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**Australian Government**  
**Department of Employment,  
 Skills, Small and Family Business**

**Minute to the Delegate**

**Re-crediting FEE-HELP balances of students of Franklyn Scholar (Australia) Pty Ltd using "own initiative" powers under cl 46AA of Schedule 1A**

<b>To:</b>	s 22(1)(a)(ii) First Assistant Secretary	<b>Date:</b> 4 October 2019 <b>File:</b>
<b>From:</b>	s 22(1)(a)(ii) Assistant Secretary	<b>Deadline for response and reason:</b> 11 October 2019 to expedite the recommendation
<b>Through:</b>	s 22(1)(a)(ii)j Director	<b>Contact officer/s:</b> s 22(1)(a)(ii)j <b>Phone:</b> s 22(1)(a)(ii)j

**Purpose**

1. The purpose of this minute is to:
  - a) Recommend you agree to re-credit the FEE-HELP balances for the 31,495 incomplete units of study of the 5,097 students of Franklyn Scholar (Australia) Pty Ltd (Franklyn Scholar) listed at **Attachment A**.

**Recommendation**

2. It is recommended that you:

(a) <b>Agree</b> to re-credit the FEE-HELP balances for the students of Franklyn Scholar listed at <b>Attachment A</b> for all incomplete VET units of study listed in that attachment under subclause 46AA(1) of Schedule 1A to the <i>Higher Education Support Act 2003</i> (HESA) on the basis that:	Agreed / Not agreed
(i) You are <b>satisfied</b> that each student has not completed, or is taken not to have completed, the requirements for the relevant VET units of study (as required by paragraphs 46AA(1)(a)-(b)); and	Satisfied / Not satisfied
(ii) You are <b>satisfied</b> that, having regard to all the matters prescribed in the <i>Higher Education Support (VET) Guideline 2015</i> (Guidelines), it is reasonably likely that Franklyn Scholar or its agents engaged in inappropriate conduct towards the student/s in relation to the units, or the VET course of study of which the units form a part (as required by paragraph 46AA(1)(b)).	Satisfied / Not satisfied
(b) <b>Agree</b> to the next steps set out at paragraph 45 of this minute.	Agreed / Not agreed

**Key Points**

3. Franklyn Scholar (Australia) Pty Ltd was an approved VET provider from July 2013 until its approval was revoked in March 2017. Franklyn Scholar was purchased by Acquire Learning & Careers Pty Ltd (Acquire) in September 2015. While Franklyn Scholar continued to operate under its original name, its staff were employed by Acquire. Acquire was the ultimate holding company of the entities within the Acquire Learning Group.
4. Franklyn Scholar's status as a Registered Training Organisation (RTO) was cancelled with effect from 21 July 2017 by the Australian Skills Quality Authority (ASQA).
5. From 2014 to 2017, Franklyn Scholar's student numbers progressively increased, peaking at 3,088 in 2015, as shown below.

**Franklyn Scholar: Time series of students enrolled**

Year	Students	Increase on previous year (per cent)
2014	560	-
2015	3,088	451
2016	1,519	-51
2017	36	-98

6. A period of rapid expansion in enrolments across the VET FEE-HELP sector from 2014 has been attributed in many cases to the inappropriate conduct of providers, who used aggressive marketing practices, offered inducements and 'free courses', and targeted potential students from vulnerable cohorts, in particular Indigenous communities and low socioeconomic status (SES) individuals.
7. The department has both quantitative and qualitative evidence that Franklyn Scholar's conduct was inappropriate, consistent with the provisions of the HESA and Guidelines, and that a number of students should have their VET FEE-HELP debts remitted for the relevant VET units of study in courses they did not complete. Key indicators include poor completion rates and rapid growth in low quality, online business, management and culture courses.
8. In May 2016 the department engaged Deloitte to undertake a compliance audit of Franklyn Scholar to examine its enrolment practices, and Orima Research to conduct telephone interviews with a sample of individuals who were students of Franklyn Scholar.
9. The Deloitte audit found that a large percentage of students (86 per cent) had no online activity for the period July 2015 and May 2016. Only 8 per cent of students were competent, 34 per cent received no grade and 50 per cent withdrew.
10. Both the Deloitte audit and the Orima interviews indicated students were enrolled without their knowledge or understanding and/or were not engaging in the course.
11. In 2015, the Australian Competition and Consumer Commission commenced proceedings against Acquire in its capacity as an education services broker and recruitment services provider. The ACCC alleged that Acquire engaged in unconscionable conduct, making false or misleading representations and breaching the unsolicited consumer agreements provisions in the Australian Consumer Law (ACL) by its conduct in telemarketing VET FEE-HELP diploma courses between 3 July 2014 and 24 March 2015.
12. The Federal Court delivered its judgement on 30 May 2017 (*Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd [2017] FCA 602*) and found that Acquire had:
  - a) entered into agreements with certain VET approved providers to market and promote their courses, on a fee-for-service basis
  - b) made unsolicited telephone calls to some job applicants for the purpose of procuring their enrolment, on the spot, in a VET FEE-HELP assisted course run by one of Acquire's clients and their participation in the VET FEE-HELP scheme

- c) engaged in misleading or deceptive conduct in breach of s18 of the ACL
  - d) made false or misleading representations about the uses or benefits of enrolling in a VET FEE-HELP assisted course in breach of s29(1)(g) of the ACL
  - e) engaged in conduct which was in breach of s34 of the ACL (liable to mislead job applicants as to the nature and characteristics of service provided by the careers advisers);
  - f) engaged in conduct which was in all circumstances unconscionable in contravention of s21 of the ACL
  - g) led job applicants to believe that, by becoming a participating student, they would find employment
  - h) failed to provide job applicants with prescribed information relating to unsolicited consumer agreements.
13. Acquire is the ultimate holding company of the entities within the Acquire Learning Group, which provided education broking and recruitment services marketed on behalf of various RTOs. Based on evidence and information available to it, the department understands that, while initially the services were provided to RTOs external to the Acquire Learning Group, the services were also provided to 'in-house' RTOs that were for a time subsidiaries of Acquire, one of which was Franklyn Scholar.
14. Acquire provided such services between July 2012 and June 2014, while Acquire Learning Pty Ltd (Acquire Learning) (another entity in the Group) took over from Acquire and provided those services from July 2014. As set out in the Deloitte audit report, Acquire Learning was one of eight agents of Franklyn Scholar.
15. Further, on the information available, the department considers that it is reasonably likely Acquire Learning operated in a similar way to Acquire. For the purposes of clause 46AA of Schedule 1A and section 58AB of the Guidelines, it is relevant that entities in the Acquire Learning Group were agents of Franklyn Scholar and that the Federal Court found that Acquire engaged in conduct that contravened the ACL.
16. There is also sufficient evidence in the data (quantitative) and qualitative information gathered by and on behalf of government agencies (see below) to indicate it is reasonably likely the students in **Attachment A** were subject to inappropriate conduct by Franklyn Scholar in the 2014 to 2017 calendar years inclusive.
17. Data extracted from the Higher Education Information Management System (HEIMS) indicates that there are **5,072** students with VET FEE-HELP debts from the relevant Franklyn Scholar courses who were reported as not completing at least one unit in the relevant course and were reported as not having completed that course. These students are considered eligible for re-credit of their FEE-HELP balance for incomplete units in the relevant course.
18. A further **25** students had a course enrolment in a relevant course for which at least one unit was reported as 'Passed' or 'Recognition of Prior Learning' (RPL), the course was reported as not complete, and the passed or RPL unit had two or more indicators suggesting the student was from a vulnerable or targeted cohort. Despite HEIMS recording those units as 'Passed' or RPL, it is reasonably likely that those students did not complete the requirements for those units having regard to the fact that these students have incomplete units in the remainder of the relevant course (and therefore clearly did not complete the requirements for the course). Further, there are indicators suggesting that the students were from a vulnerable or targeted cohort. Therefore, these students can be taken not to have completed the requirements for those units marked as 'Passed' or RPL and those students/units can be included in the recommendation for re-credit. This gives a total of **5,097** students recommended for re-credit.
19. It is therefore recommended that you agree to re-credit the FEE-HELP balances of these **[5,097]** students listed in **Attachment A** for their **31,495** VET units of study in the relevant courses listed, meaning that those students' VET FEE-HELP debts will be remitted. The total value of the VET FEE-HELP debts to be remitted will be \$86,939,393.53 in tuition fees and \$17,385,945.08 in loan fees.

