

Victorian TAFE Association Submission:

***Victorian Competition and Efficiency
Commission***

***Inquiry into Victoria's
Regulatory Framework***

November, 2010

**Victorian TAFE
*Association***



Reg. No. A37584B

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GLOSSARY

Terms used in this submission

ACE	Adult and Community Education
AMES	Adult Migrant English Service
AQF	Australian Qualifications Framework
AQTF	Australian Quality Training Framework
AUQA	Australian Universities Quality Agency
CAE	Centre for Adult Education
COAG	Council of Australian Governments
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
DEEWR	Department of Education, Employment and Workplace Relations
DIIRD	Department of Industry, Innovation and Regional Development
ESOS	Education Services for Overseas Students
ETRA	Education and Training Reform Act
HE	Higher Education
MCTEE	Ministerial Committee for Tertiary Education and Employment
RTO	Registered Training Organisation
SMS	Student Management Service
VET	Vocational Education and Training
VET FEE-HELP	Income contingent local scheme set up by the Commonwealth
VRQA	Victorian Regulation and Qualifications Authority
VTA	Victorian TAFE Association

Victorian TAFE Associations' Submission to the VCEC Inquiry into the Victorian Regulatory Framework

VTA welcomed the opportunity to discuss the issues raised in the Issues Paper *Inquiry into Victoria's Regulatory Framework* with the Commissioners and is pleased to provide further detail on a number of the matters raised at the meeting between VCEC Commissioners and the VTA on October 14, 2010.

This submission is made by the Victorian TAFE Association (VTA) on behalf of their member constituencies.

The VTA is the peak employer body for Victoria's TAFE sector. VTA members include four dual sector Universities, fourteen stand-alone public TAFE providers, AMES and the Centre for Adult Education. Victorian TAFE providers are actively engaged in VET at the state level as well as nationally and internationally. Services provided by VTA to members include governance advice, workforce relations advice, industrial relations advice and representation, education projects, research, government liaison and representation and professional development.

Context for VTA Response

TAFE institutes¹ are the major deliverers of accredited training and education across the spectrum of the Australian Qualifications Framework in Victoria. They are variously known as Institutes and Colleges and in Victoria include four dual sector universities. Delivery includes senior secondary school certificates, vocational certificates, diplomas, advanced diplomas, associate degrees, bachelor degrees and graduate qualifications. These qualifications are delivered in a range of contexts – institutional, workplace and online. They are delivered in partnership with a variety of national and international organisations, including schools, colleges, universities, enterprises and community organisations.

TAFE providers agree that continuously improving the quality and accessibility of training and student outcomes is essential if the Victorian Government's targets for lifting rates of participation and skills deepening are to be achieved.

TAFE providers differ markedly from many other Registered Training Organisations (RTOs) with respect to their defining characteristics. TAFE providers:

- are large, diverse, publicly owned institutions with prescribed accountability and governance arrangements which ensure quality assurance as laid down by the Australian Government's Provider Registration Requirements;
- offer a broad student experience with individualised vocational and further learning options for a diverse range of students, both local and international;

¹ The term TAFE & *TAFE institutes* will be used in this paper to describe the dual sector universities, colleges, and providers under the umbrella of TAFE.

- invest in social inclusion/community service obligations;
- deliver in a range of industry sectors and/or predominantly at tertiary level;
- emphasise industry relevance, currency and regional workforce development especially insofar as TAFE training and curricula are directly guided by industry requirements;
- are commercially orientated with dividends re-invested in education or for the public good;
- have an increasing role in higher AQF levels, development and delivery;
- operate primarily as state or territory based institutions;
- often have significant international operations on shore and off shore; and
- represent low risk to government for market failure because of the longstanding processes in place to ensure the delivery of quality programs to a balanced mix of local and international students, proven market success, and robust administrative procedures.

Scope of this response

This response will limit its scope to the public VET sector it draws on information directly from VTA members and on the views of Victorian TAFE providers attending a focus group with the Commissioners convened on October 2010. VTA members may respond individually to the Inquiry to highlight areas of particular interest to their organisations.

Key Messages

*'Too little progress is made too slowly by too many people having to overcome too many prescriptive barriers. Simplicity and transparency should be the watchwords driving reform. Rationalisation should be the goal.'*²

Slow Progress

The Victorian TAFE Association (VTA) and its members are in agreement that streamlining and reducing the regulatory burden while enhancing the effectiveness of regulation is a worthy aim for Government.

The VTA responded to the DIIRD Better Regulation Project in September 2007 and in doing so pointed to a range of regulatory processes that were deemed wasteful; and that created unnecessary administrative and operational complexity in what is a very sound and productive sector. However since that exercise was undertaken there has been little or no feedback from the project and little or no signs of progress have been made. In fact both the perception and the reality for TAFE providers is that things have become worse in the complexity of regulatory accountability and reporting.

² Dr Peter Shergold Macquarie Group Foundation Professor, Centre for Social Impact and Chair, NCVET Board. Speech at the launch of NCVET book The future of VET.

There appears to have been little impact on the pre-existing regulatory requirements and there have been demonstrable increases to both the cost and burden of regulation on the public VET sector.

Government reporting requirements are costly and the scope for learning is limited by the general failure to pass back the lessons of evaluation or provide benchmarks on costs and cost-effectiveness. TAFE endorses efficient and effective regulation under which:

- the principle of 'report once, use often' is used for reporting requirements; and
- information generated through performance evaluations is returned to service providers to enable appropriate learning and provide value for their reporting.

Securing Jobs for Your Future (Skills Reform)

The education and training sector has been and continues to be at the forefront of significant policy reform in Victoria particularly under the banner of Securing Jobs for Your Future. The focus of our concerns is not on policy reform as such but rather on the undue costs for TAFE providers that arise in the implementation of policy through regulation.

The VTA has largely supported the intended objectives of the Skills Reform however information from our members leads us to believe there have been unintended consequences on both the cost and burden of regulation as a result of the implementation of the reforms.

The operating environment for TAFE providers is changing within what appear to be contradictory policy settings and TAFE providers are of the view they are competing with their hands tied behind their back. Government policy is driving all providers (including TAFE) into a more contestable market alongside the policy promise of proportionate, and risk based regulation. However the role of government as the owner and regulator of TAFE; and the role of TAFE as a provider in this competitive market cloud the regulatory relationship.

Institutes report that they are being burdened by the emergence of an increasingly intrusive and prescriptive regulatory regime. Where, unlike other providers, they are constrained by the need to comply with government prescribed requirements including industrial relations policies and wage frameworks; executive remuneration; investment guidelines; and marketing guidelines.

Compliance extends to both public and commercial activity and there are no clear lines of demarcation between the government as the funder of VET; and the owner of the public system.

The following examples illustrate how the implementation of Skills Reform can create burdensome and costly regulatory processes.

Eligibility Criteria

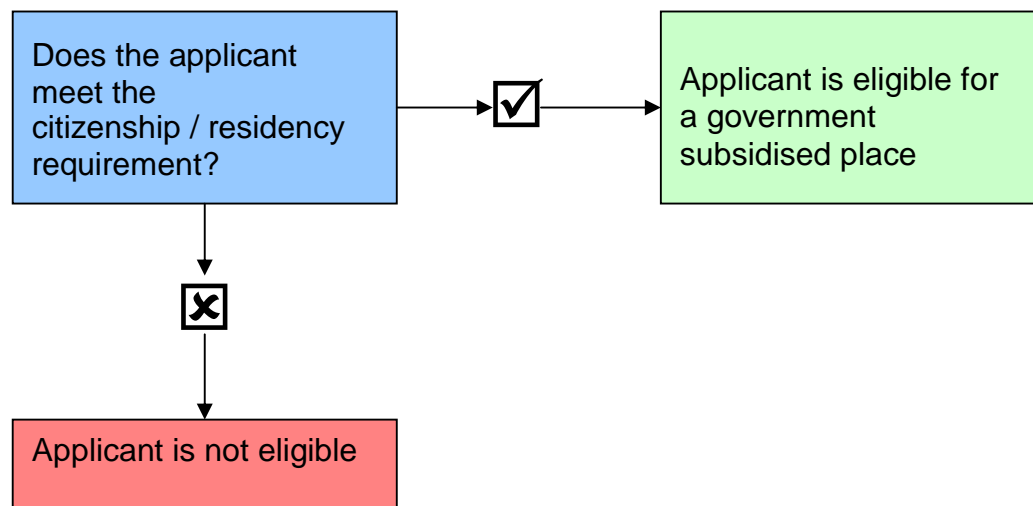
The shift from the planning and purchasing model with limited contestability; to a fully contestable and demand based funding model requires different checks and balances. From July 1, 2009 the new model significantly increases contestability and client choice with the introduction of different or new eligibility criteria for individuals to access different levels of public funding. As a result of the policy reforms there is a significantly higher degree of accountability required for Institutes:

- to correctly interpret eligibility criteria (including fee concessions) for individuals;
- to apply the relevant funding levels to programs in which individuals are enrolled; and
- to correctly report on student progression and outcomes on a continuous basis.

