti-competitive conduct, and recognition of innovation advances.
- While universities can list courses in anticipation of markets and develop materials as the course unfolds, private providers must have course materials ready and cannot market until approved.

A university can put together a ‘coherent’ group of units in 4-5 months, or even 8 weeks to reach the market – race it through their system. Don’t have to go far to find units listed on websites that are ‘not offered’ but look interesting, and materials or courses have not been developed, waiting until they have customers. NSAI HEPs must fully develop a course and materials, market analysis and staffing before we can apply for accreditation. That can take 6 months, and then add 8-10-12 months to work through the process and receive Ministerial approval – then can start marketing, sometimes two years later. *ACPET member*

In non-universities, vocational aspects of course needs cannot nest inside a higher qualification, you are not allowed to ‘add value’, but SAI, especially universities, can develop courses as they see fit. Can move into any sector they want quite easily. Less scrutiny, dotting i’s, crossing t’s. *ACPET members*

- The indicative time period for an application to become a self-accrediting institution (SAI) is now ten years. This should be reduced to reflect the pace of changing needs and how organisations develop in modern times, say to continuous operation and delivery of accredited programs for three full years.
- Opening competition for public funding to service publicly identified training needs and priorities.

**The public tertiary education entities are so strong , even with some market-widening since 2003, that ‘education’ arguably has features of a ‘regulated industry’ – where Australia seeks to encourage useful competition but power balances and historical public investments are distinctly skewed.**

Australian taxpayers have invested, and continue to provide, substantial sums toward development of Australian public education entities and their land, facilities and systems. These are costly institutions and traditions, operating without paying taxes and with exemptions from some usual business costs.

From a national efficiency perspective, for the benefit of students, and consistent with level-playing field and competitive neutrality policies, Australian Governments should closely examine opening user access to facilities into which public funds have been channelled through single universities or consortia.

As ACPET reiterated to the Minister in a response to the HE Review, achieving a national electronic knowledge library would be an important indicator of advancing equitable access to publicly owned facilities. This should be equally available to all tertiary students in Australia, whichever their provider, via public access to a conduit such as AARNet [www.aarnet.edu.au](http://www.aarnet.edu.au). Additional considerations include that:

- ‘Libraries’ are a vexed issue – indicative of many regulatory and process problems, and raising questions about level playing fields and competitive neutrality. In practice, university academics on accreditation panels are often ‘old school’, and some do not recognise that outcomes can be achieved in different ways by different types of providers. For instance, public universities give students access to brilliant libraries (much used by their researchers) but ‘jump’ student-staff ratios to meet cost pressures. In contrast, private entities establish library access appropriate to course needs, and have smaller class sizes to advance learning in specific groups of student-clients.
- The extensive facilities including libraries with thousands of books and sweeping lawns of a traditional university campus are very expensive structures, and usage is skewed to staff and to students in a position to enjoy a ‘full university experience’. Large numbers now learn effectively by electronic means, with little time on a campus, or attend entities with more modest surrounds.

ACPET also identified to a Victorian inquiry in 2005, that regulations enabling use of public facilities could assist private innovators to provide a wider range of trade and technical skills training.<sup>25</sup>

Few private providers are involved in apprenticeship training in the traditional trades. This is usually attributable to the cost involved in providing the equipment and physical infrastructure for traditional trades training. ... This barrier could be overcome if resources were made available by industry or by public providers at times when they were not in use by TAFE Institutes. This approach would avoid unnecessary high cost expenditure in infrastructure and even the duplication of facilities in some areas. These facilities are funded by the taxpayer and so any costs imposed by TAFE Institutes for private provider access to these resources should be on a cost-recovery (not profit making) basis. Such a measure would have the potential of increasing the number of private providers delivering training in these important areas. *ACPET 2005*

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<sup>25</sup> ACPET submission to the *Inquiry into Vocational Education and Training in Victoria*, Sep 2005.

#### ***d) Involvement in policy and regulation development***

**Consultation is an important element of good regulatory practice, and governments are increasingly establishing committees to work with agencies on assessing and applying consultation inputs.**<sup>26</sup> Such panel members, along with the agencies, decide recommendations to Ministers on regulation change or development, and are in a stronger position than any group just providing inputs by written submission.

Where some types of entities are represented and not others, there is potential for anti-competitive leanings. There are indicators that many in education hold ideological views about other groups.

For instance, while private enterprise is known to be the backbone of output and employment in most industries and in many professions, ‘profit’ seems to be suspect when it comes to tertiary education.

The opening up of Commonwealth supported places to private providers, which are driven by the need to maximise profits for owners or shareholders, will inevitably result in those providers moving into the most profitable market niches. This could impact on the viability of some public universities, or at least reduce their capacity to cross-subsidise other areas of activity including fields of study with important national benefits that are expensive to run. This would serve to undermine the special role of public universities in nation building. *Innovative Research Universities submission to the HE Review 7.08*<sup>27</sup>

There is a large body of work on efficiency of commercial, profit-based entities in competition across many sectors. Accounting, legal, engineering, medical and educational services are provided with integrity by commercial enterprises worldwide. Is there one ‘good model’ to be assumed for tertiary education and that model cannot be run innovatively and profitably, as the above extract suggests?

Such views or assumptions about providers need to be able to be challenged in committees and panels – including positions that universities or TAFEs as a whole, or in parts, are quality providers, whereas others are variable. There are, and will be, wide variations of experiences and outcomes within and across public education institutions.

ACPET raised the issue of consultation and need for active involvement alongside other major groups in its February 2009 input to the Minister in response to the Higher Education review, and its response to the *Skilling Australia for the Future Discussion Paper* in April 2008:

ACPET notes that *Skills Australia* will be an independent high level body of seven experts established to provide independent advice to the Government on current and future skills needs and help to inform public investment in training. On 17 April 2008 the Government announced the members<sup>28</sup> ... ACPET is

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<sup>26</sup> Office of Best Practice regulation, Principles of good regulatory process (recorded in multiple documents): Establish a case for action; Examine alternatives to regulation; Adopt the option with the greatest net benefits; Promote effective guidance to regulators; Revisit regulation regularly; Consult effectively with stakeholders.

<sup>27</sup> In contrast, the ACCI submission to the HE review called for ‘*fundamental repositioning of the higher education sector*’, to be demand driven, competitive and diverse, a business culture, relaxed regulation, universal access, and student centred funding (purchasing from public or private providers).

<sup>28</sup> To be the executive director Monash University Centre for the Economics of Education and Training, Gerald Burke (chair), economist Michael Keating, ACTU president Sharan Burrow, Australian Industry Group CEO Heather Ridout, deputy director-general NSW TAFE and Community Education, Marie Persson, executive vice president of Enterprise Capability, Keith Spence.

disappointed that the private education sector has been overlooked at this level and strongly urges the Government to consider a further appointment to Skills Australia. If the Government is to achieve its training objectives, it is essential that private providers have input to Skills Australia. ...

Given the extent of regulatory decisions made by committees as inputs to Ministers, and in developing guidelines and practice instructions, **under good regulatory practice and competition principles, it is vital that different types of providers be weighted into all levels of policy and regulation development.** Governments, agencies, and entities such as the proposed national regulatory authority [part 4], need to be open to enterprise in public and private institutions.

### ***e) Regulator and agency delivery***

Non-public tertiary education providers face substantially more complex regulatory regimes. These require considerable interface with departments and regulatory agencies. Universities, for instance, are not affected by the great majority of these regulatory processes, except a five year AUQA audit.

For private providers, regulators are currently structured by law into their enterprise operations, and the more innovative the group, the more frequent the need to obtain approvals from regulators.

**So, private provider innovation, efficiency and competitiveness relative to public entities depend in part on performance of regulatory agencies in implementation of rules and service delivery.** These education providers (and their student and employer clients), might reasonably expect governments to ensure that regulator performance keeps pace with industry developments, and that agency staffing and capacity is not a bottleneck to innovation, responsiveness and productivity advances.

**This is not the case. Ongoing concerns reported by members when surveyed by ACPET, show that regulator delay is a major (and unnecessary) regulatory burden on independent education providers.**

The following selection of comments relates to vocational and higher education approval processes in a number of jurisdictions. ACPET has raised delivery issues in submissions and contacts with agencies.<sup>29</sup>

We had been notified of an RTO audit for the end of October, we queried the independence of the appointed auditor ... [...] were happy to allocate an alternative auditor but they did not get back to us. We emailed, left messages, telephoned and wrote as we were anxious that our registration expired on Dec 31. In mid December they contacted us advising that they could audit us in two days' time - we asked for more notice... said that we had been overlooked. The staff is very pleasant to deal with but seem to be overloaded.

As a Higher Education provider we had a mid term site visit at the end of October, we have not yet received (on 20 Dec) a formal response or report of the visit. We had to ask for an agenda of papers for the visit and only received these two days before ...the Administration Officer involved seemed to have a large case load.

Innovation also applies to business models - and Departments seem to have trouble with models developed to be efficient, collaborative ... they look for traditional structures whereas today there are alliances, joint ventures, groups. Why do Departments require market assessments years in advance to get accreditations?

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<sup>29</sup> ACPET: Higher Education Review submission Jul 2008; Response to the Victorian Registration and Qualification Authority (VRQA) on the proposed changes to the role of private Training Recognition Consultants (TRCs), Jan 2008. [www.acpet.edu.au](http://www.acpet.edu.au).

Surely market risk is a matter for the enterprise ... not to be second guessed by public servants and academics faraway from markets and business?

... Submitted an initial application for registration as an RTO due to a change in ownership ... in August. The site audit was carried out in December and the first audit report was received in February the following year (over 23 weeks). There was no delay caused by non-compliance on the part of the applicant. [The agency's] customer service standards state they will 'complete all applications for initial registration within 12 weeks'.

This last was a 2006 report of experiences. In March 2009, the same delays are being experienced in that State (not Victoria). Providers have applications queued for twelve or six months. Their registration becomes due for renewal and they find out about extensions though dates sometimes changed on NTIS [[www.ntis.gov.au/](http://www.ntis.gov.au/)]. 'Providers are responsible for their registration ... we don't even get letters ... it is hanging over your head all the time that registration could be challenged, taken away.'

Concerns are also raised about power cultures and lack of personnel with capacity to understand agency roles and regulatory requirements in policy contexts, and well as shortfalls in technical knowledge.

Recently, the Victorian Registration and Qualifications Agency (VRQA) advanced a proposition that VRQA be the sole auditing body in Victoria, and cease calling on services of Training Recognition Consultants (TRCs) to conduct independent reviews and audits on behalf of VRQA. ACPET raised serious concerns about this in terms of resourcing and impact on private providers and their ability to respond quickly to student, employer and national needs in highly competitive marketplaces.