### Evidence of the inappropriate conduct of Franklyn Scholar and its agents

20. In making a decision that you are satisfied it is reasonably likely that Franklyn Scholar, or its agents, engaged in inappropriate conduct towards the students in **Attachment A**, you should consider **Attachments B and C**. **Attachment B** assesses the evidence/information available to the department against the relevant criteria for 'inappropriate conduct' in the Guidelines. **Attachment C** is the data analysis.
21. As noted above, many students of Franklyn Scholar were not aware of their enrolment, nor did they engage in the course. The Deloitte audit specifically found there were instances of Franklyn Scholar's non-compliance with paragraph 23B(2)(c) of HESA and paragraph 39(1)(b) of the Guidelines in that:
- a) the Student Entry Procedure did not specify '*how to report to the Secretary about the result of such assessments*'; and
  - b) the link to the procedure did not include the words '*student entry procedure*'.
22. In addition, the policies and Student Handbook did not outline the procedure for a student to re-enrol in a VET unit of competency with Franklyn Scholar, in the case where the student had earlier withdrawn from a VET unit of competency undertaken as required under paragraph 32(1)(b) of the Guidelines applicable from 1 January 2016.
23. The Orima Research interviews indicated a number of students said of Franklyn Scholar's enrolment practices:
- a) the course was too difficult for their educational background
  - b) they were offered inducements to enrol
  - c) they were misinformed about the course and fees associated with the course.
24. A small number of students reported being offered inducements, such as laptops, to sign up for their courses. Evidence of inappropriate enrolment practices included:
- a) students' complaints of not being aware of being enrolled
  - b) students not tested for academic suitability for the courses they were enrolled in
  - c) low levels of student participation after enrolment
  - d) students not being provided with information about course content/subjects before enrolment
  - e) students having no knowledge of a VET FEE-HELP loan application being completed
  - f) students not aware they would be required to repay a VET FEE-HELP loan
  - g) students not being provided with information about course fees and charges prior to enrolment.
25. A 'Notice of Decision as to Entitlement to Payments' was issued by the department to Franklyn Scholar on 13 October 2016 (interim Payments Decision) noting an overpayment of approximately \$10.2 million by way of advance payments relating to VET FEE-HELP entitlements to Franklyn Scholar. This was based on the results of Deloitte's audit of student enrolment numbers for the purposes of VET FEE-HELP assistance and the findings of the Orima Research interviews.
26. On 18 January 2017, the department issued Franklyn Scholar with a notice of intention to revoke Franklyn Scholar's approval as a VET provider and subsequently revoked its approval on 15 March 2017, on the grounds that Franklyn Scholar had breached the VET quality and accountability requirements by not meeting VET tuition assurance arrangements between 1 January 2017 and 13 March 2017.
27. Information available to the department through departmental as well as ASQA audits suggest it is reasonably likely Franklyn Scholar engaged in inappropriate conduct as set out in paragraph 46AA(1)(b) of the Schedule 1A and section 58AB of the Guidelines, in particular that it:
- a) provided misleading or inaccurate information about the course to potential students

- b) failed to assess the suitability of students prior to enrolling them in a course
- c) failed to provide accurate information about associated course fees.

28. In addition, in a judgement delivered on 30 May 2017, the Federal Court found that Acquire engaged in unconscionable conduct, made false or misleading representations and breached the unsolicited consumer agreements provisions in the ACL in the period between 3 July 2014 and 24 March 2015 in marketing and promoting VET FEE-HELP course on behalf of various RTOs (*Australian Completion and Consumer Commission v Acquire Learning & Careers Pty Ltd [2017] FCA 602*). As noted above, Acquire was the ultimate holding company of the Acquire Learning Group, which marketed and promoted the courses of various RTOs, including Franklyn Scholar.

29. **Attachments D to J** include the department's independent audit report prepared by Deloitte, the Orima Research Report, the department's Interim Payments Decision, the VSLO Assessment Model and Provider Profile agreed by the delegate of the Secretary on 8 April 2019, the ASQA compliance report and evidence analysis and the Federal Court judgment.

#### **Data analysis of students recommended for re-credit**

30. Data was extracted from HEIMS to determine the period for which student re-credits should be considered by the delegate, consistent with the qualitative evidence relating to students commencing between 2014 and 2016.

31. For comparison, data was analysed by year of enrolment from 2014 to 2016 inclusive using the common characteristics of students identified in the 'Redesigning VET FEE-HELP Discussion Paper' released in April 2016: low or non-completions, vulnerability indicators and poor course quality. The high level data analysis is presented in Table 1 below.

**Table 1: Number of Franklyn Scholar units of study for each year that fall into each re-credit category**

Indicators	Census Year Summary (unit count)					
	2014	2015	2016	2017	Total	VFH Debt
A Course not completed, unit not successfully completed	4,237	23,994	2,354	36	<b>30,621</b>	\$84,752,898.75
B Course completed, not all units completed (because the student is shown for a unit as having withdrawn or failed, is ongoing or as not reported)	1	0	0	0	<b>1</b>	\$2,487.50
C Course not completed, unit completed, students have two or more vulnerability indicators or indicators of potential targeting by the provider/agent (e.g. Australian and Torres Strait Islander (ATSI), studying units online, English not spoken at home, humanitarian visa holder, disability, course with specific field of education, low socioeconomic status (bottom 20%), from a very remote area, multiple courses at Franklyn Scholar)	129	743	2	0	<b>874</b>	\$2,186,494.78