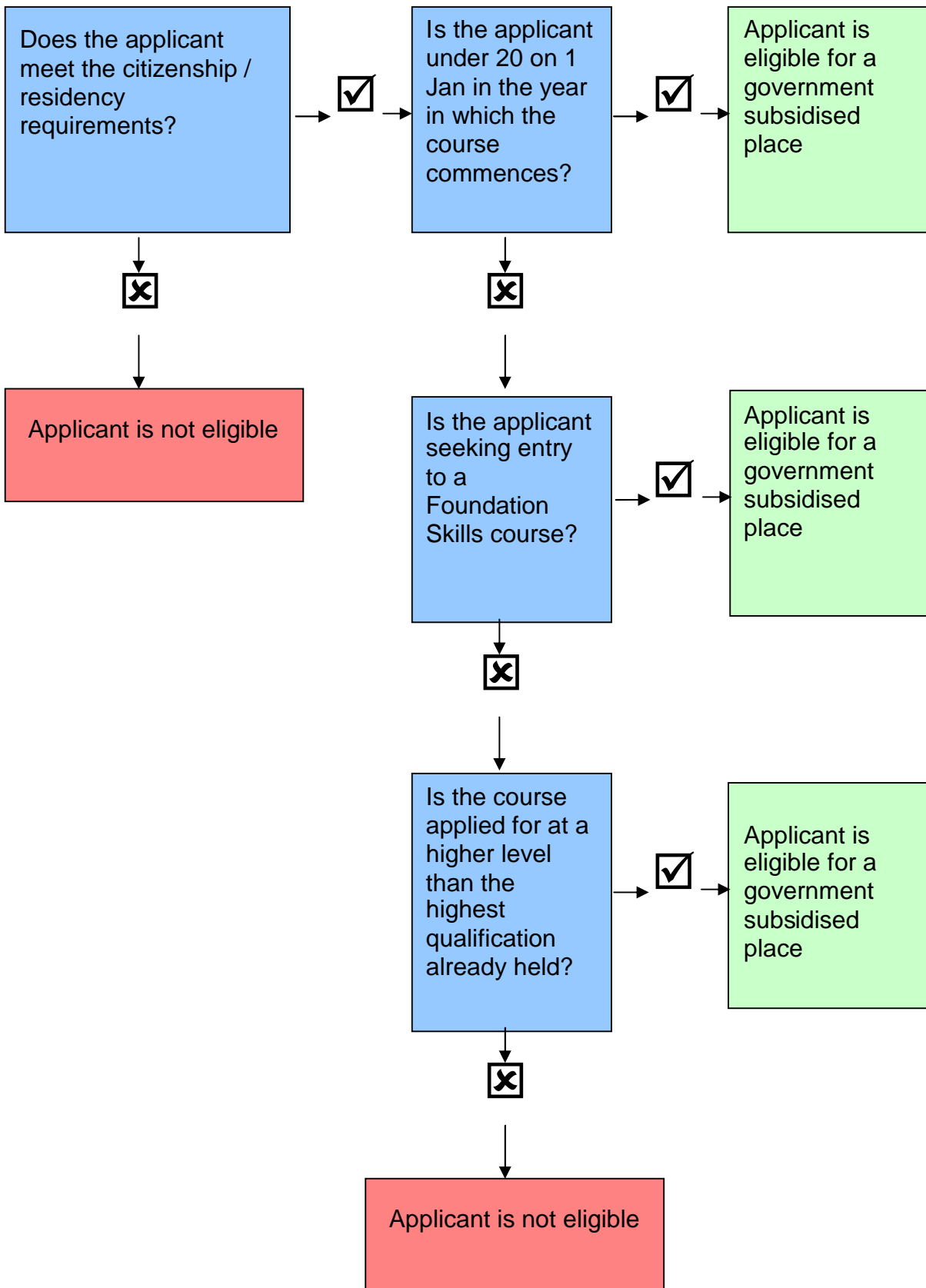
The eligibility criteria have created a large range of implementation issues related to these accountabilities which have significantly impacted on the need for increased resources required at enrolment; slowing down the enrolment process by up to 50%; validation of the student's claims; opportunity cost from the inability to calculate the actual student fees without undertaking the whole enrolment process at which stage the student may decide not to proceed because they are ineligible and in their view the fees are prohibitive.

TAFE Providers have reported having to retrain existing staff and/or employing additional staff to cope with the increased work load. This has imposed a considerable cost burden on the TAFE providers. The following flow charts indicate the increased layers of information (and validation of qualifications) required to assess a student's eligibility for a subsidised place under Skills Reform.

Flow Chart for determining eligibility for Government funding Pre July 1st 2009



Flow Chart for determining eligibility for Government funding Post Jan 1 2011*



*The period 1 July 2010 to 31 December 2010 has been one of transition where a variety of these steps has been in place.

VET FEE - HELP

Within a Skills Reform environment, VET FEE- HELP (Commonwealth Loan Scheme) is a key component offering learners the option of an income contingent loan for tuition fees for government subsidised or fee for service places in courses categorised as Skills Deepening (Diplomas and Advanced Diplomas).

However, VET FEE- HELP has been derived from the Higher Education FEE- HELP model and incorporates substantially those existing administrative requirements and curriculum structures. The model is based on the arrangement of an academic year which is highly structured and predictable. The administrative requirements of VET FEE- HELP are in no way fit for purpose under this model.

A brief examination of the Commonwealth Government [VET FEE-HELP](#) website provides some insights into the complexity of the administrative requirements. A closer examination of particular elements will highlight that it is almost impossible for TAFE to comply with some of the requirements. For example Schedule 1A Section 28 Schedules of VET tuition fees (pp.20 – 21) requires that the VET provider must publish well in advance of the commencement of each semester, a schedule of each VET unit of study (and the VET tuition fees) the provider provides or is to provide for a set period.

In effect this restricts flexibility as it leaves no scope to add new courses in response to demand until the following year/semester. The key to a successful VET sector is its responsiveness to the needs of enterprises and individuals. New job roles and the changing requirements of existing job roles require an agile and dynamic approach to program design. It is not always (or often) possible to predict with certainty what units of study will be undertaken in a given period; or what the VET tuition fee will be where this is calculated according to individual circumstances.

The implementation of VET FEE- HELP has created additional layers of administration and regulatory reporting requirements. To accommodate both flexibility of learning programs for individual students and enterprises and also the multiple administrative requirements, several large TAFE providers have had to move to a one to one relationship of competencies to units of study. They have also needed to add multiple VET FEE-HELP census dates in the calendar year thereby increasing the reporting requirements for enrolment statistics.

In addition, as all VET FEE-HELP eligible students in all VET FEE-HELP eligible courses must be reported to DEEWR, the administrative requirements for VET courses have multiplied, placing a substantial additional burden on student administration systems and personnel. VET FEE-HELP has created new regulatory relationships between DEEWR and TAFE, where DEEWR provides funding under VET FEE-HELP, which is in excess of State Government regulation.