The proposed reform will inevitably imply an immediate increase in workload for the VRQA and will require appropriate resources to support it. Unless the VRQA is staffed adequately, with extra resources being made available immediately in order to cope with this large increase in workload there is growing concern that the VRQA will eventually become like the slow and cumbersome VETAB system of NSW which is unable to respond sufficiently and effectively to the local private market. *ACPET 2008*

Some say private providers should 'just' become self-accrediting entities under the National Protocols. However, the criteria, and an indicated time frame of 10 years as an NSAI, are not aligned with the pace of modern business. In addition, persons who would be involved in decisions are often from public universities and faculties that were granted this status without hurdling any regulatory barriers.

To a certain extent the National Protocols offer paths to diversity – universities, specialised universities, university colleges ... but unless you are a SAI the system is onerous, costly and a barrier to entry ... Further SAI is not a best approach for some providers ... so the answer is not to say 'become a SAI'. Need a system attuned to diversity in modern education and knowledge arenas, not so onerous and reflecting ongoing performance ... Australia is disadvantaging itself by not allowing a more international use of the term university toward self-accreditation. Protocols 'say' two registration rounds, which is 2 times five years. Ten years is too long in today's world. Well-performing institutions should be able to achieve self-accreditation in many less years. *ACPET member July 2008*

## ***f) Structural barriers to innovation and enterprise***

Competition policy includes structural reform of government business areas ‘by introducing competition or, at a minimum, removing barriers to new businesses competing in the market’ [ncc.gov.au]. Such barriers in education (operative through regulations and practices) are burdens on businesses, and work against national goals for innovation in building human capital to increase productivity.

ACPET has argued the need for a single national tertiary education system, in its HER submission and other inputs during 2008-09. Both the HER Panel and the Minister in announcements 4-5 March, edge towards a ‘national system’, but prolong inefficient sectoral barriers (as discussed in part 4).

The Higher Education Review report also recommends changes to criteria in the National Protocols for categorisation of an education entity as a ‘university’. The Panel aims to link these criteria, and proposed changes to the regulatory regime, more strongly to intensity of research activity.

**ACPET has questioned a number of assumptions underlying the Panel’s proposed changes to tests for university status.** ACPET argues that the proposed ‘tightening’ needs critical review from two angles – the basis and genuine achievability of the stated aims, and, frank scenarios of what might realistically unfold in terms of barriers, regulatory burden and opportunity costs compared to purported benefits.

**The Protocol rules for ‘university’ title are barriers to entry.<sup>30</sup> There is reasoning for this, but some entities granted the title earlier could well not meet the tests if assessed as a new entrant.** This would be even more the case if the Panel’s tighter research test for ‘university’ is seriously implemented.<sup>31</sup> Say 10-15 current entities would lose their university title, and anti-competitive inconsistencies would be further embedded.<sup>32</sup> Likely, there would be no change to current universities (even with variable quality), leaving only higher barriers to potential new entrants with innovative models.

There are indications that the Government is likely not to support the full extent of the test.<sup>33</sup> But this does not redress the issue of current regulation barriers based more on history than performance, and taking little account of what is occurring now and the spectrum of university appellation internationally.

<sup>30</sup> *National Protocols for Higher Education Approval Processes*, as approved by MCEETYA October 2007. See also: *National Guidelines for Higher Education Approval Processes, Guidelines for establishing Australian universities* (re Protocols A and D).

<sup>31</sup> The ACPET submission to the HE Review developed a number of considerations relating to research as a classification test.. ACPET expanded on these by providing a Scenario analysis in its response to the Minister. [www.acpet.edu.au](http://www.acpet.edu.au)

<sup>32</sup> The Panel proposes a tighter research-based test for university status. However, the Panel’s criteria in HER report Table 12 do not require active, quality research across all broad and narrow fields of a comprehensive Australian university. Such a university could offer programs in say, seven broad fields but need to pass the research test in only three fields, and these could relate to a minority of that university’s undergraduate students. Under the Panel’s formula an Australian university could, for instance, research in three fields where grant availability is high and students less numerous – and run, say, its Business Faculty with large student numbers and no allocated research time or activity (many business schools do not produce much research), *in direct competition with scholarship-based providers without access to a ‘university’ title.*

<sup>33</sup> Minister Gillard, speeches 4-5 Mar 2009; Minister Carr, speech to Higher Education conference, 5 Mar 2009.

**ACPET is recommending close examination of using ‘coursework informed by global scholarship’ as a realistic, modern regulatory test of a university’s academic grounding.** ACPET considers that:

- There is need to review what is occurring now in many faculties, and costs added by the traditional idea of a research nexus, as well as whether returns to Australia's economy are commensurate.
- Elements of the National Protocols should be reformulated to use strength of scholarship and its application as a test for specialist universities and for university colleges (as a stand-alone title).
- A suite of potential types of institutions should be enabled under a single Australian tertiary education system without historical barriers to innovative development and repositioning. Potential types should not be ordained. Descriptors like ‘teaching only’ and ‘non-self accrediting’ are needless. Innovative providers including entrepreneurial commercial entities should be able to work towards a repositioning to service market needs and in doing so, contribute to advancing skills building, and knowledge diffusion across a wider range of students.

**ACPET considers Australia does itself a disservice by barring, through National Protocol regulations,** innovative education providers from utilising the ‘university’ descriptor. These entities are competing in world markets – that they have helped open for Australia – against Australian universities of variable performance plus a range of types of public and private sector universities from around the globe.

The word ‘university’ is an important brand but is not necessarily seen in a ‘research’ way – Australia is underselling itself in world competition by not extending its usage. *ACPET member 7.2008*

[Research nexus] is just an artefact of the Australian national protocols ... Universities do not necessarily have a research role in England, many US states, some Canadian provinces and many countries in Africa, Asia and Latin America. So the suggestion that universities are distinctive among higher education institutions in supervising research candidates may be an appropriate norm or ideal, but it is not an accurate description of most institutions that are commonly accepted as universities. *Moodie 2008*<sup>34</sup>

### ***g) Distribution of public funding – students, providers***

Australia needs a national tertiary education system that encourages learning and skills development on a large scale, across the majority of the population [see part 4]. ACPET has consistently argued that this will be facilitated by public education funds being linked to students, who actively monitor employment and education provider marketplaces, and are aware of their own interests and special capabilities.

**All Australian students should have equivalent access to public funding and services because they are of equal value to Australia socially and economically.** Current public funding distribution arrangements, established by various pieces of legislation and by practice, are complex mix of government funding for public institutions, attempted steering of students to particular course programs, and funding support for students that varies markedly according to type of provider and has anti-competitive elements.

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<sup>34</sup> Gavin Moodie, Push for protection is purely academic, *The Australian* 30 July 2008.



In its response to the *Skilling Australia for the Future Discussion Paper* on VET,<sup>35</sup> ACPET argued that:

- all vocational education and training should be opened to contestable funding as the only effective means to achieve full flexibility in post compulsory education and training offered
- contestable funding ensures the most efficient delivery of high quality, relevant and targeted courses to meet the needs of industry, enterprises and learners by opening the training system to greater competition through a properly regulated tender process
- there should be a student based entitlement for VET studies to enable learners a more effective voice in choosing courses to suit their needs. With competition being driven from both sides – i.e. industry and student needs – the highest quality courses will be offered.
- while, in principle, industry needs should steer VET funding in Australia, it is essential that services for marginalized groups, targeted to specific needs or learning methods, are also maintained and that funding models make allowance for special needs groups.

The ACPET submission to the HE Review, argued that resourcing arrangements resourcing should be better aligned with Australia's open economy, innovation, competition and productivity objectives, with equivalence of support to individual students, including equity needs, being a key issue.

ACPET recommended that student-centred funding models be re-examined. All tertiary students should be able to use a federally funded student learning entitlement, including credits for special needs, at any approved provider, with the same loan support system-wide.

The HE Review panel report, Dec 2008, clearly recognised the imperative of lifting Australia's education, skill and capacity levels across the board (with a focus on groups alienated by current arrangements). **The Panel recommended positive and logical changes to attune public funding to student demand and encourage wider entry and ongoing learning across the tertiary education system.** ACPET considers national objectives will be well-served by the Panel approach on student income support and student-demand led funding of student choice.

The Federal Minister then announced on 4 March major and positive financial changes, including:

- focus on students, their experiences and pathways, the knowledge they gain, the skills they will use
- funding on the basis of student demand from 2012. ... a Commonwealth supported place for all domestic students accepted into an eligible, accredited higher education course at a recognised public higher education provider
- consideration of movement in the direction of a student entitlement for VET.

<sup>35</sup> In summary, for vocational certificate courses, students pay up-front, either the subsidised fee set by State TAFE systems, or the commercial fee charged by independent providers. Where public funding is VET contestable, private providers may receive some funds from the State. Full fee paying student undertaking an eligible VET Diploma, Advanced Diploma, Graduate Certificate or Graduate Diploma qualification may be eligible for a Federal VET-FEE-HELP loan. For higher education courses, there are two fee loan systems, HECS-HELP and FEE-HELP, the better one being linked to places mostly in public universities.



**However, implementation effects of detailed changes advocated by the Panel and impliedly supported by Government needs to be considered – through a regulatory ‘what-if’ analysis.** There is potential for unnecessary and anti-competitive differentiations, with intended or unintended effects. ACPET:

- commends and agrees with the key ‘characteristics of a demand-driven entitlement model’ [HE Review report p157], plus institutions having the option of designating a course as in receipt of Commonwealth subsidy with fee caps, or otherwise [p165],
- has significant concerns with the phasing in to 2012 (by lifting the cap on university over-enrolment until 2012 when the new student-demand funding would start). In this period, universities could lift their intake of subsidised students in direct competition with private entities. As universities can move quickly to establish courses, some could modify subsidised programs to compete directly with specialised private education institutions. This could undo a decade of competitive innovation in Australian higher education and slow new innovation for students and employers.
- is very concerned there could be continuing differentiation [HER r.37] between income-contingent loans for students in ‘subsidised courses’, and others. For instance, the proposed increase in loan costs to 25% for those students paying ‘full-fees’ in any provider. Such differences in loan schemes across providers or sectors is a disincentive (as acknowledged by the Panel in advocating removal of the loan fee for OS-HELP) and will limit student access to the full range of courses and providers available at post-school and post-graduate levels.<sup>36</sup>

**Australia has opportunity to move into a new era of tertiary education provision that should ‘Give students stronger incentives to participate and provide institutions with the flexibility to decide the courses they will offer and the number of students they will admit.** [HER p155]. This will require careful implementation of changes, with reference to competition and best practice regulation principles.