Indicators	Census Year Summary (unit count) continued					
	2014	2015	2016	2017	Total	VFH Debt
D Course completed, unit completed, students have two or more vulnerability indicators or indicators of potential targeting by the provider/agent (e.g. Aboriginal and Torres Strait Islander (ATSI), studying units online, English not spoken at home, humanitarian visa holder, disability, course with specific field of education, low socioeconomic status (bottom 20%), from a very remote area, multiple courses at Franklyn Scholar)	55	163	0	0	218	\$564,812.46
E None of the above criteria	4	0	0	0	4	\$5,541.82
<b>Total</b>					<b>31,718</b>	<b>\$87,512,235.31</b>

The inclusion of indicators of potential vulnerability in analysing students reasonably likely to have been enrolled as a result of Franklyn Scholar's inappropriate conduct is based on audit reports, Orima research findings and the interim payments decision (which included material drawn from HEIMS) that Franklyn Scholar:

- a) engaged, either directly or through its agents, in misleading and unconscionable conduct in an effort to increase its enrolments, including targeting certain populations, such as vulnerable and disadvantaged persons, low socio-economic communities with a high proportion of Indigenous Australians and those who on any objective assessment were, because of their suitability or personal circumstances, unlikely to be capable of completing a course; and
  - b) encouraged those persons, either directly or through its agents, to enrol with Franklyn Scholar by providing them with inaccurate or incomplete information, including about the costs of undertaking study or the benefits of completing a course, and/or inducements.
32. Section 58A of the Guidelines provides that a person is taken not to have completed the requirements for a VET unit of study with a VET provider if it is *'reasonably likely that the student did not complete the requirements for the unit, regardless of whether the student is recorded as having completed it'*.
33. In summary, analysis of the data (detailed in **Attachment C**) suggests that from 2014 to 2015 primarily, but also continuing into 2016, the practices of Franklyn Scholar led to a substantial increase in the enrolment of students who did not complete units or the course and gain an education benefit (Category A). Combined with the qualitative evidence above and in **Attachment B**, this suggests those practices were inappropriate under the HESA and Guidelines provisions.
34. Similarly there were a number of students with at least two vulnerability indicators, who were reported as having completed units in courses which were not complete (Category C). In the case of Category C, the 874 units reported as completed were for students who had at least two vulnerability indicators. As 99.8 per cent of students with at least two vulnerability indicators had incomplete units and fell in Category A, it raises questions about the veracity of recorded unit completion rates for students with similar characteristics who fell in Category C (ie. were reported as having completed units). The analysis revealed data overlaps for a number of students who had units reported in both Category A and C, who were not included in the recommendation for re-credit.
35. While numbers of Franklyn Scholar students declined in 2016, it is likely there remained continuing and new students who had been enrolled in questionable circumstances.

36. As at the date of this Minute, the data shows there remain 5,111 students who:
- a) have a commencement date in a Franklyn Scholar course between 2014 and 2016 (inclusive)
  - b) did not complete any/some units in the course in which they were enrolled;
  - c) have VFH debts for their incomplete unit/s in the course in which they were enrolled (30,717 incomplete units); and
  - d) have VFH debts for some units which may have been incorrectly reported as complete but course was not completed, with the relevant students having two or more vulnerability indicators (874 units reported as complete).
37. The students associated with the units shown in Categories B, D and E shown in **Table 1** did not satisfy the requirement of paragraph 46AA(1)(a) of Schedule 1A to HESA (ie that the person has not completed the requirements for the unit or is taken not to have completed those requirements under the Guidelines).
38. Students who fall within in Categories A and C and were enrolled and commenced between January 2014 and 31 December 2017 are recommended for re-credit of their FEE-HELP balance at this time.

#### **Powers and considerations in making the decision**

##### ***Delegation of Secretary's power under clause 46AA of Schedule 1A***

39. The Secretary's power to re-credit students' FEE-HELP balances under subclause 46AA(1) has been delegated to you as SES Band 2 in the VSL, VET Compliance and TRA Division (Item 18 in Instrument 19-018). There is no limit on the total amount of re-credits you may approve.

##### ***Provider requirement to repay***

40. These re-credits do not in themselves trigger an associated requirement under the legislation for Franklyn Scholar to repay the Commonwealth the equivalent of the amounts re-credited.

##### ***Assessment Criteria under HESA and the Guidelines***

##### **Incomplete VET units of study (paragraph 46AA(1)(a) of Schedule 1A and section 58A of the Guidelines)**

41. Under paragraph 46AA(1)(a) of Schedule 1A, in order to re-credit a person's FEE-HELP balance, you must be satisfied that:
- 1) The person has not completed the requirements for the relevant VET units of study during the period the person undertook, or was to undertake, the unit; or
  - 2) The person is taken not to have completed those requirements during that period under section 58A of the Guidelines.

42. HEIMS indicates that 30,717 units at **Attachment A** were not completed. While HEIMS indicates that 874 units at **Attachment A** were marked as 'Pass' or RPL, the relevant students are taken not to have completed the requirements for those units under section 58A of the Guidelines given other indicators of vulnerability or potential targeting being present.

##### **Inappropriate conduct by VET provider or its agent (paragraph 46AA(1)(b) of Schedule 1A and section 58AB of the Guidelines)**

43. Under paragraph 46AA(1)(b) of Schedule 1A, in order to re-credit a person's FEE-HELP balance, you must be satisfied that, having regard to all the matters prescribed by the Guidelines, the VET provider (or its agent) engaged in inappropriate conduct towards the person in relation to the relevant VET units of study, or VET course of which the unit forms a part. Section 58AB of the Guidelines prescribes the matters that you must have regard to for this purpose.

44. **Attachment B** sets out considerations in relation to all of the prescribed matters in

**Next Steps**

45. If you agree to the above:

- 3) a minute to the Branch Manager, Economic and Market Analysis Branch will be prepared requesting that the HEIMS data relating to each student be updated to reflect the decision to re-credit their FEE-HELP balance.
- 4) Notice will be provided to the students in accordance with the process set out below.

**Use of 'own initiative' powers**

46. A decision to re-credit a student's FEE-HELP balance under subclause 46AA(1) can be made on application by a person or on the Secretary's own initiative. None of the students in **Attachment A** have made an application for a re-credit of their FEE-HELP balances, therefore you are exercising the 'own initiative' or 'own volition' aspect of the clause 46AA powers.

47. Notwithstanding that the relevant students have not applied for a re-credit of their FEE-HELP balances, it is recommended that you use the 'own initiative' or 'own volition' aspect of the clause 46AA powers because:

- all of the students at **Attachment A** share similar circumstances insofar as:
- all were enrolled by Franklyn Scholar and commenced within the period of time 1 January 2014 to 15 March 2017 in one of the following courses:
  - a. Diploma of Management (Deluxe) Path Group
  - b. Diploma of Management
  - c. Diploma of Leadership and Management (online)
  - d. Diploma of Leadership and Management
  - e. Diploma of Business (online)
  - f. Diploma of Business (EDDI)
  - g. Diploma of Business
- all 5,111 students have incomplete unit(s) in their course and/or incomplete courses, or should be taken to have incomplete unit(s), and demonstrate indicators of vulnerability or targeted cohorts;
- it would be an unreasonable and unfair imposition to expect all students in **Attachment A** to submit applications for re-credits given the above circumstances and also noting that many of those students may not be aware they have VET-FEE HELP debts for the relevant courses.