It appears evident that VET FEE-HELP as an initiative to broaden the access to VET has been constrained by the unsuitable nature of the policy and the problems of its implementation. It is further evident, although not yet quantifiable that there has undoubtedly been a significant impact at an institutional and client/student level.

It is understood that, in the first instance, the translation of the Higher Education system to the VET sector was a convenient way to expedite the implementation of a FEE-HELP scheme within very constrained time-lines. However, the way in which VET FEE-HELP administrative arrangements are managed needs to be thoroughly reviewed and, where appropriate, redesigned.

It would be highly regrettable if this scheme were to remain in place indefinitely without its effective application to the flexible needs of VET sector practices being examined.

The VTA is aware that the VCEC cannot make recommendations to the Commonwealth Government but that it can make recommendations to the Victorian Government about Commonwealth issues.

In order to better meet the needs of students, industry and providers; and to enhance the implementation of the Skills Reform policy, the VTA encourages the VCEC to recommend that the Victorian Government, increase their negotiation efforts with the Commonwealth Government to achieve a satisfactory change to the VET FEE HELP administrative arrangements.

(Appendix 1: VET FEE-HELP Explanatory Note)

Cost of Regulation

Skills Reform is proving costly for the sector with TAFE providers reporting a range of associated costs such as the need employ more staff to cope with the extra administrative requirements; and major costs for changes to their Student Management Systems (SMS). One large Institute estimated the cost of accommodating the changes to the SMS at around \$1M with Skills Victoria contributing funding of around \$90,000.

In 2009 VTA provided advice to Skills Victoria that estimated the start up costs for implementing Skills Reform to be in the vicinity of \$20M with additional annual recurrent costs of approximately \$8.5M.

More importantly regulatory compliance (and/or responding to Executive Memos) takes time, resources (financial/physical) and energy away from TAFE providers in their core purpose of, and enacting and delivering effective educational services.

Burden of Regulation

TAFE Institutes operate in a complex and ever changing policy, funding and regulatory environment. Recent work on TAFE governance (and the regulation regime) has included the Review of TAFE Governance, World Class TAFE facilities, and the TAFE Pricing Review.

The burden of Skills Victoria regulation has to be seen in the wider context of regulation for TAFE providers. On its own the regulatory regime in the VET sector may not look too burdensome, but when put into the context of all of the regulatory environments in which they have to respond and the overlaps between the instruments which govern TAFE providers (e.g. Education and Training Reform Act (ETRA), Ministerial Directions, Executive Memorandums and Owners Agreements, VRQA, CRICOS, ESOS, DEEWR funding/contracts, AGMs, AGM Reports, ISO Quality Assurance, Planning Regulations) the picture becomes more complex and clearly over crowded.

Reporting on process is an area of major concern for TAFE providers. Levels of regulation have impacted financial reporting; performance reporting; governance prerequisites; financial audit; performance audit; and accreditation requirements. They indicate that reporting regimes are often heavy handed, time consuming and add little if any value to the efficiency or effectiveness of their service delivery. They also stated that reports often disappear into a 'black hole', and wondered about how agencies used the information.

TAFE providers are under constant pressure to be responsive to the mounting expectations of government which are often accompanied by new directives, reporting and regulatory activities. For example the Government desire to demonstrate its environmental credentials has led to all public sector organisations being progressively required to implement and report on sustainable practices across their operations. TAFE providers have had to comply with new regulations and to meet sustainability targets in their organisational, operational and teaching activities. They then have to report these according to a variety of formats and to a range of bodies at a state and commonwealth level.

Lack of Consultation

The TAFE system and those within it have ushered in numerous major policy reforms over many years; and collectively it houses a huge repository of knowledge on operation and innovation in the VET sector. However the architecture of decision-making in the regulation of the VET sector is largely top down and neither reflects, nor honours this experience to pre-empt and avoid potential problems that may arise during implementation.

Effective consultation at key stages of regulation making and administration has been too late, too hurried, with too little time to respond, and often where advice is sought

it is then ignored. This is evident in an Executive Memorandum regarding Copyright of privately owned courses and ETRA, legislative changes referring to Ministerial Guidelines that don't yet exist.

Compliance is expected with a range of activities but there are variable levels of consultation which often results in well intentioned policies being difficult to implement and at worst unable to be implemented.

Dual Sector Regulation

Four of Australia's five dual sector institutions (i.e. universities with a TAFE division) are located in Victoria – the Royal Melbourne Institute of Technology, Swinburne University of Technology, the University of Ballarat and Victoria University.

The tertiary education sector has undergone a sustained period of regulatory reform over the last decade. However one area that has not been specifically addressed through these reforms is the regulation of dual sector institutions.

The regulation of dual sector institutions in Victoria occurs under the enabling legislation applying to each institute as a university (University Act) and the requirements applying to it by virtue of it operating a TAFE division under the *Education and Training Reform Act 2006* (Vic) (ETRA) and the ETR (Skills) Act 2010.

As a consequence of spanning both the TAFE and Higher Education dual sector Institutions are subject to the governance and regulation requirements of different jurisdictions (state and commonwealth, TAFE and HE respectively). This leads to different reporting requirements, different systems, different timing and different terminology and these rarely overlap or can be used concurrently for both levels of government.³

Historically the development of funding and reporting requirements have been in isolation of each other but have still resulted in many similar obligations and requirements being developed but treated differently in a regulatory sense. This regulatory framework places obligations on dual sector institutions, including in the areas of reporting, employment and accreditation, which are not placed on non-dual sector institutions.

Dual Sector Institutions are subject to dual audits from AUQA (HE) and AQTF/VRQA (VET) with different levels of public scrutiny. The AUQA audit result is available on the AUQA public website but the VET audit is 'secret regulators business' and is not publicly listed. Although providers can chose to put their AQTF audit results on their own website.

³ Dual Sector University cohesion – a discussion paper June, 2010. p.22

There have been a number of reviews of the regulatory requirements of the dual sector institutes in the last five years.⁴ There is a current study underway on organisational and operational cohesion in the dual sector environment that looks at the issues of external governance.⁵ The reviews variously identify large numbers of different reports (around 60) that a dual-sector university is required to submit annually and some cases more regularly.⁶ A 2010 KPMG report commissioned by the Victorian dual-sector universities to explore their financial reporting issues noted that *“...we understand dual sector universities navigate a maze of conflicting governmental reporting requirements, different agendas and, at times, competing governmental aspirations.”*⁷

This has led to some observers referring to the situation as one of ‘dual regulation’.

One dual sector institute consulted for this submission identified some 49 reporting requirements provided to 8 (or more) state and commonwealth government agencies. Much of the information required appeared to be duplicated across the agencies but separate reporting was required for each; and often the same information had to be reported in a format specific to an agency requirement e.g. in a financial reporting framework format and then again in a whole of government format.

The funding models and reporting requirements for dual sector institutions provides a further example of unnecessary reporting. Dual sectors are required to produce two sets of consolidated accounts; one for the whole university and another for the TAFE operations alone. While the Victorian Government has the legislative capacity to request the consolidated accounts for the TAFE operations be provided separately, this information could well be extracted from the whole university report and shared between jurisdictions under the principle of good regulation - ‘report once, use often’.

The previously cited reports indicate that it is likely a more common reporting approach would be significantly more efficient and cost-effective; that changes to the current arrangements requirements would lead to improvements in the effective performance management of the organisation as a whole; and, possibly give support to the evolution of the organisation.

(Appendix 2: Dual Sector Explanatory Note provides a fuller examination of Dual Sector issues.)⁸

⁴ Phillips KPA 2005, 2010; KPMG 2010

⁵ Dual Sector University cohesion – a discussion paper June, 2010. Section 3.6 pp. 22 – 25. The Dual Sector Collaboration Project is supported by the Australian Government Department of Education, Employment and Workplace Relations (DEEWR) under the auspices of the Diversity and Structural Adjustment Fund. <http://www.ballarat.edu.au/projects/dscp/docs/discuss.pdf>

⁶ Ibid p.22

⁷ Ibid p.22

⁸ Source: Minter Ellison, Carolyn Vigar, July 2010

Commonwealth-v-State: A national VET regulator

As previously indicated the VTA understands that the VCEC cannot make recommendations to the Commonwealth Government but that it can make recommendations to the Victorian Government about Commonwealth issues.