Other financial rules also warrant examination. Removal of old sectoral barriers and public-private lines is key [part 4]. For instance, current regulations limit provider access to Federal funding for a range of development grants for improving courses and student teaching and learning, mainly to public entities.<sup>37</sup> ACPET considers rules that delineate by type of provide should be adjusted to distinguish by purpose of the public investment grant eg. for innovation in course structure and delivery.

**In a modern multi-faceted, responsive tertiary education system, there is no reason for regulations that draw a line between public and independent/commercial entities.** In many other Australian sectors, including schools, manufacturing, technology, agriculture and tourism, private businesses have the opportunity to seek support from government funded programs of various types.

<sup>36</sup> ACPET notes that Panel itself is uncertain in making recommendations about these arrangements [p168]. This lack of certainty from the Panel supports ACPET’s position that further financial modelling is required before any action takes place.

<sup>37</sup> HESA Act, Table A providers (all public universities, ACU, The Batchelor Institute) is the premier HEP category with access to a wide range of Federal grant programs. A few independent entities are in Table B. All other HEP are not HESA ‘listed providers’.

## 4. A single Australian tertiary education system

Work is increasingly complex in terms of mix of skills and capacities needed. As apparently recognised by the Minister and the Australian populace, divisions created within an industry itself (supplier traditions), or by jurisdictional histories, can be inefficient, self-serving and fail to move with needs of the times.

[Australians] know that the supposed dichotomy between academic and technical education is ultimately a false one. Australians know that high quality advanced technical skills, high quality research and the best analytical thinking must go together to improve the way our businesses operate. And that together this skill and knowledge builds prosperity, more jobs and wealthier households. *Minister Gillard, 13 Mar 2008*

The Minister has said that Australia expects its post-school education arrangements to be capable of:

- contributing to innovation and productivity gains needed for long term economic development, and
- ensuring there is a broad-based tertiary education system producing professionals for both national and local labour market needs.

The expectation is that Australia's tertiary education system and providers demonstrate 'responsiveness ... in altering the course mix in response to student and employer demand and an understanding of trends in the economy, demography and the labour markets served' *HER ToR 2008*. The HER asked 'what are the impediments to innovation in developing courses and programs?' ACPET identifies two:

- **The biggest impediment to education innovation is the historical dual-sector division.** ACPET recommends a single effective Australian tertiary education system primarily for this reason. Australia's institutional distinctions embedded in regulations are arbitrary and funding based, with unfortunately persistent 'class' features in terms of students ('professionals' or not) and teachers ('academics' or 'trainers').

There are fundamental issues with the ideological gulf between current vocational and higher education qualifications, with VET stuck on the competency based training model and set structures even where it does not work (ie. above certificates, even Cert IV). So students are voting with their feet and with Fee-Help, into new HE courses that some universities can move faster to set up, covering similar ground without the strictures. Advanced Diploma and Diploma were always meant to be para-professional now including managers/supervisors. But providers have lost control of structures and we can't customise them for our student needs (although this is what we are supposed to do and theory says there is flexibility). Need one system to uncouple these from training packages; tiers of qualifications and the way they are developed and delivered. All practice based qualifications have skill and practice elements – competencies – plus theoretical and personal/professional elements. *ACPET member institute, academic director, July 2008*

- **A second, substantial impediment for non-universities is regulatory overload.** Regulatory issues interweave with difficulties arising from sector and public-private divisions. Current processes slow the efforts of established providers to respond to changing student, work and industry needs [part 5]. The regulations also operate as barriers to entry or expansion – a concern for the economy.

ACPET has recommended (to the HER Panel, the Federal Minister, and Skills Australia), that:

- **Australia establish a single tertiary education system with one mission** - to develop capacities, skills and knowledge across the diverse population through an integrated continuum of functions, qualifications and providers, and streamlined administration
- **Australia needs a ‘fit-for-purpose’ qualification and quality system** structured around student and provider performance. With more complex life, work and productivity challenges, old barriers to individuals or employers useful qualifications integrating skills and should not be perpetuated. Barriers to innovation and enterprise by any type of provider should be removed.
- There appears no reason against Australia steering all formal post-school education through one efficient, effective, modern tertiary education regulatory system in place of multiple ‘sectors’, to deliver a matrix of qualifications responding to evolving stakeholder needs. Individuals have different learning styles with many people who could excel in high-skills-thinking areas being uninspired by academic lecture-essay pathways from school.

Notably, Industry submissions to the HE Review also reinforce frustrations with ‘sector’ divisions:

From the point of view of the business community, ACCI recommends an integrated post secondary skills environment where skills and knowledge delivered are current and up-to-date, where the standards of the skills and knowledge acquired are deemed by industry to be excellent, and where articulation between institutions is easy and based on sound recognition principles. *Australian Chamber of Commerce and Industry, Jul 08*

There is an expanding need for existing workers to achieve higher levels of VET qualifications and articulation into higher education qualifications. Accordingly there is an urgent need for the higher education and VET sectors to work collaboratively to complement each other and to improve pathways between the sectors. *Australian Industry Group, Aug 2008*

In its December 2008 Report], the HE Review Panel strongly advocates *‘a more coherent approach to tertiary education provision ... based on a continuum of tertiary skills provision primarily funded by a single level of government and nationally regulated rather than two sectors configured as at present’*.

**ACPET, in its response, supported and congratulated the Panel on recommending a stronger National Tertiary System to be regulated as a whole**, including the recommendations for national regulatory authority [see 4.a] and for funding arrangements to hasten development of a national system. However, while the Panel says a coherent system is vital, the Panel’s proposals retain a ‘two sector’ distinction that ACPET considers is unnecessary in terms of regulatory systems, qualifications and course development.

While it is important to maintain the integrity of the VET system and its provision of distinct qualifications in which the content is strongly driven by the advice of industry, the time has come for a more coherent approach to tertiary educational provision. **If we are to meet the ambitious tertiary participation targets necessary for Australia to remain internationally competitive, a more holistic approach to planning and provision is vital. What is needed is a continuum of tertiary skills provision** primarily funded by a single level of government and nationally regulated rather than two sectors configured as at present. Such a model would deliver skills development in ways that are efficient and fit for purpose to meet the needs of both individuals and the economy. *Higher Education review report p xvi*

**Minister Gillard, in speeches on 4 and 5 March, appears to support the logic of a single system.** The Minister identifies the changing dynamics of work and workplaces, and the need –

- to insert vocational education into the centre of the emerging tertiary educational landscape
- for stronger and richer vocational learning and pathways, offering students a broad band of learning that engages them intellectually and technically that stretches their imagination, ingenuity and problem-solving skills
- to fundamentally rethink separate systems and institutions to create better connected learning for millions of individual students (not to bolt new policies to an already complex system)
- to open doors to different fields of learning in trades, services and professions; to employment and self-employment in businesses large and small
- for access and skill formation to be driven by the right balance of student choice and employer need.

The Minister announced the AQF Council will be asked ‘to improve the articulation and connectivity between the university and VET sectors’ and the ‘ambit of Skills Australia will expand to encompass the full scope of Australia’s labour market needs, to give advice to the Commonwealth about the effectiveness of both the university and VET systems in meeting the broad range of Australia’s skill needs’.

The Minister also stresses national alignment – the ‘need to be more nationally consistent and rigorous in the way we register, accredit and monitor courses and providers and the way we enforce performance standards’, however the division of sectors remains – ‘two systems, one shared vision’.

ACPET recognises the intended directional changes, and sensitivities in these areas, but considers that **Australia cannot afford to prolong artificial structures when innovative workplaces and students are moving ahead of the capacity of regulated systems to change.**<sup>38</sup> If in-depth review now proceeds on the basis of ‘two systems’, Australia’s education rules in 5-10 years will be further holding back advance.

**ACPET considers Australia can achieve a national tertiary education system without sector divisions embedded by regulation, funding or historical practice.** It would have a diversity of institutions deciding to focus on parts of the Australian Qualification Framework (AQF) and on different ways of delivering learning for people with different learning styles to successfully attain AQF outcomes. This aligns with objectives of competition policy and good regulatory practice. Further considerations/pointers include:

- The sector distinction is being actively blurred, especially by universities with only a few broad external regulatory requirements and the flexibility to move quickly into all learning arenas, if they so decide, and without higher education or VET system restraints.

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<sup>38</sup> The HER Panel, throughout its report, actually unpicks reasoning for separate sectors. Bachelor degrees today, as much as diplomas and certificates, relate to industry expectations, and students want to be educated for work careers and professional degrees have long had vocational elements. Many of the VET courses that educated today’s allied professionals and managers across the spectrum, from accountants to surveyors to event managers, are now provided as degrees. A range of discipline degrees can be obtained by students in two years within double-degree sets. All types of qualifications increasingly involve education for thinking, integration, problem solving and teamwork as well as knowledge and skills – as demanded by all types of work including self-employment and small to medium enterprises (SMEs).

- However, VET rules and training packages [below] are anchored in trades training competencies and workplace locations. Trades are a small although important part of today's skill needs. As *experienced by ACPET members*, VET rules stop innovative providers from developing courses to meet changing needs of employers or the self-employed, from 'adding value' to training packages to enhance the learning and experience of international students, and make it difficult for providers to serve students who are not employed in a work place (despite policy aims for this group).
- The National Regulatory Authority, as announced, is for 'higher education', entrenching divisions. There appears limited likelihood of Australia coming to grips with the unnecessary regulatory complexity in VET. Calling it a 'world class system' will not stop the costs and productivity losses.

**The frontline for the innovative education development Australia needs is at interfaces of higher education and VET – integrating thinking, analysis and multiple skills.** Whether future skill wants will be 'university' or 'vocational' is a debate based on old structures and regulatory arrangements. Courses and qualifications at high-skill interfaces of traditional VET programs and degrees offer interest, options and strong work futures, and tailored by innovative providers for groups of students should encourage wider education participation.

ACPET recognises policy issues around sector delineation, but a new national system should be built with an effective continuum of AQF qualifications and other features and without sector divisions. Opposition appears mainly to be on jurisdictional grounds. The Panel noted that state/territory agencies responsible for accreditation are 'generally opposed the establishment of a national regulatory body'.<sup>39</sup>

The challenge for Australian Governments – and regulation reformers – is to take major policy and system and regulation reform steps to develop one tertiary education system - beyond institutions by removing traditional 'sector' divisions of vocational and HE – recognising integrated multiple skill development as the rising need.