**Procedural Fairness**

48. Under clause 46AA, the Secretary (or delegate) is required to give procedural fairness to persons who made an application for a re-credit and to providers in certain circumstances:

- 5) to persons who made an application – before making a decision to refuse their applications;
- 6) to providers – before making a decision to re-credit that would require the provider to repay equivalent amounts to the Commonwealth.

49. As neither of the above scenarios are applicable in this case, there are no procedural fairness requirements.

**Notice of Decision**

50. If FEE-HELP balance is re-credited under subclause 46AA(1), the Secretary or the delegate must, as soon as practicable, give written notice of the decision and reasons for the decision to the person concerned.

51. Given it is unlikely that accurate (or any) contact details for these students have been entered into HEIMS by the provider, it is proposed to give notice of the decision to re-credit some of Franklyn



Scholar's students, and the details of the period of time and courses which relate to the re-credit decision, on:

- Department's website - "Information for VET FEE-HELP Students" page, at: <https://www.employment.gov.au/vet-fee-help-students>
- Study Assist website- "VET Student Loan or VET FEE-HELP debt complaints" page, at: <https://www.studyassist.gov.au/vet-students/vet-fee-help>

### **Public Governance, Performance and Accountability Act 2013 considerations**

52. A decision to re-credit a person's FEE-HELP balance under subclause 46AA(1) of Schedule 1A does not involve the exercise of a financial delegation under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), as it does not involve the direct approval of a commitment of relevant money or a decision to enter into, vary or administer an arrangement. Further, it is also not a decision under the PGPA Act not to pursue a debt to the Commonwealth or a decision to write off a debt.
53. However, the broad principles in the PGPA Act relating to the proper (that is, efficient, ethical and economical) use and management of public resources remain relevant and should be taken into account when making a decision under subclause 46AA(1). This is because, subject to the specific circumstances of each case, a decision to re-credit under subclause 46AA(1) may have flow-on consequences that may impact the Commonwealth financially.
54. In recommending the re-credit of the Franklyn Scholar students in **Attachment A** your actions would be consistent with the principles of the PGPA Act.

### **Background**

55. The passage of the *Higher Education Support Amendment (VET FEE-HELP Student Protection) Act 2018* introduced into the *Higher Education Support Act 2003 (HESA)* a number of new measures designed to provide redress to students who were subjected to 'inappropriate conduct' by VET providers but did not meet the evidentiary threshold required by previous legislation which provided redress to students experiencing 'unacceptable conduct'. The VET FEE-HELP Student Redress Measures introduced in the HESA amendments took effect from 1 January 2019.
56. The Secretary of the Department of Employment, Small and Family Business (department) is empowered to act on their own initiative to redress groups of students with similar experiences of inappropriate conduct, even if those students have not formally applied for redress.

### **Attachments**

- A Spreadsheet of data extracted from HEIMS showing students enrolled by Franklyn Scholar and commenced from 1 January 2015 to 31 December 2015 inclusive.
- B evidence of Franklyn Scholar's inappropriate conduct against the Guidelines).Secretary Initiated Action: Data Analysis – Franklyn Scholar.
- D DET Final Audit Report of Franklyn Scholar under Clause 26 of Schedule 1A to the Higher Education Support Act 2003. Date of Audit:12 July to 23 August 2016, Deloitte DET Franklyn Scholar.
- E Orima Research Final Report 12 October 2016: Findings of Enrolment Data Verification Interviews for Students enrolled at Franklyn Scholar.
- G VSLO Assessment Model 7.2 Franklyn Scholar Australia Pty Ltd and Provider Profile: Franklyn Scholar.
- H ASQA – Compliance Monitoring Cover Franklyn Scholar (RTO 7134) dated 5-7 July 2017.
- I ASQA - Evidence analysis – VET Quality Framework – dates review conducted: 30 January 2017 and 3-7 February 2017.
- J Federal Court Judgment: *Australian Completion and Consumer Commission v Acquire Learning & Careers Pty Ltd [2017] FCA 602*

7365 Franklyn Scholar recreditable units of study as at 19 September 2019 - units recredited under VSLO or Tuition Assurance removed

Notes

1. 31,495 units of study are considered recreditable
2. 5,097 students are associated with these units of study
3. The total debt considered recreditable is 586 939 393.53 with an associated 517 385 945.08 in loan fees.

s 22(1)(a)(ii)

## Section 58AB of the Guidelines – Matters for Consideration: Franklyn Scholar and its agents

Matters prescribed in section 58AB of the Guidelines	Considerations in relation to Franklyn Scholar and its agents
s. 58AB(1)(a) – Whether the provider engaged in conduct towards the student that involved treating the student as being entitled to VET FEE-HELP assistance under clause 43 of Schedule 1A to the Act, when the student was not entitled to that assistance.	N/A
s. 58AB(1)(b)(i) – Whether the provider or agent engaged in unconscionable conduct. Subsection 58AB(2) sets out the matters that you may have regard to in considering whether the conduct was unconscionable.	<p><b><i>Agents of Franklyn Scholar</i></b></p> <p>Evidence and information available to the department indicates that entities within the Acquire Learning Group (Acquire and Acquire Learning Pty Ltd) provided education broking and recruitment services to Franklyn Scholar, by marketing and promoting its courses. The department engaged Deloitte to conduct an audit of Franklyn Scholar on 2 June 2016. Evidence regarding this relationship includes Deloitte’s audit report, a report to creditors prepared under the <i>Corporations Act 2001</i> and obtained by the department in its capacity as creditor of Franklyn Scholar. Further, it is reasonably likely that, once it took over the day to day education broking and recruitment operations from Acquire, Acquire Learning operated in a similar way to Acquire.</p> <p>For the purposes of clause 46AA of Schedule 1A and section 58AB of the Guidelines, it is relevant that entities in the Acquire Learning Group were agents of Franklyn Scholar and that the Federal Court found that Acquire engaged in conduct that contravened the ACL.</p> <p><b><i>ACCC proceedings against Acquire – Australian Competition and Consumer Commission v Acquire Learning &amp; Careers Pty Ltd [2017] FCA 602</i></b></p> <p>In 2015, the Australian Competition and Consumer Commission commenced proceedings against Acquire in its capacity as an education services broker and recruitment services provider on behalf of various RTOs. The ACCC alleged that Acquired engaged in unconscionable conduct, making false or misleading representations and</p>

breaching the unsolicited consumer agreements provisions in the Australian Consumer Law (ACL) by its conduct in telemarketing VET FEE-HELP diploma courses between 3 July 2014 and 24 March 2015.

As set out in a judgement delivered on 30 May 2017, in the relevant period, Acquire employed sales staff, misleadingly called Career Advisers, to use personal information that Acquire had purchased to make unsolicited marketing calls to job seekers (job applicants) and aggressively market vocational education courses to them. The courses were run by education providers who had agreed to pay Acquire a fee for referrals and enrolments, sometimes a percentage of the course fee.