In addition to the VET FEE-HELP issue the VTA would advocate the VCEC make recommendation to the Victorian Government that they reconsider the decision to remain outside the soon to be created national VET regulator, which COAG has agreed to establish for the VET sector.

The new national VET regulator is due to be established in 2011 it will be responsible for the registration and audit of RTOs, and accreditation of courses, and will be established under Commonwealth legislation. A national standards council will also be established to provide advice to MCTEE on national standards for regulation, including registration, quality assurance, performance monitoring, reporting, risk, audit, review and renewal of providers, and accreditation of VET qualifications.

Victoria has opted to remain outside the National VET Regulator arrangements and has indicated that it will continue to regulate providers operating in Victoria and will enact legislation to mirror the Commonwealth legislation. All providers who wish to operate in more than one jurisdiction or to enrol international students will be required to be registered through the national regulator. Victorian providers who wish to exercise these options will therefore continue to be regulated under two parallel but separate systems.

The VTA and its members have consistently advocated for an effective, well resourced, single national regulator with a focus on quality assurance and continuous improvement across the VET sector.

The VTA supports the establishment of the national VET regulator and the opportunity it presents to rationalise and streamline the regulation and reporting arrangements for RTOs.

The VRQA: Excessive Audits

The VRQA website states their regulatory practices are based on a style that is proportionate to risk; minimises duplication with other compliance requirements; a 'one-stop-shop' for all education sectors; and focuses on quality assurance, not quality control.

In practice TAFE Institutes find the VRQA regulatory regime to be audit centred, disproportionate, onerous and to have created the need for extra resources (human & financial) to support audit regimes. One Institute cites an identified audit regime for 2010 of some 50 external audits to September 2010. While these are as a result of the broad range of activities provided by the Institute they claim the audit regime of the VRQA, in particular, is excessive and heavy handed.

This situation is exacerbated by the increased use of external auditors with little contextual knowledge of the organisations they are auditing which leads to problems such as misunderstanding, misinterpretation, and causes an extra burden on resources.

As indicated above the current regulatory system should take a risk based approach which aims to focus the regulatory effort on those RTOs that pose the greatest risk to quality.

While TAFE institutes would agree that public ownership cannot be viewed as a proxy for quality, under a system that purports to regulate proportionate to risk TAFE Institutes could expect to be the recipients of light touch regulation given their low risk to government for market failure, long term operation, financial stability, community recognition, and community service focus.

However since the formation of the VRQA in 2007 this approach has not been evident. The Authority has acted more like an auditor than a regulator. It has been slow to implement change and as a result all RTO's have been swept up in the in the same regime of high level of regulation and reporting initially designed to check the quality and efficacy of new RTO's seeking registration and RTO's seeking re-registration.

There has been little discrimination of high and low risk providers in the organisational transition period, and although this may be expected to change over time in the short term it has been an unnecessary burden on TAFE providers.

Links between migration and international education whereby students have been encouraged to apply for courses in the hope they might gain permanent residence have created perverse outcomes for the whole VET sector.

The recent high profile failure of a number of private RTO's, the poor experiences of some international students, and the resulting impact on the international student market has led to a 'crisis' of confidence in the training system and a crisis 'response' from the VRQA. This has involved a system of rapid audits on high risk providers; and the layering of more regulation on to the whole sector to strengthen consumer protection via closer scrutiny of financial stability and proper business management.

We do not dispute the issues raised have required a government response however, we are concerned with problems of proportion, prescription and perpetuity. Options and design principles are not well considered in terms of who should be scrutinised, how legalistic approaches need to be and how long the situation will require the measures. Mechanisms such as sunset clauses and periodic reviews need to be built into legislation to ensure that regulation remains relevant and effective over time.

The current regulatory regime is based in large part on compliance measured through financial metrics. The current regulatory activity however appears to be driven by a

government desire to be seen to be responding to the consumer protection of and provision of support for international students.

Notwithstanding the source of these problems has been confined to the private providers, and is also in part due to the failure of the state and federal regulators to ensure they met the terms of their registration; the State Government (driven in part by Commonwealth responses to these issues) has created a new set of expectations and compliance measures for TAFE institutes.

There are some 1200 plus RTO's in Victoria including TAFEs, schools, ACE, enterprise and private providers. The VRQA currently audits RTO's at the time of registration and in their final year of registration to confirm compliance with the national standards (AQTF) as well as ad hoc risk based audits. Establishing and maintaining quality in the VET sector presents difficulties because of its size and diversity. Public and private providers present the VRQA with distinctly different risk profiles, and the rapid growth of private providers, as a result of government policy to open the VET market to greater contestability, has arguably stretched the resources of the Regulator in overseeing the training industry.

If the government wills the ends, that is a public and private VET sector that is both quality assured and delivers quality outcomes to its users; then it must also will the means through a properly equipped regulator with access to the human and financial resources necessary to confidently undertake its legislated role.

Notwithstanding the proper resourcing of the state regulator we would reiterate our position that the VCEC recommends that the State rethinks its position on the national VET regulator.

Crisis Regulation and Quasi Regulation

The purpose of regulation in the VET sector appears to have shifted focus lately as a result of the recent 'crisis' in the international education market. Governments, state and federal, have sought to achieve a number of consumer protection (and public confidence) outcomes by clamping down on the whole sector. The VTA and its members believe it would be more effective, appropriate and less burdensome if increased regulation requirements were directed to where the risks are evident (and/or likely) rather than applied to the system as a whole.

Executive Memoranda also provides a constant stream of quasi regulation to which TAFE institutes are expected to respond. These range from system information to compliance activities. One example is of the approved process for advertising and communications issued in September 2008 (Executive Memorandum 2008-42 30.09.08 attached) which informed TAFE CEO's of the new guidelines for public entities issued in relation to the management of Government advertising and communications which affect the stand-alone TAFE institutions in Victoria but not dual-sector universities.

The Executive Memorandum reinforced the obligations of TAFE institutions under the new guidelines. These guidelines took effect immediately. The intention of the Victorian Government's Communications Approval Process was to ensure that all advertising and communications meet appropriate standards; are well considered, relevant, effective and accountable because they are funded by taxpayers' money.

TAFE institutes understand that advertising and communications funded by tax payer's money must be managed effectively and that the Victorian Government wished to capture government expenditure in this area. However, TAFE institutes already report annually to the Victorian Parliament, and are able to offer alternative approaches to report spending on campaign advertising and communications that enable the Victorian Government to ensure that Victorian taxpayers' money is well spent.

The VTA on behalf of its members provided advice to the government on what it identified as the likely unintended consequences of TAFE institutes having to comply with the new approvals process for advertising and communications. These included:

- The advantage offered to TAFE institutes adhering to the guidelines was that in doing so they would access the cheaper advertising rates through the Master Agency Media Service (MAMS) contract. In fact these cheaper rates were already available to TAFE institutes and in practice many (especially those in the regions) were able to source alternative services and cheaper rates using their own local networks.
- The process of applying to place a paid communication activity, receiving endorsement and certification of compliance before being allocated an approval number to proceed with a media booking can be lengthy, is cumbersome and achieves precisely what the guidelines say the process is not designed to do i.e. "The approval process is not designed to hinder your communications requirements. It has been put in place to help you deliver your message and achieve your desired outcomes effectively and efficiently."
- The scope of compliance is detrimental to operational and competitive activities. It extends to advertising and paid communications including newspaper inserts and paid public relations, as well as materials and events produced in support of these, such as websites, print collateral and launches. TAFE Institutes are in the unique position of being the only public entities that face the introduction of policy reforms that mean they have to compete for public funding. They must be nimble with the capabilities to quickly inform the training market, through advertising and communications, of opportunities that will ultimately provide a highly skilled workforce for Victoria. The processes mandated by the Guidelines impose significant time delays that negatively impact on the responsiveness of TAFE institutes compared to private RTOs, and TAFE Divisions of Universities— neither of which is bound by the approval process for advertising and communications. This is inequitable and creates disadvantages for stand-alone TAFE providers in the Victorian VET market place.