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<sup>39</sup> July 2008 submissions to the HER are informative. The NSW Department of Education and Training considers that 'higher education should be comprehensive, covering vocational and generalist education, scholarship and research' equally valued, complementary and interrelated, but DET opposes a single system. TAFE Directors Australia, however, identifies administrative delineations as barriers: '*Most, if not all, of the characteristics and functions of higher education listed by the [Review] Discussion Paper also apply to the VET sector. This raises the question of whether it is necessary to identify the separate and distinguishing characteristics of each of these sectors or whether it would be more realistic and productive to consider the post-school sector as a whole.*'

### ***h) AQF rules and a continuum of qualifications for innovation***

The Australian Qualifications Framework (AQF) has a strong high-level mission and important objectives [[www.aqf.edu.au/](http://www.aqf.edu.au/)] including to:

- provide nationally consistent recognition of outcomes achieved in post-compulsory education
- help with developing flexible pathways which assist people to move more easily between education and training sectors and between those sectors and the labour market by providing the basis for recognition of prior learning, including credit transfer and work and life experience
- integrate and streamline the requirements of participating providers, employers and employees, individuals and interested organisations, and
- offer flexibility to suit the diversity of purposes of education and training.

Various AQF statements and rulebooks emphasise its aims for flexibility and integration. For instance:

The Framework links together all these [15] qualifications and is a highly visible, quality-assured national system of educational recognition which promotes lifelong learning and a seamless and diverse education and training system. *AQF website 2.09*

There are many pathways that connect schools, vocational education and training, universities, community education and employers. These pathways include agreed credit for previous learning between institutions and education sectors. *DEEWR website 2.09*

The Australian Qualifications Framework provides a comprehensive, nationally consistent yet flexible framework for all qualifications in post-compulsory education and training. *AQF Handbook, 2007*

**In reality, the application of AQF principles and rules is clumsy and can be criticised from a number of perspectives.** Issues appear to arise from structuring an Australian *Qualifications* Framework around regulatory and administrative arrangements of historical sectors, more so than to achieve effective identification of levels of learning, thinking and skills in a continuum of qualifications.

**The AQF Handbook confirms these sectoral influences and divisions.** It states for instance, that *‘the AQF recognises that the schools sector, vocational education and training sector and higher education sector each have different industry and institutional linkages’*. The 15 AQF qualifications are grouped *‘according to the sector with authority for setting the standards of each qualification’*, even as the Handbook 2007 notes cross-sectoral incursions that have arisen to meet student and workplace needs, ie:

There is rapidly increasing provision of vocational education and training in the schools sector; some Certificate qualifications are issued by higher education institutions as RTOs, and some Associate Degrees and Bachelor Degrees are issued by vocational education and training institutions approved to provide higher education qualifications.

A further overlap, not mentioned in the Handbook, is escalation of vocational skills and ‘work integrated learning’ within bachelor degrees. This is plus of the rising expectation by students and employers, that ‘thinking’ skills used in daily work practices including problem solving, anticipation and planning, will be built into all qualifications and competencies of outcoming students, including those taking Certificates.

Longstanding ‘different industry and institutional linkages’, and ‘sectors with authority’ [AQF Handbook] have entrenched ‘ways’ of course development, assessment, quality assurance, and application of the AQF itself. Issues these circumstances bring forth are usefully demonstrated in accounts of experiences. These reinforce ACPET’s position that the top impediment to innovation is the tired dual-sector division.

**Australia needs to finish the incomplete reform of the AQF** so that ‘vocational’ includes only Cert I-IV compliance with competency based training via Training Packages. This protects the trades while liberating [by changing TP primacy rule, see 1.b]. Diplomas, Advanced Diplomas, Graduate Certificates and Graduate Diplomas from the academic dead hand of Training Packages to better align differentiated and professionally oriented *curriculum* content with graded assessment (that optimises rather than minimises intellectual as well as practical/technical performance). ... Will facilitate articulation arrangements between qualitatively enhanced applied VET qualifications and [degrees]. *ACPET member 7.08*

**AQF is there but is not utilised as pathways;** different approaches to learning need to be recognised. VET is skills then cognitive as a pathway, higher education uses cognitive for theory first then practices, eg. Medicine. Training Packages (TP) should be an optional pathway at Cert IV level, need to re-evaluate usage and rules. TPs are not successful at the para-professional level, wanting higher level of technical proficiency using emerging technologies ... simply using VET diplomas (built on training packages) as credit for degree entry also does not prepare students – need to be able to shape qualifications at a level for different purposes, and build within a program eg. achieve Cert II, Cert IV and diploma learning along, building skills, knowledge and capacity. AQTF will not allow nested VET courses so can’t do. Nor value-adding to TPs. *member 12.08, 3.09*

**There are different learner demographics.** Some are ready to go into degrees; others need to use Cert IV, Diplomas as an introduction. There should be no barrier to stop moving on vocational pathway with the qualifications needed. Institutions should be able to develop this flexibility, institution developed, look at the learner, need the option to use or opt out of TPs, providers need the option to accredit courses at Cert IV and Dip levels. AQF needs to align to industry needs for cognitive and practical skills at para-professional, Cert IV and diploma levels, and to develop a rich vocational curriculum, that also visibly feeds into degrees. The counter is continuing collapse in the value of Certificates and vocational diplomas. *ACPET members 12.08*

**The numbers of students that move between the sectors is relatively small.** The proportion of domestic undergraduate students admitted to higher education on the basis of prior vocational education and training study (articulation) was only 10.1 per cent in 2006. The proportion of students gaining credit (or exemption) for previous vocational education and training study was only 3.4 per cent in 2006. *HER discussion paper 2008*

These signal the need for critical review of regulatory and administrative structures embedded in the AQF, and of escalating complexity of the training package system and competency assessment. Some TPs now amount to 1000 pages without teaching content. ACPET is providing input to multiple reviews, built is also concerned to be ‘at the table’ in redevelopment of a national tertiary system [2.d].

**ACPET supports development of a framework to enable vocational qualifications and products to respond** to changing market demand for skills needed by businesses, industry and individuals in the 21<sup>st</sup> century including the need to: redefine the term competence as currently used to acknowledge cognitive thinking and attributes; review the appropriateness of qualification levels and descriptors under the AQF particularly above Certificate III level; creating more flexibility and portability within and across Training Packages to support the needs of industry and assist individuals move through industry and/or career pathways; encouraging innovative learning and assessment practices to assist with the recognition of all types of learning; and developing a system of crediting all forms of learning as a means of gaining a qualification. *ACPET response to Skills and Workforce Development, COAG Working Group on the Productivity Agenda, 12.08 edited.*



The National Quality Council (NQC) and COAG working group are now progressing a project, *VET Training Products for the 21<sup>st</sup> century*, to which ACPET will continue to contribute, [nqc.tvetaustralia.com.au/](http://nqc.tvetaustralia.com.au/). This review could address part of the structural and regulatory issues at interfaces of current sectoral traditions, but there will need to be deeper investigations and a willingness to extract vocational education rules from trades apprentice and traineeship driven models that are tied with students already being employed.

- In 2008, around 1,680,000 were enrolled in the VET system, not including VET in schools. About 400,000 (<25%) were apprentices and trainees across Australia (up 178% from 144,000 in 1995) but Of these, the number of trades apprentices had grown only 39% over 1995 to 2005 (171,000) then to 188,700 in 2008 (88% males, 50% 15–19 years, near 31,000 (16%) employed in manufacturing, 76,000 (40%) in construction, 7% in wholesale-retail, 5% in hospitality, and 22% in services including telecommunications, electricity, water). Some 53,000 (28%) were training in automotive fields.<sup>40</sup>

The HER panel also recommended a review of the Australian Qualifications Framework [r19] – that is, a modernisation of the AQF to achieve an *‘enhanced architecture and updated and more coherent descriptors of learning outcomes’*. The Minister has asked the AQF council to examine closer integration but both appear to seek to maintain the ‘integrity’ of the VET system even as real developments around it (including opportunities lost) regularly demonstrate limitations and inefficiencies.

- Another example raised by ACPET members, is the *‘lack of applicability of training packages for international students’*. With overseas students as an important export activity for Australia, and the policies and learning principles that Australia espouses urging focus on student needs, providers servicing international students are not allowed to add value to TPs, to better fulfil and interest the students (who, regulations state, must receive 75% of teaching face-to-face, not in workplaces).

**To genuinely facilitate innovation, quality, effectiveness, efficiency and student participation, Australia needs to evolve to a single national tertiary education system able to serve multiple stakeholders.** In response to calls from industries, employers and students, a range of providers are endeavouring to shape courses to integrate thinking, skills and knowledge development across old divisions. Universities, with their flexibility, can shape mixed courses quite readily (and likely want to keep this competitive edge). TAFEs often also have delegated authority to accredit. *Private providers, more than any group, are slowed by training package strictures, accreditation rules and ways these are implemented* [part 5].

All practice based qualifications have skill and practice elements – competencies – plus theoretical and personal/professional elements. Some universities move to do this without the constraints of training packages and long slow NSAI accreditation process – they sit on our accreditation panels, where we show our developed materials. We have to run the gauntlet of HE accreditation which is far more rigorous than in universities ... yet we are constantly being measured against ‘idealised’ university provisions. *ACPET member 7.08*

<sup>40</sup> Sources: ABS, *Training for a Trade*, 2007; ABS *Education and Work, Australia*, 2005 and 2008.



## 5. National regulation, local application, provider performance

Need for ‘harmonisation’ of rules across States, Territories and Federal regulation is an understandable catchcry from many industry groups, especially those with larger, multi-state enterprises.<sup>41</sup> For large, national enterprises with resources to prepare well for and deal with a set of regulatory requirements, inconsistency in regulations across jurisdictions could account for a major part of their regulatory costs.

It is also understandable then that COAG is placing regulatory reform priority on achieving a ‘seamless national economy’, and tertiary education regulation certainly has jurisdictional interface issues.<sup>42</sup> However, for smaller entities, operating in one jurisdiction, regulatory and compliance deriving from the rules themselves can be substantial, with influences on motivation to continue, invest and innovate.

I am concerned about the small providers. One or two person RTOs who offer specialised and personalised training to important niche groups, flexible, hiring rooms when needed, providing a phenomenal service to special needs. They may have to close given the time and costs of compliance now. Removes student choice and the country lose that personalised training. *Sizeable ACPET member, 3.2009*

**The Australian tertiary education sector, unlike some other industries, has established regulation and bodies that are meant to perform as a nationally uniform rule systems**, - the Australian Qualifications Framework, MCEETYA *National Protocols for Higher Education Approval Processes* and associated items, the *Higher Education Support Act 2003* (Cth) and instruments, the National Training System, Australian Quality Training Framework, the National Quality Council, Industry Skills Councils, and Australian Training Packages [1.a]. Yet there is ongoing criticism of variability in implementation across regulator agencies (mainly State and Federal Education Departments) and of duplication. Costs are also added by different rule sets for ‘sectors’, their content, and ways rules are applied in registration, accreditation and audit.