The Federal Court found that Acquire had:

- a) entered into agreements with certain VET approved providers to market and promote their courses, on a fee-for-service basis
- b) made unsolicited telephone calls to some job applicants for the purpose of procuring their enrolment, on the spot, in a VET FEE-HELP assisted course run by one of Acquire's clients and their participation in the VET FEE-HELP scheme
- c) engaged in misleading or deceptive conduct in breach of s18 of the ACL
- d) made false or misleading representations about the uses or benefits of enrolling in a VET FEE-HELP assisted course in breach of s 29(1)(g) of the ACL
- e) engaged in conduct which was in breach of s 34 of the ACL (liable to mislead job applicants as to the nature and characteristics of service provided by the careers advisers)
- f) engaged in conduct which was in all the circumstance unconscionable in contravention of s 21 of the ACL
- g) failed to provide job applicants with prescribed information relating to unsolicited consumer agreements.

***Unconscionable conduct***

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

***VSLO complaints***

The VSLO has received 530 complaints from students of Franklyn Scholar, of which 335 fall within the VSLO's identified top 10 issue 'strings' relating to inappropriate conduct. Of these 21.8 per cent relate to unknown loan/debt, 15.5 per cent were about unsolicited contact to sign up, 10.15 per cent related to lack of/misleading/inaccurate enrolment information.

<p>s. 58AB(b)(ii) – Whether the provider or agent engaged in systemic conduct, or a pattern of behaviour, that is unconscionable.</p>	<p><b><i>ACCC proceedings against Acquire – Australian Completion and Consumer Commission v Acquire Learning &amp; Careers Pty Ltd [2017] FCA 602</i></b></p> <p>While the Acquire judgment did not involve the court finding a system of unconscionable conduct in contravention of s21 of the ACL against Acquire, it found these contraventions did apply to the eight consumers referred to in the judgment.</p>
<p>s. 58AB(b)(iii) – Whether the provider or agent engaged in misleading or deceptive conduct.</p>	<p><b><i>Investigations by department</i></b></p> <p>The Orima report indicated that, of the 153 participants who made further comments about Franklyn Scholar or their enrolment practices, only 17 per cent provided positive feedback on their experience of training with Franklyn Scholar. Others provided less than favourable feedback on their experience of training with Franklyn Scholar. Of those, some claimed of being misinformed about the course and the fees and charges associated with the course.</p> <p>Evidence from the Orima Research suggests that the provider or its agents were enrolling students inappropriately, and not providing correct information relating to fees such as:</p> <ul style="list-style-type: none"> <li>• Students’ complaints of not being aware of being enrolled</li> <li>• Students not tested for academic suitability for the courses they were enrolled in</li> <li>• Students not participating in the course after enrolment</li> <li>• Student feedback to ORIMA about enrolment practices adopted by Franklyn</li> <li>• Student claims of not receiving information about the course content and subjects before enrolment</li> <li>• Students having no knowledge of a VET FEE-HELP loan application being completed</li> <li>• Students not aware they would be required to repay VET FEE-HELP loan</li> <li>• Student claims of not being provided information about course fees and charges before enrolment</li> </ul> <p>The VSLO complaints data also shows that 34 (10.15 per cent) of the 335 complaints making up the top 10 issue strings by the VSLO were about lack of, misleading or inaccurate enrolment information, and 16 (4.78 per cent) related to agent/associate conduct.</p> <p><b><i>VSLO complaints</i></b></p> <p>The VSLO complaints data also suggests that students had been provided with misleading or inaccurate enrolment information (33 of 210 complaints about lack of/misleading/inaccurate enrolment information, 17 of 210 complaints related to agent/associate conduct – VSLO was unable to verify if the 17 complaints related to misleading or deceptive conduct).</p>

## Attachment B

	<p><b>ACCC proceedings against Acquire – Australian Completion and Consumer Commission v Acquire Learning &amp; Careers Pty Ltd [2017] FCA 602</b> As set out above, the Federal Court found that, in marketing and promoting the VET FEE-HELP courses of various VET provider on a fee-for-service basis, Acquire engaged in misleading or deceptive conduct in breach of s18 of the ACL and made false or misleading representations about the uses or benefits of enrolling in a VET FEE-HELP assisted course in breach of s 29(1)(g) of the ACL.</p>
<p>s. 58AB(b)(iv) – Whether the provider or agent made a representation about a future matter (for example, doing, or refusing to do, any act) where there were no reasonable grounds for making the representation.</p>	<p><b>ASQA’s audit</b></p> <p>ASQA’s audit of Franklyn Scholar found that the information provided by Acquire on behalf of the RTO was not accurate and factual as it misrepresented that enrolling in a training product would enable a learner to have employment found on their behalf (p7, para 1, Clause 4.1).</p> <p>The audit also found that the information provided by the career consultants in ‘Stage 1’ was not accurate and factual because the conversation led the potential student to believe that the Job Hunter allocated to them would be searching for available jobs on their behalf if they enrol in a Diploma qualification (p8, para 3).</p>
<p>s. 58AB(b)(v) – Whether the provider or agent advertised tuition fees for the course where there were reasonable grounds for believing that the provider would not be able to provide the course for those fees.</p>	N/A
<p>s. 58AB(b)(vi) – Whether the provider or agent used physical force, harassment or coercion.</p>	N/A
<p>s. 58AB(1)(c) – Whether any of the circumstances involving unacceptable conduct specified in Division 2 of Part 6 of the Guidelines (other than sections 53, 57 and 58) exist.</p> <p>Such circumstances are:</p> <ul style="list-style-type: none"> <li>- s. 49 – Publishing information suggesting VET</li> </ul>	<p><b>Inappropriate marketing and cold-calling of students</b></p> <p>Franklyn Scholar undertook a range of marketing and promotional activities to achieve an increase in student numbers through a range of mediums. An email complaint from one individual, suggests that there was a practice of continuously calling people to seek out information which was then used for enrolment.</p> <p>While the department does not have direct evidence of cold calling, approximately 15.5 per cent of the complaints examined by the VSLO related to unsolicited contact from Franklyn Scholar or its agents, suggesting a reasonable likelihood that students may have been contacted directly by Franklyn Scholar or its agents where personal details were sought and later used to enrol those students and complete VET FEE-HELP loan applications.</p>