- While the process does not apply to functional advertising (tenders and public notices) and vacancy recruitment advertising, recruitment advertising that is not specifically designed to fill immediate vacancies (e.g. a campaign that promotes a career path in general terms) is deemed to be campaign advertising and hence subject to this approval process. The capacity to promote career opportunities in a very competitive recruitment market can be hampered by the approval process.
- TAFE institutes earn significant proportions of total revenues from fee-for-service activities, estimates range from 30% to 50% of total revenue derived from non-tax payer sources. However advertising and communications for fee-for-service activities are considered to be included in the process described in the Guidelines. In the context of Skills Reform and increased competition this is at best inappropriate and at worst jeopardises commercial opportunities through approval process delays.
- Victoria's TAFE institutes contribute substantially to Victoria's export earnings from education to international students. They need to have unfettered access to marketing services meeting local needs in overseas locations and not be tied to one supplier selected for domestic purposes in Victoria.

The VTA received no response to its advice and TAFE institutes continue to have to comply under the regulations with no changes, regardless that their original concerns have become the reality*; and that Skills Victoria, in its Executive Memorandum undertook to 'issue a further memorandum in due course responding to questions collected from VTA members about the operation of the contract, and will periodically provide updates to TAFE Marketing Managers as required.'

(* One Regional TAFE institute consulted for this submission reported the impact on their marketing budget from having to use the MAMS has been to halve the value of their marketing dollar.)

Duplication and Intra Department regulatory arrangements/agreements

The State Government makes a significant investment in the infrastructure for public institutions; this infrastructure and other resources in public providers represent investment on behalf of the community and industry and government has an obligation to maintain and develop these on behalf of the state.

The Minister and government department with responsibility for TAFE Institutes has changed with successive Cabinet reshuffles and departmental restructures. These shifts in the machinery of government have required some renegotiation of the regulatory responsibilities of Ministers which has had a flow on effect to those being regulated.

The planning process for TAFE Institute capital works and planning exemptions is an example of where such a shift has created a significant compliance issue for TAFE Institutes.

Prior to 2006 TAFE Institutes came under the responsibility of the Department of Education and Training (DET). Under this arrangement they were covered by the Minister's ministerial exemption from gaining planning permissions. In 2006 responsibility for TAFE Institutes was moved from DET to the Department of Industry, Innovation and Regional Development (DIIRD) under this new arrangement TAFE Institutes no longer had the benefit of this exemption.

A regulatory hiatus existed and a lengthy process ensued in which the Minister for Skills and Workforce Participation negotiated with the Minister for Planning for an exemption from planning permits. The respective Ministers came to agreement on the issue in 2009 and the Minister for Skills and Workforce Participation was granted an exemption from planning schemes.

In June 2010 clarification of the exemption in the context of the planning process for TAFE Institutes was detailed in an Executive Memorandum to TAFE Institute CEOs.

As a condition of the exemption from planning schemes, the Minister for Skills and Workforce Participation agreed to 'shadow' arrangements for TAFE Institutes. Under these arrangements, even though it is understood that the TAFE Institute will gain the necessary planning permissions, Institutes are obliged to undertake a 'shadow planning' process in which they are required to consult with the local planning authority (and in some cases more than one authority) and to consult with the broader community.

From the TAFE perspective the 'exemption' agreed between the Minister for Planning and the Minister for Skills and Workforce Participation does not amount to an exemption in practice as they still have to go through the planning process. The 'shadow process' in effect is as onerous as having to obtain the planning permission; and it is more onerous than under the previous DET arrangements.

(Attachment No.2 Executive Memorandum 2010-27 Planning Process for TAFE Institute Capital Works and Planning Exemptions)

Industrial Relations

The VCEC Commissioners indicated that management and operational issues are outside the scope of their review but acknowledged that Industrial Relations (IR) regulations may legitimately be raised as an issue where they impact on the regulatory environment.

The main impact of the industrial relations regulations is the quasi regulation status, of the current Victorian government industrial relations policy. All of the TAFE Institutes (including the four dual sectors) are required to comply with the current Victorian

Public Sector Industrial Relations policy. The purpose of the policy is to ensure that all public sector agencies industrial relations strategies and actions reflect Victorian Government industrial relations policy. An aspect of this policy requires each TAFE Institute to submit their management logs to the Victorian government for costing and approval, prior to negotiating with their employees.

The industrial instruments that govern the employment of teachers within the sector outline not only the qualifications that are required for the various classification standards but also regulate the teaching employment relationship from the hours worked, attendance time, allocation of duties and to what extent excess teaching hours can be allocated. This is not required of private RTO's, and it adds yet another dimension to the regulatory framework that public sector TAFE Institutes must comply with.

Areas for Reform

The following are suggested areas of regulation that could be reformed or reduced as a matter of priority:

- Better clarify the role of government in relation to TAFE as owner and regulator of the public VET system especially where this results in a regulatory burden over and above that of other RTOs;
- Immediately revoke the obligations for TAFE institutes under the Victorian Government Advertising and Communications Approval Process;
- More effective consultation with regulated parties at all stages of the regulatory cycle (regulation making and administration);
- Reduce the frequency of audits;
- Review the 'shadow planning' process and renegotiate the conditions relating to planning exemptions;
- Rationalise the statistical collections to the things that are important and that will be used for change/improvement;
- Streamline the statistical collections;
- Harmonise the Commonwealth and State regimes/processes where possible;
- Institute mechanisms such as sunset clauses and periodic reviews to ensure that regulation remains relevant and effective over time;
- Encourage Victoria to join the national VET regulator to assist to rationalise and streamline regulation and reporting arrangements;
- Implement a cross sectoral provider registration process such that if you meet the requirements for one sector/one process you should automatically qualify for the others (with only additional processes where necessary not full duplication);
- Enforce the 'report once, use often' practice to reporting related to regulatory requirements;
- In the longer term move towards single tertiary sector regulation as opposed to separate VET and HE regulation;
- Reinforce the role of the AQTF as the national standard and therefore the lack of necessity for VRQA standards as well.

Conclusion

The information cited in this submission is not exhaustive but is indicative of a wide range of issues that warrant the need for a specific examination of the regulation of the Victorian public VET sector.

TAFE Institutes would agree that significant public financial support warrants accountability and demonstrable results. However, many argue that current requirements are not appropriate, impose compliance costs without commensurate benefits and are lacking any sense of proportion in regard to the size of the organisation or scale of the undertaking.

The shift to competitive tendering and contracting for procuring government funded services has brought greater transparency, and in many cases enhanced efficiency, in the delivery of services. Yet it has also increasingly demanded greater prescription of how agencies are to function and deliver services. While the aim has been to drive improvements in service delivery, TAFE Institutes report being swamped by contractual regulation, a multiplicity of reporting requirements, micro management, restrictions on other activities and significantly greater compliance burdens.

TAFE Institutes need the trust of government and the public to undertake their diverse roles within society. This must be underpinned by sound institutional arrangements. Where possible self regulatory regimes such as the development and implementation of codes of conduct should be encouraged that enhances public trust and confidence in their activities.

TAFE Institutes also need what all businesses need: a sound and supportive regulatory system; access to resources (labour and capital); and good relationships with their stakeholders — notably government in the case of government funded services — but also people seeking assistance, business and the wider community.

In the longer term the regulatory system should aim to provide:

- Knowledge systems that support the understanding of the sector by itself, government and business, as well as building an evidence base of information that is returned to providers to enable appropriate learning and provide value for their reporting;
- Clearer governance and accountability via a consolidated regulatory framework that operates on the principles of proportionality and where 'report once, use often' underpins all reporting requirements;
- Regulation at state and territory level that enhances regulatory consistency across jurisdictions or reduces duplication and overlap in regulation and in the role and operation of regulatory bodies;
- A range of feasible policy options including self-regulatory and co-regulatory approaches;

- Effective guidance for the relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements;
- Regular targeted public reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits the VET sector; and
- A common framework for benchmarking, measuring and reporting on the regulatory burden.