ACPET mainly represents small-medium enterprises. A number operate across States and some work under national systems and State and Federal rules. As context to next sections, ACPET stresses that:

- **The panacea ideal of ‘national regulation’ is not the answer to all, or even most, regulatory issues.** Achieving uniform regulations across Australia will not rectify poor regulation structures or negative impacts of particular rules, intended or otherwise. Uniform poor regulation will increase costs and spread productivity and innovation losses across the economy. There are also arguments for spurring competitive vigour among policymakers and regulators to local and national benefit.
- **Variation in implementation of rules will occur in any system that involves numerous decision-makers and auditors.** *The onus is on policy and regulation developers, in consultation with different entities in the industry, to develop regulatory frameworks that state realistic and objectively assessable performance and outcome expectations.* Most detail of ‘how’ the results are achieved should be left to the enterprise, especially after a few years of demonstrated performance.

<sup>41</sup> Business Council of Australia, *Towards a seamless economy – Modernising the regulation of Australian Business*, Mar 2008.

<sup>42</sup> COAG, *National Partnership Agreement to deliver a Seamless National Economy*, 29 Nov 2008. Key elements: reducing costs of complying with unnecessary and inconsistent regulation across jurisdictions, plus *competition reform* to enable growth.

### ***i) A national regulatory agency and quality assurance***

**ACPET recognises the drivers for a national regulatory authority and, supports the HE Review proposal for an independent national regulatory body responsible for regulating all forms of tertiary education** – as a pivotal part of a single national tertiary education system with a continuum of qualifications.

The more demand-driven, student-entitlement system will require a greater focus on accreditation, quality assurance, evaluation of standards and use of outcomes measures. Placing more choice in the hands of students requires a different approach to quality assurance and accreditation.

A national system for accreditation of all higher education providers – both public and private – on a regular cycle is necessary to assure the quality of the deregulated system. *HER report chp 4.1*

To achieve this, the Panel saw that ‘an independent, national regulatory agency, with responsibility for all aspects of regulation [impliedly also VET], including that for international students, is necessary’.

**ACPET is encouraged that the need to extend regulatory requirements equivalently across providers**, whether public or independent has been recognised – bringing Australian systems closer to competition and innovation policy objectives. ACPET is concerned the Minister has announced a national regulator only for ‘higher education’ [see part 4], but acknowledges stated intentions to align sectors.

ACPET and some members have had reservations, particularly relating to gaps between the theory of national regulation, and evident difficulties in practice [5.j below].<sup>43</sup> In supporting the formation of an empowered national authority, ACPET is expecting this agency will aim to achieve highest performance, against measures of good practice regulation. Performance indicators would include regulatory balance and quality, and consistency of application and effect across industry participants. ACPET stresses that:

- To facilitate strong performance of ‘*the larger, more diverse, demand-driven system*’, it is vital the national regulator develops its role on a high plane, harnessing the best of Federal, State and VET processes plus overseas frontlines of education development (not necessarily university traditions),
- The agency must be open to enterprise and the business models of public and private institutions,
- As a regulatory body, the agency needs to understand and evenly apply COAG best practice regulation and competition principles to benefit the economy, students, other key stakeholders, and to support the vibrant range of public, independent and commercial education institutions,

<sup>43</sup> In March 2008, ACPET provided feedback to the Joint Committee on Higher Education (JCHE) inquiry into desirability of a national higher education accreditation body. ACPET reported mixed views among its members about ‘continued harmonisation of the existing higher education regulatory system versus a fully-fledged centralised regulator for NSAs’. Although somewhat overtaken by the HE Review, the JCHE inquiry report outlined four models including a possible national accreditation agency. It noted that such an agency could increase regulatory burdens ‘*unless the model is extended to encompass integrated registration and audit functions across both VET and higher education*’. ACPET provided similar cautious support for a national authority in 2008 inputs to Skills Australia on *Future Governance of the National Vocational Education and Training System* and comments to the COAG Working groups on Skills and Workforce Development.

- The new regulatory agency is to contribute to creating a *'more flexible and responsive tertiary and training system'*. To this end, as the Panel notes, it is vital standards be developed and applied in a manner that acknowledges provider, student and course differences, and need to tailor approaches to student cohorts to achieve learning outcomes. Risk of 'regulated uniformity' needs to be kept in mind during regulation development and implementation,
- To encourage innovation in teaching, technologies and service models, and taking of responsibility, adjudication should be of entity, or sub-entity performance, based on outcomes in terms of student advance through stages of their education program (rather than checking inputs), and
- Regulation regimes need to include appropriate appeal processes, cognisant of and structured for all participants contributing and competing in the tertiary education system, including small and specialist providers.

**A measure of effectiveness of new national agency could be its success in bringing together numerous audits and checks conducted on tertiary providers into, say, one annual activity per provider [see 5.j].**

These audits are organised by government agencies, State and Federal (unlike other industries where commercial buyers also audit), so critics could ask why this convergence was not done long ago. Even single State education departments will send different auditors to the one provider under various rules.

**ACPET agrees it is important the Australian public has confidence in the performance of its tertiary education system and institutions, including universities and private providers.**

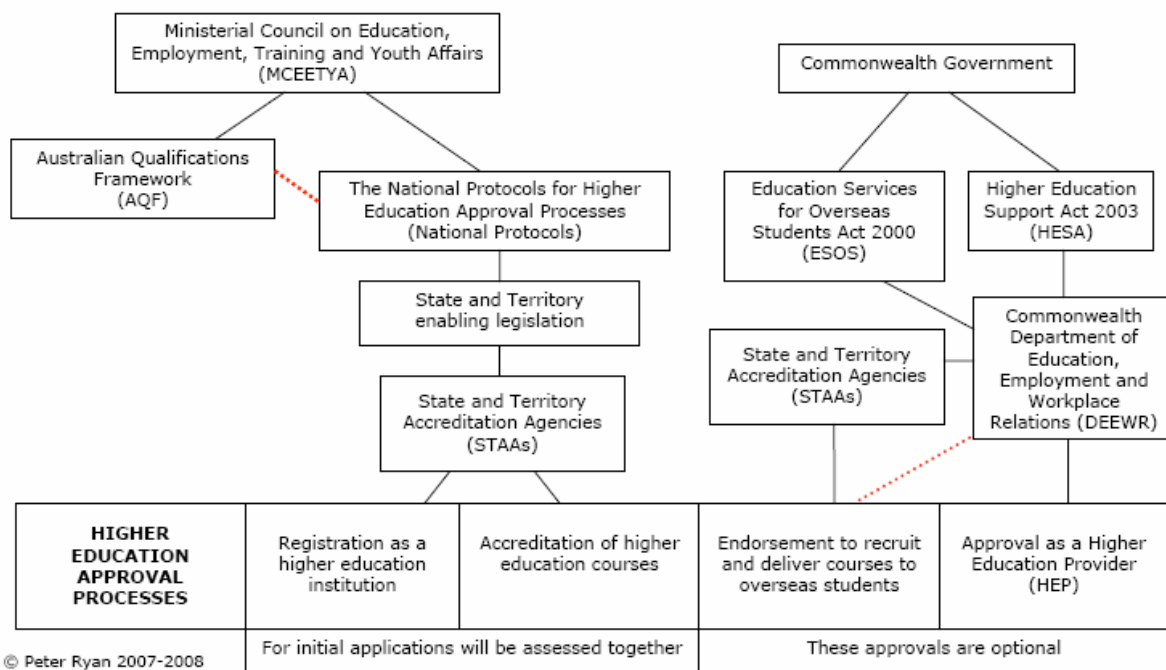
To this end, in January 2009, ACPET announced a new National Quality Strategy for ACPET members with four key elements: requirements for ACPET membership, member accountability against the ACPET Code of Ethics and Membership Standards, providing better market information to intending students and employers, and recognising and rewarding performance excellence. This Quality Strategy should support ACPET in its active involvement in development of the national regulatory arrangements.

## j) *Registration, accreditation, audit – rules and practices*

ACPET has provided many submissions to reviews on aspects of tertiary education regulation [1.b]. Inputs include comments and proposals on governance, regulation and regulatory load problems. ACPET has reported members' experiences of regulatory overload in registration, accreditation, and quality systems. Overarching issues and arguments include:

- There are few signs of 'minimum effective regulation' and 'best practice regulation' tests having been conducted on these national regimes for registration, accreditation, reporting and audit [5.k].
- There is no policy reason for public entities to be given priority, special treatment or advantage as education providers, but regulatory structures do differentiate between public and private entities. Universities and TAFEs through direct exemptions, and custom and practice, are less regulated.
- ACPET members too frequently need to raise concerns about the costs and 'red tape' of current registration (of entities) and accreditation (of courses) regulations, and their implementation.

**The overall multiplicity of systems must itself meet the 'unnecessarily burdensome' criteria, without going into detail of rules.** For instance, for a non-self accrediting higher education provider (NSAI HEP) delivering services to overseas students (under the ESOS Act), the regulatory requirements just for higher education courses can be shown diagrammatically as follows:



For an existing or aspiring NSAI (non-self accrediting institution), this means: -

- each entity is to be registered by a State (5 yearly) for compliance with the National Protocols, then separately approved by Commonwealth as a HEP,

- detailed reports annually to State authorities including financials
- an AUQA audit at least five yearly, plus possible compliance audits (HESA 19-80)
- accreditation of each course offering, with re-accreditation five-yearly
- re-registration – repeating whole process – each five years or if there is a ‘major change’ in business arrangements, *plus*
- State approval for any proposed ‘major change’ in an accredited course, *plus*
- Separate registration of the entity, and accreditation of course delivery elements in any State/s where the provider wants to physically offer the course, plus AQTF VET approvals and audits. <sup>44</sup>

*From an ACPET member, 6.2008 - ‘Top priority: Establishment of a genuinely ‘national’ registration and accreditation system for ‘tertiary’ education including ‘higher’ education so that multijurisdictional providers only need to spend the time and resources on updating and maintaining their status (and right to practice) once per period of registration rather than multiple times. This will ... reduce rapidly escalating duplication, wasted time and dissipation of human and financial resources (of both applicants and regulators) on non-productive [effort] much ... currently done for bureaucratic [checklist] compliance ... Every \$ spent on compliance is a \$ less spent on educating individual students. Over 10 years this must have run into multi-millions of dollars spent on pushing paper and running audits and panel meetings rather than on teaching. When established and performing, [entities need] a regulatory regime that does not make the task of staying accredited impossibly complicated and expensive; achieve a single regulatory process – a licence to operate, to deliver, to receive Commonwealth support.’*