<p>FEE-HELP assistance is not a loan or that unit/course is free.</p> <ul style="list-style-type: none"> <li>- s. 50 – Inappropriate Marketing and cold-calling.</li> <li>- s. 51 – Failure to provide necessary information to student.</li> <li>- s. 52 – inappropriate inducements.</li> <li>- s. 54 – Failure to comply with student requests to cancel enrolment or withdraw request for Commonwealth assistance</li> </ul>	<p><b><i>Failure to provide necessary information</i></b></p> <p>Claims from students interviewed by Orima Research suggest that Franklyn Scholar failed to provide necessary information about the course/ subjects and that VET FEE-HELP was a loan that was to be repaid when their income reached a certain level.</p> <p><b><i>Inducements</i></b></p> <p>According to the Orima Research report, a number of students claimed to have been offered inducements by Franklyn Scholar or its representatives for enrolling into courses/units. Of the 293 students who indicated they were enrolled with Franklyn Scholar:</p> <ul style="list-style-type: none"> <li>• 14 (5 per cent) reported they were offered something of value to enrol as follows: <ul style="list-style-type: none"> <li>○ 10 reported being offered laptops. Of these: <ul style="list-style-type: none"> <li>▪ 5 reported the laptop was provided just to use during the training and 5 reported it was theirs to keep;</li> <li>▪ 6 reported the laptop was offered by someone from Franklyn Scholar, 2 reported that it was offered by a door-to-door salesperson or education adviser, 1 reported it was offered by a representative from Acquire and 1 did not remember who offered the laptop.</li> </ul> </li> </ul> </li> <li>• 4 reported being offered other incentives, for example: <ul style="list-style-type: none"> <li>○ 1 reported being offered a transport voucher worth \$20</li> <li>○ 1 reported receiving help with the resume and obtaining a job in the future; and</li> <li>○ 2 reported being offered a job.</li> </ul> </li> </ul> <p>Only 6 of the 14 reported actually receiving the enrolment incentive that was offered to them. 12 of the 210 complaints by the VSLO were with an issue string of ‘inducements to sign up for study’.</p>
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## Attachment B

<p>s. 58AB(1)(d) – Whether any of the circumstances involving unacceptable conduct specified in section 53, 57 or 58 exist on or after 1 January 2016. Such circumstances are:</p> <ul style="list-style-type: none"> <li>- s. 53 – Failure to provide VET FEE-HELP notices</li> <li>- s. 57 – Failure to apportion fees appropriately.</li> <li>- s. 58 – Failure to publish fees.</li> </ul>	N/A
<p>s. 58AB(1)(e) – Whether the provider or agent failed to comply with a requirement under Division 2 of Part 3-2 of Chapter 3 of the Australian Consumer Law (unsolicited consumer agreements).</p>	<p><b>ACCC proceedings against Acquire</b></p> <p>As noted above, the Federal Court found that, in marketing and promoting the VET FEE-HELP courses of various VET provider on a fee-for-service basis, Acquire made unsolicited telephone calls to some job applicants for the purpose of procuring their enrolment, on the spot, in a VET FEE-HELP assisted course run by one of Acquire’s clients and their participation in the VET FEE-HELP scheme. It also found that Acquire failed to provide job applicants with prescribed information relating to unsolicited consumer agreements.</p> <p><b>VSLO complaints</b></p> <p>The VSLO found that out of 335 cases relating to Franklyn Scholar they examined, 52 (15.52 per cent) were found to have had unsolicited contact from Franklyn Scholar or its agents to sign up for a course.</p>
<p>s. 58AB(1)(f) – Whether the provider has financial, administrative or other barriers that prevented the student from fulfilling an expressed intention to withdraw from the VET unit of study before the census date.</p>	N/A

s. 58AB(1)(g) – Whether the student was a vulnerable person.	<p>Of the total number of students enrolled with Franklyn Scholar from 2014-2017, the representation of vulnerable students was as follows:</p> <table border="1" data-bbox="674 284 2027 549"> <thead> <tr> <th>Year</th> <th>Indigenous</th> <th>per cent of total</th> <th>Low SES</th> <th>per cent of total</th> <th>Disability</th> <th>per cent of total</th> </tr> </thead> <tbody> <tr> <td>2014</td> <td>39</td> <td>7</td> <td>126</td> <td>23</td> <td>9</td> <td>2</td> </tr> <tr> <td>2015</td> <td>298</td> <td>10</td> <td>850</td> <td>28</td> <td>153</td> <td>5</td> </tr> <tr> <td>2016</td> <td>108</td> <td>7</td> <td>344</td> <td>23</td> <td>117</td> <td>8</td> </tr> <tr> <td>2017</td> <td>1</td> <td>3</td> <td>6</td> <td>17</td> <td>3</td> <td>8</td> </tr> </tbody> </table>	Year	Indigenous	per cent of total	Low SES	per cent of total	Disability	per cent of total	2014	39	7	126	23	9	2	2015	298	10	850	28	153	5	2016	108	7	344	23	117	8	2017	1	3	6	17	3	8
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s. 58AB(1)(h) – Any recommendation made by the VSLO under paragraph 20ZM(1)(ca) of the <i>Ombudsman Act 1976</i> regarding the student or any other student of the provider.	<p><b>VSLO Recommendations</b></p> <p>As at July 2019, the VSLO had received 530 complaints in total from students of Franklyn Scholar. The VSLO found that 21.9 per cent of the issues related to students having no knowledge of the loan/debt, 15.52 per cent related to unsolicited contact to sign up, 10.15 per cent related to misleading or inaccurate enrolment information. A small number (3.58 per cent) related to inducements to sign up for study.</p> <p>The VSLO is satisfied that the following vulnerabilities were prevalent in the Franklyn Scholar student population:</p> <ul style="list-style-type: none"> <li>• Aboriginal and Torres Strait Islander</li> <li>• Education level</li> <li>• Employment status</li> <li>• Low socio-economic status</li> </ul> <p>In addition, the VSLO relied upon evidence from a range of sources to inform its assessment. These are:</p> <ul style="list-style-type: none"> <li>• <i>ASQA audit of 5 and 7 July 2016</i> (Audit Number 5) in which the report raised concerns about the rate of participation in the FS courses (86 per cent of the VFH enrolments in 2015 and 2016 had no online activity for the period of study even though Franklyn advised it delivered courses by online and face-to-face modes). Only 2 per cent successfully completed the course of study.</li> <li>• <i>Rectification response to ASQA audit</i></li> <li>• <i>Deloitte audit of Franklyn Scholar 12 July to 23 August 2016</i> in which Deloitte recommended further analysis be undertaken.</li> <li>• <i>Evidence analysis VET Quality Framework– ASQA Review</i> conducted 30 January 2017 and 3-7 February 2017 – finding of critical non-compliance. This is a review of Franklyn’s rectification response to Audit Number 5. ASQA found Franklyn remained non-compliant.</li> </ul>																																			