The VTA believes that the public education and training industry is one that would benefit from regulatory reduction. It would also benefit from the same attention that has been paid to simplifying and improving business regulation.

Appendix 1: VET FEE-HELP Explanatory Note and Additional Information

VET FEE-HELP - Its implementation in the context of VET courses in Victoria

Within a Skills Reform environment, TAFE providers have carefully considered and addressed the changed conditions to ensure effective and efficient implementation for diverse groups of learners.

For Skills Deepening courses, VET FEE-HELP is a key component offering learners the option of an income contingent loan for tuition fees for government subsidised or fee for service places. The scheme is detailed in federal legislation, the Higher Education Support Act 2003.

VET FEE-HELP has been derived from the Higher Education FEE-HELP model and incorporates substantially those existing administrative requirements and curriculum structures with variation for the types of fees paid by VET students. In particular the system:

- is underpinned by a model of subjects that start and end, usually within a semester;
- stipulates stringent requirements for the publication of course details, including content and cost, twice a year, three/four months in advance of a semester commencement; and
- includes a census date that is no less than 20% into course delivery to allow students to withdraw without penalty or liability for debt.

As a result, the VET FEE-HELP system is purely designed to manage a loan and repayment plan for learners and a payment system for education providers, without any account being taken of whether sound educational practice, in particular flexible learning designed to the skills and competencies of the learner, is compromised in the process.

The flexibility that lies at the core of VET provision relates to options for learners. Current Victorian and national policy imperatives require RTOs to respond to the emerging and current demands of individual and enterprise learners. Learner groups may select relevant content in stand alone, or combinations, of competencies; in qualifications, skill sets, single competencies or customised collections of competencies. RTOs may also work within State delegation of accreditation and accredit new competencies and qualifications at Skills Deepening levels.

Within current arrangements, individual learners and enterprises may also choose to begin their study at any time in the year to continue for a negotiated duration that is outside of a traditional academic year construct. National recognition and RPL are standard and required components of the vocational education and training system that are designed to recognise the existing and required competencies of the learner in relation to the standards required for a particular qualification.

The administrative requirements of VET FEE-HELP require an RTO to predict and publish all possible courses, and combinations of learning therein as units of study, accurately and completely three months prior to the standard two semester starting dates that are associated with an academic study year.

In effect, flexible start and finish dates for different groups, rolling enrolments and customised gap training requirements would impose a burden on the RTO to maintain multiple administrative arrangements to accommodate VET FEE-HELP conditions requirements – in particular census dates for withdrawal and publication of loan liability statements for students.

As training packages become larger, competencies more numerous, packaging rules more flexible and RTOs engage more with industry and non-school leaver students, the ability to predict and correctly publish course options becomes more challenging for providers. The quick response required for Skills For Growth clients is an example of operational arrangements that are at odds with publication arrangements for VET FEE HELP. The resulting risk of not being properly organised is that the learner may not be able to apply for VET FEE-HELP and therefore not be able to afford to study.

To accommodate both flexibility of learning programs for individual students and enterprises and also the multiple administrative requirements, several large TAFE Institutes have decided on a one to one relationship of competencies to units of study. They have also implemented about 10 census dates in the calendar year.

As all VET FEE HELP eligible students in all VET FEE HELP eligible courses must be reported to DEEWR, the administrative requirements for VET courses have multiplied, placing a substantial additional burden on student administration systems and personnel.

With this in mind, the way in which VET FEE-HELP administrative arrangements are managed within the philosophy and operation of the Skills for Growth program at a Skills Deepening level needs to be thoroughly reviewed and, where appropriate, redesigned.

The key to a successful VET sector is its responsiveness to the needs of enterprises and individuals. New job roles and the changing requirements of existing job roles require an agile and dynamic approach to program design. The administrative requirements of VET FEE-HELP tend to favour established courses. This may be reasonable for many course requests but does not meet the needs of the emerging economy.

It is understood that, in the first instance, the translation of the Higher Education system to the VET sector was a convenient way to expedite the implementation of a FEE-HELP scheme within very constrained time-lines. However, it would be highly regrettable if this scheme were to remain in place indefinitely without it being examined as to its effective application to the flexible needs of the VET sectors practices.

Extracts from the HIGHER EDUCATION SUPPORT ACT 2003 - SCHEDULE 1A

VET FEE-HELP Assistance Scheme

28. Schedules of VET tuition fees

General rule

- (1) A * VET provider must give the Minister a schedule of the * VET tuition fees determined under clause 27 for all the VET units of study it provides or proposes to provide, other than under * VET restricted access arrangements, during a period ascertained in accordance with the * VET Provider Guidelines.
- (2) The provider must:
 - (a) ensure that the schedule provides sufficient information to enable a person to work out the person's * VET tuition fee for each * VET unit of study the provider provides or is to provide; and
 - (b) publish the schedule for a particular period by the date ascertained in accordance with the * VET Provider Guidelines; and
 - (c) ensure that the schedule is available to all students enrolled, and persons seeking to enrol, with the provider on request and without charge.

7.10 DATE BY WHICH A VET PROVIDER MUST PUBLISH THE SCHEDULE OF VET TUITION FEES FOR A PARTICULAR PERIOD

7.10.1 For the purposes of paragraph 28(2)(b) of Schedule 1A of the *Act*, a VET provider must publish a schedule of VET tuition fees for a VET unit of study, which:

- a) meets the course requirements under subclause 45(1) of Schedule 1A of the *Act*; and
- b) does not include a unit being undertaken only through a VET restricted access arrangement as follows:
 - i) by the 1st of April of each year for a VET unit of study with a census date in the second period of the same year; and
 - ii) by the 1st of October of each year for a VET unit of study

Appendix 2: Dual Sector Explanatory Note – Minter Ellison, Carolyn Vigar, July 2010

Hybrid regulation of dual sector institutions

TAFEs and non-dual sector universities in Victoria are regulated under distinct regimes primarily set out in the applicable enabling legislation. Dual sector universities, in contrast, must comply with the requirements of their own enabling University Act, plus the requirements of the enabling Act for the TAFE sector: the ETR Act. These obligations seek to achieve parity in regulation between the TAFE divisions of universities and stand alone TAFE institutes, but in doing so subject dual sector institutions to a regulatory regime which does not apply to other universities in Victoria.

University Acts

For each Victorian university (including dual sector institutions), there is a University Act which is the primary source of the university's powers and obligations. Broadly speaking, University Acts have applied consistently across dual sector and non-dual sector institutions in Victoria. The consistency across the enabling legislation for universities is even more pronounced under the new 'model' University Acts (**Model Acts**), which have been enacted but are yet to commence.

While the existing University Acts for dual sector institutions specifically provide for TAFE divisions, TAFE academic boards, and particular employment arrangements for TAFE division staff, the new Model Acts do not provide specifically for these matters. Indeed the only relevant difference between the Model Acts for dual sector institutions and non-dual sector institutions is the specific requirement to have on the Council a member with substantial knowledge or experience with vocational education and training.

Under each University Act, the Council is the peak governance body of the respective university. The University Acts recognise that each respective university is a body politic, as well as a body corporate, and vest in each university's Council the power to make university statutes and regulations which govern the university. The structure of courses and the awards of the university are matters for the Council, as are the terms and conditions of employment of staff (subject to workplace relations legislation).

The current University Acts do not require universities to report to the relevant Minister (currently the Minister for Skills and Workforce Participation (**Minister**)). New reporting requirements to be introduced under the Model Acts mean the commercial activities of the relevant university must be reported to the Minister on request. These reporting requirements are much less onerous than those applying to TAFEs, reflecting the greater autonomy of universities from the Commonwealth Government. As much of the funding for universities is derived from the Government, there are additional reporting and performance requirements which universities need to satisfy under these funding arrangements.

ETR Act

In contrast to the autonomy granted by University Acts, the ETR Act – and Ministerial directions and guidelines made under that Act – closely regulates the TAFE sector, including the TAFE divisions of universities. The system of regulation reflects an integrated TAFE sector with external accreditation of courses and awards by a statutory authority, extensive reporting requirements, Ministerial oversight, and consistency in employment arrangements across the TAFE sector. Three of these aspects are used to illustrate the system of hybrid regulation currently applying to dual sector institutions.