It is useful to record reports of experiences ACPET has collected in recent years, in the voice of those key people in a range of innovative employing enterprises, using initiative and taking responsibility to provide services to Australian and international students (in Australia’s third largest export industry). *[see also 5.k]*

## **I. On across-jurisdictions - mutual recognition – national accreditation**

Why are the arrangements like this? Processes for accreditation and registration have just grown in history, jurisdictional gaming, ‘who is in charge’, ‘not invented here’, competitive barriers and advantage, and Finance trying to limit numbers of people getting FEE-HELP. 6.2008

Need for a national system and much streamlining and common use of material and mutual recognition, but some dangers in having one national system – loss of competitive vigour among states – cost to smaller providers could be crippling including developing relationships at national levels. 6.2008

Need to conscientiously set about correlating the same or similar information requirements for [ESOS] and HESA (FEE-HELP) into one set of application documentation so that it can be dealt with concurrently during the national registration and accreditation cycle. Again this will help to avoid very substantial time delays on multiple submissions and multiple processing by multiple State and Commonwealth agencies that each feel compelled to undertake multiple reviews of substantially the same evidence. 6.2008

And ensure Mutual Recognition at the State level is actively streamlined and consistently applied by the Commonwealth having mandated minimal documentary substantiation of the adequacy staff and premises in each location (i.e. State). This could be done by using exactly the same criteria and proforma (not variations on a theme) to eliminate the inappropriate additional arbitrary demands by state bureaucrats on provider practices that encroach on already approved institutional Governance, Policies and Procedures. 6.08

<sup>44</sup> ACPET understands DEEWR has more detailed maps of these complex sets of tertiary education regulations and processes.

Vigilance to ensure mutual recognition is being achieved – MCEETYA as custodians of the National protocols should set this as an auditable outcome of effectiveness. Vital to check how the Protocols, templates and mutual recognition are being applied – spirit and intention of Protocols to achieve diversity and a modern system - in the context of national policies - is defeated if regulators and panels return to a tick-box checklists against old criteria. 6.2008

Radical pruning of the variety of regulations should proceed, or at least proceed ... with, any national body. Indeed, without the will to re-engineer, any new body would be born to fail. An integrated registration, accreditation and HESA process to limit the cost, time and paper burden, and mitigate the risk of 'double jeopardy' (that is, approval through one process but not the other). While the regulatory standard should be rigorous and consistent, its application should be strictly fit-for-purpose – for example, where an institution has demonstrated its quality and stability through performance over time or through a number of regulatory rounds, a less time and paper-intensive process for continuing licensing. *Edwards Good Regulation and Bad Regulation: a view from the private sector, Syd, Mar 2008.*

▪ Versions of these issues are also experienced by solely VET providers (RTOs) operating across States

X purchased a franchise, including a complete AQTF compliant system from a Victorian RTO of high standing. ... this system was presented for audit in NSW by the franchisee there were over 160 non-compliances. 2006

Documents submitted by RTO Y in the application for registration were deemed non-compliant even though the exact same documents were deemed compliant at the last registration audit. This was the case even though the AQTF standards have not changed in the areas covered by the documents. ... *Interpretation of AQTF standards by auditors vary over time and between auditors. Moderation of auditors does not appear to have noticeably improved consistency. 2006*

As soon as the States get round to doing the legislation changes to allow NARA to operate, we will be in there like a shot, for co-ordinated accreditation of our courses across States. 3.2009

It has been commented that, in the case of higher education provider accreditation rules, under the *National Protocols 2007* and *National Guidelines*, reasonable time should be allowed to test the efficacy of mutual recognition principles, in terms of State enactment of legislation, and changes in regulator behaviour (which some ACPET members say they see in some States). Even so, the concerns expressed in reports above raise issues that are applicable to current and future regulatory arrangements.

## **II. On need for a performance-based assurance and audit system**

Market oriented providers will ensure they are equipped and positioned to take advantage of opportunities to offer suitable courses to target markets that have demonstrable needs. In this context, compliance to meaningful quality standards that evolve to meet the changing environment can be viewed as an opportunity to demonstrate that the provider has independent and credible certification of its course. This is very different to the stifling and inappropriately focused bureaucratic system that is in place at present. 6.2008

We need a sensible level of compliance that includes: • Registration through one national process, recognizing, where appropriate, international certification and accreditation; • Monitoring of the factors that truly drive quality in education, focusing on outcomes *not* inputs; • A recognition that our students who are mainly adult 'clients', with a client mind set, can themselves obtain adequate information about the educational services available to them and that they have an ability to assess the quality, suitability and value of their educational options; • An understanding of the value of an international endorsement. 6.2008

R is an RTO of 15 years standing. They report that last December [2005] they applied to have courses from a reviewed training package added to their scope of registration. ... they were still waiting 8 months later for their scope to be amended. In order to compare how providers of the same courses in other jurisdictions had fared they contacted very similar RTOs in Melbourne and Brisbane. Both RTOs advised that the courses from the reviewed training package were added to their scope within 3 weeks of application. 2006

K is concerned that any complaint made by a student or prospective student against an RTO triggers a disproportionate regulator response – in this case resulting in a wide-ranging audit. This member laments that although the RTO had traded for many years and was an RTO of good standing, a single complaint could cause such a reaction. 2006

A repeated concern of providers is the inconsistency of rules applied by auditors. What passes muster for one auditor is deemed inappropriate by another. *“The greatest issue we have faced is the inconsistency between auditors. What is acceptable as evidence for one auditor has not been acceptable to another, particularly with regards to evidence of SCH.”* While this problem is demonstrably worse in other jurisdiction, great variations in audit practice and between auditors in relation to the interpretation and application of the standards does occur in Victoria. Providers have found the inexperience of some auditors a problem as they are sometimes not aware of the privacy issues involved in auditing: *“Auditors asked if they could take copies of financial statements simply “because they ‘seemed’ interesting” – VRQA has new, inexperienced auditors who are not aware of the private nature of some documentation”* Auditors not familiar with the industry that they are auditing and it is suggested that auditors should ‘tailor’ their approach to the type of field/industry that the RTO delivers. Time taken for audits is far too long: who pays for an RTO’s staff time when auditor takes so long? *“Two days are too long for RTO staff to be tied up for an initial audit.” “Auditors took 2 days for the initial audit” ACPET submission 2007*

### **III. On registration and accreditation and approval processes including timeframes, panels**

Innovation also applies to business models - and the Departments seem to have trouble with models developed to be efficient, collaborative ... they look for traditional structures whereas today there are alliances, joint ventures, groups. Why do Departments require market assessments years in advance to get accreditations? Surely market risk is a matter for the enterprise ... not to be second guessed by public servants and academics faraway from markets and business? 6.2008

The M course accreditation process was disgraceful, took ages, 12-18 months really, hold up waiting for academics, then many meetings – department ended up saying they couldn’t delay or refuse the accreditation any further. We could not market until all this was done. 6.2008

G submitted an initial application for registration as an RTO due to a change in ownership. The application was submitted in August, the site audit was carried out in December and the first audit report was received in February the following year (a period of just over 23 weeks). There was no delay caused by any non-compliance on the part of the applicant. VETAB’s customer service standards clearly state that the agency will ‘complete all applications for initial registration within 12 weeks’. 2006

VRQA needs to review the way it assesses applications for extensions to scope, CRICOS and similar, that involves duplication. For example, one provider has submitted applications for a change of premises for Higher Education (SCU), Higher Education (AIPS) and VET (MEG). All the same premises, but THREE separate applications. This is a waste of time for both parties. ACPET submission 2007

Impediments to the accreditation of RTOs, with long lead times for RTO registration and additions or variations to the scope of registration – sometimes of many months or even years, have a direct impact on the education sector’s ability to be responsive to industry and employer needs. Many of ACPET’s members



operate in more than one State or Territory and therefore they see first hand the inefficiencies of the current system of eight State and Territory registration authorities. *ACPET May 2008*

Private VET providers remain very sceptical about the compulsory data collection as a Condition of Registration under AQTF 2007. Data on enrolments and completions, employer and student satisfaction. What other private industry requires this government intervention? The effort in collecting this data far outweighs its usefulness in informing 'risk-based management auditing. As indicators of quality, these are crude measures which have the potential to be misinterpreted.

Higher education providers accessing FEE-HELP for higher education are currently required to provide their statistics to DEST for both FEE-HELP and non FEE-HELP places. It is clear why government funded/supported places need to be reported, but unclear why the rest of the statistics need reporting. ... in view of this level of reporting, and its extension, no doubt, to private VET providers once the VET FEE-HELP legislation is passed, it would be useful for the Commonwealth and States to work together to see how this information can be provided in a consistent manner, sufficient for both state and federal purposes. *ACPET submission 2007*

#### **IV. On Panels and Time - issues around achieving the intent of the Protocols**

Can the nation afford this amount of bureaucracy – tried to establish a Dip Business, guide-lines say about 8 months, in reality 18 months. Then Panel makes changes to match the way they do – or did- it at university – they want every element eg. order of subjects to match what they do at university. What about diversity and different cohorts? Now, I cannot use the accredited diploma as it does not fit with other subjects and what our students need. *6.2008*

We have so much invested having fully developed the course before can even apply; we mainly just do what they say. Even across States - one panellist says we need a piece of equipment, another thinks it would change the nature of the experience! We buy the equipment for one state. *6.2008*

Panels are too often our direct competitors, or want to be. Subject specialists deep in faculties, not trained in policy directions behind what they are asked to do. Concepts can be taken, and in a quicker time, 'appear' on universities – even with confidentiality agreements. Panels also override also the processes we step through with advisory boards that set up as required. *6.2008*

Panels, ie. Academic members want grander libraries – not fit for purpose or attuned to the electronic knowledge economy – want what they feel comfortable with. *6.2008*

Some panel members are direct competitors, adversarial, start by trying to stop a new degree. There are appeal processes but no-one wants to use them. Sometimes Departments moderate. A better way would be for the Department to do a desk audit of the large folders of materials and testimonials provided to them, and only convene a panel if necessary. Certainly, this should be the case for reaccreditation. We are also hoping the Mutual Recognition will kick in properly, the way the Protocols say it should. *6.2008*

It is inappropriate that accreditation panels comprise, almost exclusively, university staff in determining equivalence to 'university standard'. There would be value in including staff with experience in teaching in private institutions – or with senior operational experience in the field. *6.2008*

**These examples of ways regulations are being implemented indicate the daily impact of current rules on enterprising businesses.** Each item could be dismissed as a 'story' but as a whole they are indicators of duplicative, complex, and to an extent unnecessary, regulatory burden. These messages from the coalface of current regulatory systems raise issues to be addressed by any national agency.