	<ul style="list-style-type: none"> <li>• <i>Preliminary analysis of VFH complaints received by VSLO</i> as at 16 May 2019</li> </ul> <p>As at 1 October 2019 the delegate had approved re-credits for 35 Franklyn Scholar students based on the recommendations of the VSLO, totalling \$588,318.66 in tuition fee debts remitted.</p>
<p>s. 58AB(1)(i) – the provider’s (or the agent’s) history of compliance with:</p> <ul style="list-style-type: none"> <li>(i) HESA and the regulations;</li> <li>(ii) the Guidelines;</li> <li>(iii) any conditions imposed on the provider’s approval as a VET provider;</li> </ul> <p>(i) the <i>National Vocational Education and Training Regulator Act 2011</i>;</p> <p>in relation to the provider’s (or agent’s) conduct towards any student.</p>	<p><b>1. Compliance with HESA/Guidelines and investigations by the department</b></p> <p><b><i>Deloitte audit</i></b></p> <p>The Deloitte audit found that Franklyn’s Scholar’s Student Entry Procedure did not specify ‘<i>how to report to the Secretary about the results of such assessments</i>’ as required by paragraph 23B(2)(c) of Schedule 1A top HESA and paragraph 39(1)(b) of the Guidelines. Further, the policies and Student Handbook did not outline the procedure for a student to re-enrol in a VET unit of competency with Franklyn Scholar where the student had earlier withdrawn, as required under paragraph 32(1)(b) of the Guidelines applicable from 1 January 2016.</p> <p>During 2015-16, Franklyn Scholar engaged 8 agents. Agent agreements must specify responsibilities and requirements that they must meet. The audit found that the agreements with at least 3 agents did not include all the required information in the agent agreements resulting in instances of non-compliance with clause 29 of the Guidelines (and section 4.6 of an earlier version of the Guidelines). The remaining agreements (with the exception of those 3) were compliant with the requirements of the Guidelines.</p> <p>The Deloitte audit also found that 86 per cent of student enrolments had no online activity during the period – 87 per cent during 2015 and 86 per cent in 2016. Of the 20,410 units of competency with no online activity, 82 per cent had a grade of withdrawn and 15 per cent had no grade.</p> <p><b><i>Notice of Estimate of Entitlement to a Provider</i></b></p> <p>In its <b><i>Notice of Estimate of Entitlement to Payment to A Provider (Notice of Estimate)</i></b> dated 13 October 2016, the department noted that, based on the findings of the Deloitte audit and the ORIMA research report, Franklyn Scholar’s entitlement to VET FEE-HELP for 2015 was around \$56.3 million and that it was not entitled to any further amounts of VET FEE-HELP. Further, the department outlined that it is likely that there may have been an overpayment of around \$10.2 million to Franklyn Scholar. The department also highlighted concerns around Franklyn Scholar’s non-compliance with the Guidelines and HESA.</p> <p>On 1 December 2016, the department gave Franklyn Scholar written notice of an intention to suspend its approval as a VET provider on the basis of low numbers of student engagement and completion as highlighted in the Deloitte audit. The provider’s approval was revoked in March 2017.</p>

## 2. ASQA audit and report

ASQA conducted an audit of Franklyn Scholar between 5 and 7 July 2016. The ASQA audit findings and results of evidence analysis against the requirements of the VET Quality Framework were as follows:

*p25, paras 205*

The RTO did not demonstrate that it provided advice to the prospective learner about the training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies. Further the RTO did not demonstrate that these learners had the existing skills and competencies required to participate in a level 5 AQF accredited qualifications. The RTO also did not demonstrate that it had carried out remedial action to address the impact the non-compliance may have caused to learners.

*p4-5 para 16*

The RTO did not demonstrate that, for all learners who had been enrolled in the sampled training products since 1 August 2016, the amount of training to be provided to each learner was determined with regard to the individual's existing skills, knowledge and experience and the mode of delivery. The RTO also did not demonstrate that it had carried out remedial action to address the impact of non-compliance on learners where the RTO had failed to provide advice to the learner about training products appropriate to the learner's needs, taking into account their existing skills.

*p21, para 8*

The RTO did not demonstrate that the information about RTO services was both accurate and factual to allow prospective learners to make informed decision. Further, where the RTO had identified a learner was not provided with factual or accurate information, it did not demonstrate that it carried out remedial action to address the impact of non-compliance on the learners.

*p22, para 2*

Amended information about the RTO services, to be disseminated directly by the RTO or by a third party was not provided with the exception of the RTO's website and the 2017 Student handbook. Both of these contained insufficient or inaccurate information.

*p26, paras 1-2*

The RTO referred students to their website to inform them of the third parties that would be providing a service on their behalf. The website did not list what those services were. Consequently, there was no evidence to support that learners were informed the trainers and assessors were employed by third party provider, Acquire Learning,

and would be providing the training and assessment on the RTO's behalf. While the enrolment process provided a learner with sufficient information in relation to VET FEE-HELP, it provided inadequate information on the learner's rights to be able to make an informed decision about undertaking training with the RTO.

*p29, para 7*

The RTO did not demonstrate that it had retained all information provided to each learner in accordance with the requirements of paragraph 31(3)(a) of the Guidelines.

*p25, paras 2-5*

The RTO did not demonstrate that it provided advice to prospective learners about the training product appropriate to meeting their needs.

*p21, para8*

The RTO did not demonstrate that information about services is accurate and factual to allow learners to make informed decisions. Further there was no evidence of remedial action where learners were not provided accurate information.

***Suspension and revocation of Franklyn Scholar's approval as VET provider***

On 9 January 2017, TAFE Directors Australia (TDA) informed the department that Franklyn Scholar had not applied for a renewal of its tuition assurance policy which expired on 1 January 2017. On 18 January 2017, the department issued Franklyn Scholar with a notice of intention to revoke approval as a VET provider. Franklyn Scholar made written submissions stating reasons why its approval as a VET provider should not be revoked. Having considered those submissions, the delegate revoked Franklyn Scholar's approval on 15 March 2017, being satisfied that Franklyn Scholar had breached the VET quality and accountability requirements by not meeting VET tuition assurance arrangements between 1 January 2017 and 13 March 2017. The delegate noted that Franklyn had not provided any evidence to demonstrate that it had in place during that period any of the other tuition assurance arrangements as described in subsection 9(2) and 10(2) of the Guidelines.

***Department of Education and Training Findings of Enrolment Data Verification Interviews for Students Enrolled at Franklyn Scholar (Australia) Pty Ltd Final Report 12 October 2016 (ORIMA Research Report)***

The department engaged Orima Research and its quality-accredited fieldwork partner Action Market Research (AMR) to conduct telephone interviews with a sample of individuals who had been reported by Franklyn Scholar as

being enrolled by it between 1 July 2015 and 9 March 2016. The department provided Orima with electronic records for 1,297 individuals who were reported as enrolled in units of study with Franklyn Scholar.

Orima Research selected a random sample of 636 individuals for interview over the fieldwork period of 19 April-11 May 2016 and AMR were given a sample target of 300. Of the 448 (70 per cent) who were able to be contacted, 329 (73 per cent) completed the interview, 38 (8 per cent) were unable to participate, and 81 (18 per cent) refused to participate in the interview.

Of the 188 (30 per cent) who were unable to be contacted, 70 had mobile numbers that were disconnected, 16 were not known at the contact number provided and the remaining 102 could not be contacted within the fieldwork period for other reasons.

Interview participants were informed of the courses that Franklyn Scholar had reported that they were enrolled in since 1 July 2015. Of the 329 interview participants, 38 (12 per cent) reported that the enrolment details did not sound correct, 37 reported they had not enrolled with Franklyn Scholar. Of these:

- 28 reported they had not undertaken a training course with any other training organisation, and 9 reported they had undertaken a training course with another training organisation.

1 reported enrolling in a training course with Franklyn Scholar but with a wrong enrolment date, and 37 requested that someone from the department investigate the accuracy of their enrolments and VET FEE-HELP debts.