Reporting obligations

Reporting obligations under the ETR Act require TAFE institutes and dual sector institutions to report extensively and on an on-going basis, to the Minister, the Secretary to DIIRD and the Victorian Skills Commission. These reports include the compilation of statistical data in accordance with detailed requirements set out in Ministerial directions. The application of these reporting requirements to dual sector institutions place these universities under a very different accountability regime to that applying to other Victorian universities.

Accreditation

The Victorian Registration and Qualifications Authority (VRQA) registers education and training providers (including dual sector institutions) and accredits all TAFE courses provided by these providers. In comparison, the VRQA only accredits higher education courses provided by non-dual sector universities (along with other education and training providers) to overseas students.

Employment

The employment of staff at TAFE institutes is regulated by the ETR Act and the Ministerial directions under that Act. These requirements are currently imported into the University Acts of dual sector institutions by express reference. A submission to Victoria's higher education sector review in 2008 from a dual sector institution commented that this created a disparity between higher education and TAFE staff within the university, and hampered the movement of staff between divisions. The issue was also recognised in the *Statement of Intent: Higher Education Review* published by the Victorian Government in November 2008.

The Model Acts in respect of the dual sector institutions no longer include express references to the employment requirements of the ETR Act. These requirements, however, remain relevant by operation of provisions of the ETR Act which specifically apply these requirements to the TAFE divisions of dual sector institutions.

Skills Victoria

Department of Innovation, Industry and Regional Development

Executive Memorandum

2010-27

7 June 2010

TO: CEOs OF TAFE INSTITUTES

SUBJECT: **PLANNING PROCESS FOR TAFE INSTITUTE CAPITAL WORKS AND PLANNING EXEMPTIONS**

In December 2009, through an Order in Council (Order), the Minister for Skills and Workforce Participation was granted an exemption from planning schemes under section 16 of the *Planning and Environment Act 1987*. The Minister may exercise this exemption if required, on development projects carried out on her behalf.

To assist TAFE institutes with their capital developments, the following establishes the exemption in the context of the planning process and government policy as outlined in the TAFE *Capital/Infrastructure Guidelines*.

Context

The Order directs that planning schemes are not binding on the use or development of land carried out by or on behalf of the Minister for Skills and Workforce Participation. This has the support of both the Minister for Skills and Workforce Participation and the Minister for Planning.

The Minister for Planning has asked the Minister for Skills and Workforce Participation to ensure, that when an exemption is being sought, each request is considered on a case by case basis. This will ensure that there is no ambiguity about the extent to which the Order applies in relation to the use and development of land. The Order applies to the Minister, and not directly to TAFE institutes or universities.

TAFE institutes are required to plan their capital works in accordance with the Government's Asset Management Framework prepared by the Department of Treasury and Finance and can be summarised by the following process:

Master Plans

A master plan is essential for each campus where the TAFE institute expects to carry out capital development works. These master plans identify the critical capital works needed to deliver the business services of the TAFE institute and are developed with a

five to ten year outlook. The master plans should be reviewed and adjusted annually to ensure alignment with the TAFE institute's business.

The master plans should portray the condition of the existing buildings on the campus, and identify development opportunities translated into potential building footprints showing site areas and building heights.

The master plans must be prepared in consultation with the local council and community and Skills Victoria.

Capital Development

An outcome of the preparation of master plans is a list of prioritised capital works projects, entered in each TAFE institute's Multi Year Strategy, which are required to meet the Institute's business needs.

All capital works proposed by the TAFE institutes must be:

- registered on the Skills Victoria Multi Year Strategy,
- approved by the Minister for Skills and Workforce Participation; and
- approved by the Expenditure Review Committee (ERC) to proceed.

Development on Land Zoned *Public Use 2 – Education*

In the majority of cases, projects being developed by TAFE institutes will be on land zoned Public Use 2 – Education which do not require planning permits. This also applies to universities with a TAFE sector and universities in general.

However, the development must comply with the requirements of the local council's planning scheme. TAFE institutes in this instance should consult with the council to ensure that the project complies with the planning scheme, including planning overlays.

As prescribed in the *TAFE Capital/Infrastructure Guidelines*, TAFE institutes and TAFE projects undertaken within a dual sector university will be expected to conform to Government policy, and carry out a consultation process with the local council and community as follows:

1. Consult with the local council to ensure that the development aligns with the council's planning objectives, and take advice as to whether a community consultation process should be undertaken.
2. Inform Skills Victoria on the outcome of the discussions with the local council and advise the date for the first community consultation session, if required.
3. Carry out a well publicised consultation session with the local community, if required.
4. Conduct a second presentation which addresses any issues that were raised previously.

5. Complete a final presentation to the community and council which confirms the agreed development.

Universities are also expected to undertake council and community consultation when involved in construction projects.

Development on Land Not Zoned *Public Use 2 – Education*

In December 2009, the Governor in Council published an order in the Victoria Government Gazette stating that “planning schemes shall not be binding on the use and development of land carried out by or on behalf of the Minister for Skills and Workforce Participation”, in accordance with section 16 of the *Planning and Environment Act 1987*.

Projects, to be developed by TAFE institutes or dual sector universities, which are registered on the Skills Victoria Multi Year Strategy (MYS), approved by the Minister for Skills and Workforce Participation and the ERC are undertaken ‘by and on behalf of the Minister for Skills and Workforce Participation’ for the following reasons:

- The Minister for Skills and Workforce Participation administers the *Education and Training Reform Act 2006* (the Act) in relation to all tertiary education matters.
- TAFE institutes are accountable to the Minister under Division 2 of the Act for the efficient and effective governance of the Institute which includes performing its functions and exercising its powers in accordance with the objectives of the State Government.
- Under the Performance Agreements between TAFE institutes and the Victorian Skills Commission, the Institutes are required to comply with the State Government’s Asset Management Framework for the approval of all future asset investment projects.

The Minister for Skills and Workforce Participation has made a commitment to the Minister for Planning that a thorough consultation process will be undertaken for each project, and TAFE institutes and universities undertaking TAFE projects must comply with this commitment from the Minister.

Accordingly, TAFE institutes and dual sector universities undertaking a TAFE project are required to consult with the relevant council, as the local planning authority, from the early stages of any development project and to consult with the broader community. In effect, TAFE institutes and the universities will be obliged to undertake a ‘shadow planning’ process as outlined above.

Should a TAFE institute or a dual sector university believe that, for a particular TAFE project, it will have to rely on section 16 of the *Planning and Environment Act 1987* for an exemption (including planning permits and overlays), they should request written confirmation from Skills Victoria that the project is exempt, which can then be provided to the relevant council.

The Victorian Government Solicitors Office has advised Skills Victoria that universities are not entitled to rely on the Minister's exemption from planning schemes for university projects under section 16 of the *Planning and Environment Act 1987*.

Project Control Group (PCG)

A PCG is established at the inception of a project to sign off on the functional brief, ensure compliance with Government policy and planning requirements, and approve the appointment of a project design team.

The PCG is established as a joint management structure of the building project administered by the TAFE institute as the client and Skills Victoria representing the Victorian Skills Commission.

The *TAFE Capital/Infrastructure Guidelines* require that a Skills Victoria representative be invited as a member of the PCG before any project planning is started.

For further information please contact Peter Nowatschenko, Manager Infrastructure Development, Skills Victoria, at peter.nowatschenko@diird.vic.gov.au or on (03) 9637 2794.

Signed by

KYM PEAKE

Deputy Secretary

Skills Victoria

Department of Innovation, Industry and Regional Development

Executive Memorandum

2008-42

30 September 2008

TO: CEOs OF TAFE INSTITUTIONS

SUBJECT: Approval Process for Advertising and Communications

New guidelines for public entities have recently been issued in relation to the management of Government advertising and communications. These affect the stand-alone TAFE institutions in Victoria but not dual-sector universities.