### ***k) Regulatory process and cost-benefit – Quality Indicators as case study***

The new National Protocols 2007 (changes to higher education accreditation processes), and the new AQTF 2007 for vocational education and RTOs, were being implemented through 2007 and 2008. These separate systems have each had near two years to settle and to start to demonstrate expected benefits. Well-functioning 'mutual recognition' is a key intention and measure of each system [discussed 5.j].

The revised *Australian Quality Training Framework 2007* also emphasises 'streamlined' and 'transparent':

**Streamlined:** The standards for registered training organisations have been simplified and streamlined to focus on outcomes. AQTF 2007 places the focus of quality assurance squarely on training and assessment, client services and management systems.

**Transparent:** National guidelines and handbooks to be used by registering bodies in all states and territories are readily accessible through the ... national training website .... The commitment by registering bodies to work together on continuous improvement in implementation of AQTF 2007 is one of the measures to build confidence of industry, clients, regulators and registered training organisations in the quality assurance arrangements of the training system. *AQTF 2007 National Guideline for Industry Regulator Engagement, July 2007*

There has been some consultation on the AQTF 2007 and its elements, including the Quality Indicators (QI) requirements being implemented in early 2009. However, as discussed below, concern has arisen around realities of the Indicators and the Quality Indicator Resources Package (QIRP) which includes the detailed surveys and institutions that will be mandatory and regulatory. [www.acer.edu.au/aqtf/](http://www.acer.edu.au/aqtf/)

**This level of business concern calls into question the extent of regulatory impact analysis conducted for the AQTF 2007 as a whole or the Quality Indicators requirements specifically.** AQTF instruments and Quality Indicator requirements are regulations that will have significant cost impact on many entities. Industry would reasonably expect a Regulatory Impact Statement (RIS) to be developed and that it would objectively (as intended by policy and regulation best practice) weigh up the range of costs and proposed benefits and how these would flow. Eg. will positive performance quickly reduce audit load?

**A deep electronic search locates neither a Regulatory Impact Statement for the AQTF 2007, or for the Quality Indicators requirements, nor any mention of such statements existing.** ACPET also has no recollection or record of a regulatory impact assessment being conducted.

The AQTF 2007 and QI are regulations developed and implemented through the National Quality Council and TVET, the MCVTE secretariat company. Does distance from a Minister, Department and Parliament reduce the policy requirements for RIS on rule changes of significant impact on businesses? <sup>45</sup>

**ACPET considers this question needs to be examined for all tertiary education regulators and councils.** Procedural requirements for systematic regulatory impact assessments have COAG policy purposes – to minimise risk of regulatory burden on businesses without clear public benefits, and arguably, to ensure potential benefits are critically examined, achieved and measured.

<sup>45</sup> Compare with the *Explanatory Statement on Student Assistance (Education Institutions and Courses) Determination 2008 (No. 1)* that is posted on ComLaw and includes a specific paragraphs on Regulatory Impact Statement and Consultation.

The AQTF 2007 *Essential Standards for Registration* applicable to all Registered Training Organisations was implemented on the 1st July 2007 with the intent of improving quality. The AQTF 2007 includes:

- three standards relating to training and assessment, client services and management systems
- a set of quality indicators, or data to be collected, **to help the RTO** continuously improve its training and assessment, and to help the registering body to monitor quality of the RTO's operations, and
- a set of conditions (Conditions of Registration) to be met while operating as a training provider.

**As stated above ACPET supports revisions that promise a focus on outcomes**, but this means a new way of thinking for registration, accreditation and audit cultures in State agencies. Some members have seen initial changes in approach, whereas others consider delegation to State authorities is the 'AQTF 2007 Achilles heel, because of State interpretation practices'. There is general agreement that lifting regulatory focus on outcomes and measures needs to be clearly and quickly matched with reduction of time and money costs of compliance checking [quotes 5.j].

As part of the changes, the AQTF 2007 *Essential Standards for Registration* (as a RTO) regulate for 'a set of quality indicators' – data to be collected, to help the RTO and the registering body [above]. In June 2007, the National Quality Council (NQC) agreed on three quality indicators: competency completion rate; employer satisfaction; and learner satisfaction (learner engagement and competency development).

The NQC contracted ACER and NCVER to develop systems to measure these indicators. This progressed through 2008, with elements of consultation, and in Dec 2008, a Quality Indicator Resources Package was ready for information sessions in early 2009. The ACER website *introduces* the QIRP as follows:

Under their Conditions of Registration, RTOs agree to provide their Registering Body with accurate and timely data relevant to measures of their performance. The AQTF 2007 Quality Indicators underpin an evidence - based and outcomes-focused approach to quality assurance in Australian vocational education and training.

The tone of this statement is different to the balance in the points written in the AQTF 2007 *Essential Standards* p 6. It is now evident to ACPET members as QIRP is launched, that ground rules have changed.

... regulatory authorities have taken [the Conditions] to mean that they can determine what data is to be provided in measuring the performance of RTOs when it was the original intent of the AQTF and still states, data relevant to measure their performance. Who best to complete this measurement than the RTO itself using its own systems and tools?

It is not clear this will apply to TAFE or university RTOs? Only OTEN seems to provide reports on outcomes.

... a real problem is that it [QIRP] has nothing to do with Quality, or improving the quality of teaching and learning ... so global performance survey criteria are imposed n company RTO system, without any reference to their strategic plan, student cohort, approach to teaching and learning, whether they have employers, and what amounts to 'success' for those students and that RTO ... they will have to dismantle current measurement tools (some quite sophisticated) and do the QIRP, with no evidence of value. It is unnecessary burden.

If I thought it [QIRP] would make any difference to the students I would do it anyway ... ends up not being about what happens in the classroom but what you do on paper.

The QI don't have any measures of 'ways'. Just collect data, without being able to provide explanations of data. Eg. Employers not interested to reply (to a long questionnaire), some students only take a unit, don't want to complete qualifications, some are self-driven don't; have employers, others will answer highly satisfied, the less you ask of them ...

RTOs are being forced to use set learner and employer surveys and to provide a large amount of detailed enrolment and completion data on clients resulting in additional costs and time. RTOs now have to implement and monitor mandated processes in replacement of existing organisation specific systems which **were relevant** to measure the RTO's performance as stated under the Conditions of Registration.

The ACER website suggests a number of self-management benefits to RTOs (and to some the data could be useful), and states that 'data can also assist Registering Bodies assess risk associated with an RTO's operations and hence the scope of audit'.

**However, the information sessions have shown the weight of extra work for RTOs, and many do not see these benefits.** Although implementation will be staged, there is no lead in time for organisations to make adjustments. For example, the competency completion data from 2008 training activity must be reported by 1st July 2009. 'RTOs that do not have the required completion data have been placed under undue and excessive regulatory burden in an attempt to backtrack and gather this information'.

The AQTF Quality Indicators Resources Package (QIRP) ... forces providers to use the ACER produced learner survey, employer survey and provide data on enrolment and completion on every unit of competency or module. [There is] an intense amount of anger about this additional regulatory burden and enforced way of doing 'their business' *to the point where it may push providers away from delivering accredited training to avoid the unnecessary and additional regulatory burden.* This is not what the government wants in terms of training ... Even the collection of the data about enrolments and completions is based on historical delivery and is not necessarily of value to direct future training and therefore workforce planning.

The government wants to increase student participation in obtaining AQF qualifications yet the additional regulatory burden will force some RTOs to move into delivering customised unaccredited training.

An AQTF 2007 *National Guideline for Risk Management* has been operative since July 2007. This provides for 'risk assessment based on an RTO's performance against the nationally agreed Quality Indicators and assessment of the risk level attributed to their operations' and allows registering departments to adjust requirements for registration renewal and extension of scope, as well as ongoing monitoring, to reflect whether an RTO has been assessed to have a high, medium or low risk-rating. This facility to adjust for performance is a key factor. It is reiterated in both the AQTF 2007 *Quality Indicators Handbook for RTOs* and the AQTF 2007 *National Guideline for Use of the Quality Indicators by Registering Bodies* Dec 2008. It is assumed this has been raised at all information sessions.

However, RTOs have raised strong concerns about QIRP demands, even when potential benefits to their management, marketing and audit status are outlined. **This suggests RTOs are not 'seeing' a translation of performance-based risk assessment theory into their daily interactions with regulators.** Or put another way, which experiences recounted in quotations above [5.j] are continuing.

This is reinforced by findings of KPMG's *Formative Evaluation of Implementation of AQTF 2007*, Nov 2008. Alongside positives, KPMG found difficulties in implementation of AQTF risk management, including:

- varied implementation of AQTF 2007 National Guideline for Risk Management across jurisdictions
- validity and reliability of the risk management approach, and variation in linkage between the risk management protocols and the treatment of risk by Registering Bodies, ... [plus that]
- challenges experienced by auditors in shifting to the AQTF 2007 audit approach have limited the extent to which effectiveness in implementation of the [new] audit approach has been achieved.

**ACPET's overarching concern is the move away from the intent of the AQTF 2007 and extra regulatory burden put on RTOs**, in particular small and medium enterprises. There has been a major shift from the position of using quality indicator data as a key tool for continuous improvement (to help the RTO), to a position where QI are a mechanism for registering bodies to collect data on all. The focus on data has replaced focus on using evidence to improve quality. As ACPET members comment:

TAFE and universities receive additional funding for such changes in data collection etc, we are just required to do it. There does not seem to be any recognition of the costs burden of changing systems, data collection and linking with all the different computer systems.

The mandated use of the QIRP is an additional regulatory burden forcing businesses in the education and training industry to use set surveys, software and systems dictated by governments for training delivered on a service basis (non-government funded). Few other industries are regulated and controlled in this manner.

ACPET supports the AQTF 2007 original intent and underpinning concept of 'continuous improvement', based on collection, analysis and comparison of data over time by the RTO within its own organization.

ACPET does not support collection of data, as is now required through the **mandated** use of the AQTF Quality Indicators Resources Package (QIRP) by registering bodies.<sup>46</sup> There is no argument to support registering bodies' need to collect this data as it is not definitive and cannot be benchmarked. The data collected from the learner and employer questionnaires is only relevant within operations of the RTO.

ACPET supports RTOs providing evidence (which may not be data) to auditors to enable risk assessment and then changes to audit load. Evidence used to undertake risk assessment should focus on the extent and nature of continuous improvement systems incorporated into the RTO's business practice.

**In their current form, the Quality Indicators and documentation signal a move away from continuous improvement to a compliance focus, and they will add substantial costs.** The costs-benefits of this regulation have not been assessed, despite long established regulatory impact *requirements*.