This Executive Memorandum reiterates advice previously provided to TAFE institutions by the Strategic Communications Branch of the Department of Premier and Cabinet. This Branch is implementing the mandatory changes, initiated and approved by the Premier.

It appears some TAFE institutes may not have received the previous notification of their obligations under the new guidelines. For this reason, enclosed is a further copy of the *Victorian Government Advertising and Communications Approval Process - A Guide for Public Entities*, and some related material which clarifies the nature of functional rather than campaign advertising.

The Guidelines can be downloaded from the Central Station website <http://intranet.vic.gov.au>, by following the links to the Advertising and Communications page. Philippa Nihill of DIIRD, on phone number 9938 0513, will be in touch with you all soon about how you can gain access to this intranet site for relevant institute staff, enabling you to access policy updates as they occur.

Representatives of Skills Victoria, DIIRD Strategic Communications and the Strategic Communications Branch of the Department of Premier and Cabinet met with Victorian TAFE Association representatives today to explore how the policy might be introduced with minimal disruption to TAFE institutions. The meeting noted significant savings are available under the whole-of-government media buying contract to which the guidelines apply.

These guidelines take effect immediately. For queries or further assistance, please contact Merita Tabain on 9651 9252.

Skills Victoria will issue a further memorandum in due course responding to questions collected from VTA members about the operation of the contract, and will periodically provide updates to TAFE Marketing Managers as required.

Philip Clarke

Acting Deputy Secretary

VICTORIAN GOVERNMENT
ADVERTISING AND
COMMUNICATIONS
APPROVAL PROCESS
A GUIDE FOR PUBLIC ENTITIES

September 2008

WHO THESE GUIDELINES APPLY TO

These guidelines apply to Public Entities as defined in the *Public Administration Act 2004*.

Public entities are defined as bodies whether corporate or unincorporated that are established by or under an Act (other than a private Act) or the Corporations Act or by the Governor-in-Council or by a Minister and which have a public function to exercise on behalf of the State or are wholly owned by the State (and in the case of a body corporate, where the Governor-in-Council or a Minister has the right to appoint at least one half of the directors).

Separate guidelines apply to other classes of public entity, including Government Departments.

INTRODUCTION

The Victorian Government's Communications Approval Process ensures that all advertising and communications meet appropriate standards. Government's advertising and communications must be well considered, relevant, effective and accountable because they are funded by taxpayers' money.

The approval process is not designed to hinder your communications requirements. It has been put in place to help you deliver your message and achieve your desired outcomes effectively and efficiently.

In general the level of expenditure determines the level of scrutiny you will be required to undergo. However, there are overriding principles:

- Your proposed communications must comply with the *Guidelines for Victorian Government Advertising and Communications*.
- Your application should clearly identify the need for the campaign/activity, what it aims to achieve and how its effectiveness will be evaluated.
- Your proposed communication strategy must be strategically sound with clear objectives, clearly identified target audience/s, appropriate media options, an appropriate budget allocation, and a suitable robust evaluation plan.
- A relevant executive officer is aware of your proposed activity and supports the application.

AUTHORITY

The Communications Sub-Committee of Cabinet (CCC) is responsible for overseeing Government communications and advertising activity, providing direction, setting priorities and identifying themes and messages. CCC endorsed this new approval process in July 2008.

CCC takes advice from the Government Communications Review Group (GCRG). This is a peer review body chaired by the Director of Strategic Communications, DPC, and comprising Senior Communications Officers from across Government on a rotational basis. All GCRG panel members have extensive advertising and communications experience.

SCOPE

Compliance with this approval process is mandatory for all Public Entities as defined above.

Activities to be submitted comprise: advertising and paid communications including newspaper inserts and paid public relations, as well as materials and events produced in support of these, such as websites, print collateral and launches.

This process does not apply to functional advertising (tenders and public notices) and vacancy recruitment advertising however, recruitment advertising that is not specifically designed to fill immediate vacancies (e.g. a campaign that promotes a career path in general terms) is deemed to be campaign advertising and hence subject to this approval process.

MASTER AGENCY MEDIA SERVICE (MAMS) APPROVAL NUMBERS

The MAMS contract is a whole-of-Government contract for media planning and buying services. It is mandatory for all Government entities.

From August 2008, contract users require a MAMS Approval Number in order to place advertising through the MAMS campaign advertising contract. Irrespective of your campaign expenditure – from a single insertion press advertisement to a multi-million dollar, multimedia campaign – a MAMS number is mandatory.

The MAMS contractor cannot – and will not – book your advertising without an approval number. (Financial penalties apply if the contractor does so).

This number will be provided by the GCRG Secretariat as part of the approval process. The contractor and the applicant will be advised by email of the MAMS Approval Number.

REMEMBER: Functional advertising and recruitment vacancy advertising will not require a MAMS Approval Number. These types of advertising must, however, still comply with Government functional advertising and recruitment advertising policies.

THE APPROVAL PROCESS

1] MEDIA EXPENDITURE UNDER \$50,000

CCC has authorised that all advertising and paid communications activities with a media value under \$50,000 can be approved by an Authorised Officer in your entity.

How it works:

- 1) Fill out the **PE:U50** application form with details of your proposed activity and sign it off.
- 2) Forward the application to your entity's Authorised Officer for endorsement and certification of compliance with the *Victorian Government Advertising and Communications Guidelines*.
- 3) Once endorsed, your Authorised Officer will forward those applications involving campaign advertising to the GCRG Secretariat. You will then receive your MAMS Approval Number which will be verified by the MAMS contractor when you place your media booking.

2] MEDIA EXPENDITURE OVER \$50,000

GCRG will consider applications over \$50,000 and make its recommendation to the CCC. Please be aware that approval-in-principle by GCRG is no guarantee that CCC will endorse the recommendation. Don't proceed with production until final CCC approval has been received in writing.

Please note that media expenditure is not the sole determinant of which category an activity falls into. Entities or the GCRG may, at their discretion, refer applications with a media value lower than \$50,000 to CCC if they consider them sensitive or controversial or otherwise requiring CCC consideration.

How it works:

- 1) Fill out the **PE:50+** application form with details of your proposed activity and sign it off.
- 2) Forward your application along with your Communications Strategy to your entity's Authorised Officer who will endorse your activity and certify its compliance with the *Victorian Government Advertising and Communications Guidelines* ¹.

- 3) Your entity's Authorised Officer will then arrange endorsement and sign off by your entity's CEO or delegate.
- 4) When endorsed by your entity's CEO/delegate, your Authorised Officer will then forward the application and strategy to the GCRG Secretariat by the next GCRG due date.²
- 5) GCRG will consider your application. If GCRG's recommendation is to approve or reject the application it will be added to the agenda for the next CCC meeting. If further advice or re-working is required you will be advised.
- 6) CCC will then consider your activity, along with GCRG's recommendation and make its final determination.
- 7) The GCRG Secretariat will advise your Authorised Officer of the outcome. If approved, the Secretariat will provide you with your MAMS Approval Number via email. This number will be verified when you place your media booking with the MAMS contractor.
- 8) The Evaluation and Recording (ER) form should be completed and forwarded to the GCRG Secretariat no later than 0 days after completion of the campaign/activity.

IMPORTANT CONSIDERATION

You should present your advertising/communications strategy, strategic thinking and only initial creative concepts, where applicable. Generally, final creative solutions and advertising production should not commence until approval to proceed has been granted.

² FOR GCRG DATES SEE <http://intranet.vic.gov.au/advertisingandcommunications>



RECORD KEEPING AND CABINET CONFIDENTIALITY

Please note that records of applications for approval created pursuant to these Guidelines may be subject to audit and should therefore be appropriately managed.

All items with media expenditure over \$50,000 are prepared for CCC consideration and must therefore be handled in strict confidence and in keeping with the conventions and protocols of Cabinet.

Specifically, this means they should be marked 'Cabinet-in-Confidence' and they should not be emailed outside a local area network, but rather, should be delivered in hard copy via hand or secure courier.

If you have queries regarding these requirements, contact the Cabinet and Legislation Liaison Officer (CLLO) of the relevant Department for further details.