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<sup>46</sup> Under the Conditions of Registration, the RTO's chief executive must ensure that the RTO cooperates with its registering body: • in the conduct of audits and monitoring of its operations, • by providing accurate and timely data *relevant to measures of its performance*, • by providing information about significant changes to its operations, • in the retention, archiving, retrieval and transfer of records consistent with its registering body's. The Conditions of Registration require the RTO to provide accurate and timely data relevant to measures of its performance, not general data for training statistics.

## 6. Education as a major export industry – further regulation

... the government is beginning to take notice of education exports ... The government is doing what every government does when it discovers a successful industry not yet encumbered by excessive red-tape – the bureaucrats move in. *Dodd, When softly, softly is best ... the challenge is to tap lightly on the controls. AFR, 10.11.2003*

Education as an Australian export has grown markedly over two decades. Export education contributes to local and overseas economies, provides skilled workers through immigration paths and adds multi-cultural and global dimensions to Australian institutions.

Export education delivered onshore (97% - international students studying in Australia) or offshore (3% as distance learners, not overseas campuses) amounted to 6% of Australia's exports in 2007. 'Education exports are now Australia's third largest export, behind only coal and iron ore'.<sup>47</sup>

In addition to the enterprise, employment and trade this represents, export education advances Australia's policies on economic and social interaction with the world and Asia.<sup>48</sup> The Asian boom has been a key factor in evolution of Australian educational enterprises over 20 years. In 2006, near 25% of students in universities were from overseas, plus those in independent and TAFE education entities.

**A substantial proportion of Australia's export education industry has been developed by private sector enterprises**, through innovation, investment and sustained performance, as well as by sizeable business arms of public universities and of State TAFEs.

**Private education providers have achieved their position in international education by developing and marketing tailored programs to serve needs and expectations of overseas students in Australia.** Student-focus is a key to success. Tailored programs are developed at all education levels to meet particular market demands. For instance, calls for courses that closely integrate skills and thinking, or to build capacity to work as creative individuals not employees, or meet needs for closer tuition.

Availability of these student-focussed programs has also helped Australian citizens to participate in and achieve higher qualifications than were open to them through traditional university paths.

As indicated above, regulation of export education has expanded greatly since the start of this decade. **ACPET and members agree with the need for a framework of expected conduct, but question further government rules and particularly, the additional registration and audit processes.**

<sup>47</sup> Reserve Bank of Australia, *Australia's exports of education services*, June 2008.

<sup>48</sup> For instance, as indicated in BCA submissions to the Review of Export Policies and Programs in 2008. 'There are clear economic and social benefits to all countries from greater levels of global economic integration ... For Australia to achieve higher productivity and living standards into the future, it [must] increase the level and effectiveness of our global engagement.' The BCA notes Australia's share of international services exports has declined since 2000 and sees potential to leverage education activities [[www.dfat.gov.au](http://www.dfat.gov.au)].

## ***1) International students – education and migration regulation***

DEEWR regulates education and training industry services for overseas students studying in Australia on student visas. Australian Education International (AEI) is an arm of DEEWR, staffed by DEEWR officers. AEI has policy, market research and international marketing, promotion and communication roles. AEI is also regulatory authority for the Education Services for Overseas Students (ESOS) legislative framework:

- *Education Services for Overseas Students (ESOS) Act 2000*
- *Education Services for Overseas Students (ESOS) Regulations 2001*
- *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* (The National Code) including 15 Standards, plus Explanatory Guide
- *Education Services for Overseas Students (Registration Charges) Act 1997*, and *Education Services for Overseas Students (Assurance Fund Contributions) Act 2000*

For providers of English Language Intensive Courses for Overseas Students (ELICOS), another level of regulation and audit operates through registration with the NEAS (National ELT Accreditation Scheme). NEAS is an industry self-regulation entity, some delegation of state functions such as CRICOS approval. Many NEAS standards cover the same ground as ESOS National Code standards.

The aim of the ESOS legislative framework is ‘to protect Australia’s reputation for delivering quality education services and the interests of overseas students, by setting minimum standards and providing tuition and financial assurance’ <http://aei.gov.au/>. The AEI website explains that:

- ESOS Acts and Regulations set out the legal framework for the delivery of education to overseas students, and govern: Which providers may be registered; CRICOS (Commonwealth Register of Institutions and Courses for Overseas Students - a database of more than 1200 Australian institutions) registration; Obligations of providers; Tuition assurance and consumer protection mechanisms; Enforcement and compliance powers; Charges providers pay to enrol overseas students.<sup>49</sup> ESOS is said to be *a nationally consistent approach to registering education providers*.
- Further requirements are set out in the *National Code of Practice 2007*. Following a review over 2004 to 2006, ‘on 1 July 2007 the original National Code ... was substantially revised to improve clarity and to give institutions more flexibility. For students the changes brought about greater protection. All CRICOS-registered providers must comply with the provisions of the National Code 2007’. This contains: a description of the principles and guidelines that underpin the Code; a description of the roles and responsibilities of state and territory governments; requirements for CRICOS-registered providers; and standards for CRICOS-registered providers.
- ‘The professionalism and integrity of the industry is further strengthened by the ESOS legislation’s interface with immigration law. This imposes visa related reporting requirements on both students and providers.’

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<sup>49</sup> Annual costs to education providers for ESOS/CRICOS registration and AEI services are substantial. A vocational education provider with about 2500 students taking short and longer courses paid over \$90,000 last year to DEEWR. This is separate to costs of registration, compliance monitoring, managing the system with individuals and agencies, data collection, reporting.



ESOS regulations are detailed. ACPET providers understand the need, but the rules are unnecessarily burdensome especially where elements overlap with other government compliance requirements, ie. with **other rules set through Federal or National systems** (and mainly implemented by State agencies).

During 2006, as input to consultation on the National Code of Practice 2007, the then Australian Vice Chancellors' Committee commissioned a study of likely additional costs of the Code changes. These extracts illustrate cost impacts at working levels by education entities as rules multiply: <sup>50</sup>

... Standard 9 [in Code 2007 this is Completion Within the Expected Duration of Study] ... is fundamental to the management of overseas students. All of the universities participating in the study identified potentially very considerable costs which could arise in respect of Standard 9 depending on the extent to which it varied from the definitions contained in the HESA legislation currently applying to domestic students. Additional costs would include reviewing and revising policies and procedures, updating websites and marketing materials, additional administration and perhaps most costly of all, systems upgrades. ...

For the most part start-up and ongoing costs are those attributed to existing staff or appointments which will need to be made to absorb extra workloads while system costs tend to be payments to external (or in some cases in-house) systems managers for necessary upgrades. ... start-up and systems costs represent over two-thirds of total costs and these are the costs that need to be met in the short term. Ongoing costs are smaller but will be a continuing imposition on university funds on an annual basis. ... significant costs already being incurred by universities in complying with ESOS legislation. This has never been quantified and the costs identified in this study are only those over and above base costs ... .

In its May 2006 response to the National Code consultation draft, ACPET emphasised its concern 'that Australia should remain an inviting and competitive study destination for international students and that the National Code should support that end'. ACPET also raised issues with regulatory impacts:

ACPET has consistently maintained that, while the National Code is an important document for the industry, the details place excessive administrative and financial demands on quality providers without, in fact, targeting those who may threaten the viability of the industry.

...there should be no additional obligations or financial burdens on private providers. Education providers are required to deal with up to eight state/territory jurisdictions, and two departments of the Federal Government. The cost of compliance for private providers in the field of international education is already excessive. Many providers must employ personnel simply to meet compliance requirements, significantly contributing to their bottom line costs.

Among other points, ACPET focused on duplication – '*ACPET recommends that the standards regarding staff capability, educational resources and providers' premises be removed as, under their conditions of establishment, providers must comply in relation to staff, premises and educational resources.*'

More recent ACPET submissions to and interactions with the Federal Government have related to the immigration rules both steering and linked to aspects of export education. ACPET emphasises that:

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<sup>50</sup> Baumber Consulting for AVCC, *Assessment of costs to the university sector of compliance with revised National Code as set out in the Industry Consultation Draft*, May 2006.



- any reforms to the education pathways to skilled migration must reflect the tremendous benefits international students bring to the country and provide transitional arrangements for international students already in Australia’,<sup>51</sup>
- there is need to recognise that ‘there are hundreds of training institutions around the country that have built their businesses around a particular legislative framework, and it is very important that reforms address the need for stability in the industry’, and
- it is critical the thousands of international students currently studying in Australia expecting their studies will be valued, are given the opportunity for a rewarding career in our country.<sup>52</sup>

**This issue area can be described as ‘regulatory risk’ to those involved in a key Australian industry, including the students and potential Australian citizens.** Some participants also identify regulatory failures in their eyes, where already burdensome and complex rules stand in the way of quality services.

There is more and more regulation but it is not being effective to build a stronger industry. I went through the last lot of ESOS regulations. Get more and more rules and regulations. Then when a rule is broken by a student (eg. attendance) and is reported, they are bounced back to us. Less and less credibility with the students. And reporting: ... beaten into submission, we just do it. *ACPET member, 3.2009*

**ACPET believes that all students, domestic or overseas, deserve the highest quality education that can be offered.** It is well established that good teaching and learning practice pivots on ‘student oriented teaching’. ACPET and members are concerned that facets of Australia’s regulated education and training arrangements, do not enable sufficient tailoring of education to meet needs of this large student cohort.

An important example is provided in the discussion of AQF and training packages in part 4.h, ie.

Another example raised by ACPET members, is the ‘*lack of applicability of training packages for international students*’. With overseas students as an important export activity for Australia, and the policies and learning principles that Australia espouses urging focus on student needs, providers servicing international students are not allowed to add value to TPs, to better fulfil and interest the students (who, regulations state, must receive 75% of teaching face-to-face, not in workplaces).<sup>53</sup> [see 4.h above]

ACPET considers it is vital that all Australian governments, regulatory councils and agencies rapidly come to grips with the inefficiencies, and costs (direct and opportunity) of current systems regulating tertiary education – including implementation problems reflecting cultures, citadels and resourcing.

There are signs of attention to these issues in the Ministerial statements over 4 and 5 March – but no great assurance that COAG governments are willing yet to seriously address sectoral divisions and traditions, the multiplicity of burdensome and duplicative rules, and all anti-competitive elements.

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<sup>51</sup> ACPET, *International education is a two way street, reforms must provide transitional arrangements for students*, 4.12.2008

<sup>52</sup> ACPET, *Skilled Migration Reforms strike the right balance, consultative approach welcome*, 17.12.2008

<sup>53</sup> National Code of Practice Standard 9 - Completion within the Expected Duration of Study: ‘This standard allows students to study up to 25 percent of their total course through online or distance learning.’ (75% is to be face-to-face teaching).