Of the 293 Franklyn students who participated in an interview, 272 (93 per cent) reported they had not provided a copy of their school certificate or could not recall providing a copy of their school certificate to Franklyn Scholar at the time of enrolment. Of these:

- 16 (6 per cent) reported their highest level of schooling was less than Year 10
- 67 (25 per cent) reported their highest level of schooling was Year 10
- 34 (13 per cent) reported their highest level of schooling was Year 11
- 110 (40 per cent) reported their highest level of schooling was Year 12, and
- 45 (17 per cent) reported other responses, such as completing other VET or university courses.

107 (37 per cent) reported Franklyn Scholar had made them sit a written text to enrol in the course. Of these 7 (7 per cent) reported that someone had helped them to do the test. All 7 reported they had been helped by someone from Franklyn Scholar.

164 (56 per cent) of the students reported they had not participated in the training course. Their reasons for not participating included:

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	<ul style="list-style-type: none"> <li>• A number of students has withdrawn from the course with Franklyn Scholar, however, some noted they had had difficulties in withdrawing and some noted they were unsuccessful in withdrawing.</li> <li>• The student was misinformed about the course content and had decided not to participate.</li> <li>• A number of students said they did not have enough time to study for various reasons.</li> <li>• A number of students noted they did not think they were enrolled with Franklyn Scholar. Some commented about inappropriate enrolment practices while one noted their enrolment was accidental.</li> <li>• While a number of students said they could not participate due to personal reasons (ill health or carer responsibilities), others noted they could not participate in the online courses because of internet/computer access issues.</li> </ul> <p>Of the 129 participating students, 15 (12 per cent) reported they were dissatisfied with the training provided citing the following reasons:</p> <ul style="list-style-type: none"> <li>• Course was too difficult for their educational background</li> <li>• Insufficient feedback and support by Franklyn Scholar assessors and tutors, and</li> <li>• They felt that they had been misled and enrolled on the basis of misinformation or false promise. Some had unsuccessfully attempted to withdraw and were annoyed at being charged for these courses.</li> </ul> <p>129 (44 per cent) of the participants reported they had tried to withdraw from a course or unit of study. Of these 77 (60 per cent) reported they were successful in withdrawing. Of these 4 reported they had been charged a fee to withdraw and 1 reported that although they had withdrawn before the Census date, they were still charged for the unit of study. 18 (23 per cent) reported it was not easy at all to withdraw.</p> <p><i>Course information and payment</i></p> <p>Of the 293 interview participants, 70 (24 per cent) claimed to not have been provided with information about the course content and subjects before enrolment and a further 35 (12 per cent) could not recall being provided this information. 61 (21 per cent) reported they were not provided with information about course fees and charges before enrolment and a further 24 (8 per cent) could not recall being provided this information.</p>
s. 58AB(1)(j) – any other matter that the Secretary considers relevant.	No other matters are considered relevant.

## Secretary Initiated Action: Data Analysis – Franklyn Scholar

### Overview

Data was extracted from the Higher Education Information Management System (HEIMS) to determine the appropriate period for which student re-credits should be considered by the delegate for Franklyn Scholar. This data was entered by the provider.

Data, by year of enrolment from 2014 to 2016 inclusive, was considered to determine key criteria as well as patterns and trends that would inform a decision on re-credit or no re-credit for Franklyn Scholar students. Data for 2017 was not included as there were only 36 continuing students at Franklyn Scholar that year. Inclusion of so few students, who were clearly just completing their studies, was not considered to add to this analysis.

**Table 1** shows the change in student numbers at Franklyn Scholar from its first year with VET FEE-HELP students in 2014 until its closure in 2017. It is evident that student numbers increased significantly from 2014 to 2015 (a 451 per cent increase).

*Table 1: Time series of numbers of students enrolled at Franklyn Scholar*

Year	Students	Per cent increase on previous year
2014	560	-
2015	3,088	451
2016	1,519	-51

**Figure 1 to Figure 6** show trend data for Franklyn Scholar for the following characteristics that have been identified as an indicator of student vulnerability: Aboriginal and Torres Strait Islander (referred to as Indigenous in this document) students, students from low socio-economic status (SES) areas (bottom 20 per cent), students studying in courses with fields of education of 'Management and Commerce' or 'Society and Culture', students with at least one unit of study being studied externally (online), students from a very remote area and students with a disability.

The percentage of students in each of these categories is also compared with the overall percentage trends at each of the VET FEE-HELP provider types – that is, private, TAFE and other public.

It is evident from these figures that Franklyn Scholar had much higher percentages of students studying online and studying in courses with fields of education identified as those targeted by unscrupulous VET FEE-HELP providers than the averages for all provider types. The data indicates that all Franklyn Scholar students were enrolled in courses with suspect fields of education, i.e. 'Management and Commerce' and 'Society and Culture'. Further, almost all Franklyn Scholar students were reported as studying online across all years (the lowest was 98.5 per cent in 2014), with only 16 students in the period 2014-16 reported as having studied either face-to-face or multi-modal.

Percentages of Indigenous students and students from a low SES background at Franklyn Scholar, while lower than the average for private providers, were higher than for TAFEs and other public providers for the period 2014-16. Indigenous student percentages peaked at just under 10 per cent in 2015 and were around 7 per cent in both 2014 and 2016, while TAFE recorded 2.7 to 3.6 per cent for the same period.



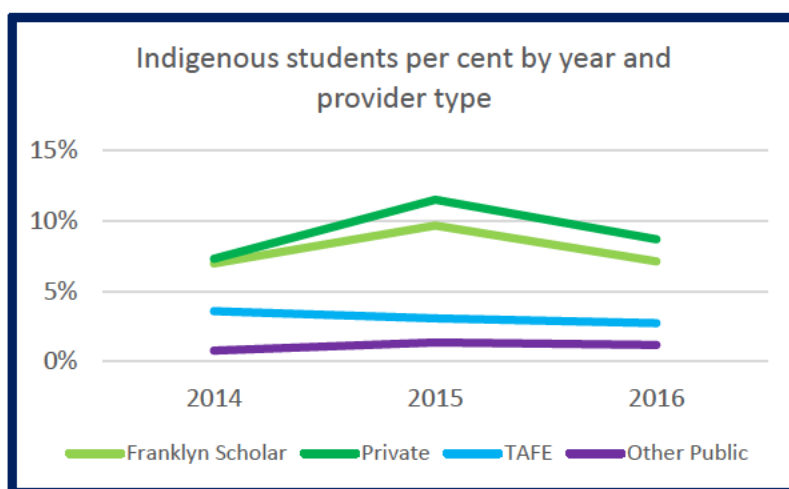
In 2014, the percentage of low SES students for Franklyn Scholar and private providers were relatively similar on average, but was slightly lower in 2015, further decreasing in 2016. Franklyn Scholar's percentage of low SES students was higher than the average for TAFEs (5 per cent, 8 per cent and 4 per cent higher, respectively, in 2014, 2015 and 2016).

The percentages of students from very remote areas at Franklyn Scholar were relatively similar to the average percentages at TAFEs and other public providers, as compared to private providers in general.

In 2014 and 2015, Franklyn Scholar had lower percentages of students with a disability than the average for each of the provider types. However, the data shows percentages were increasing and in 2016 it had surpassed the private provider average and the average for TAFEs.

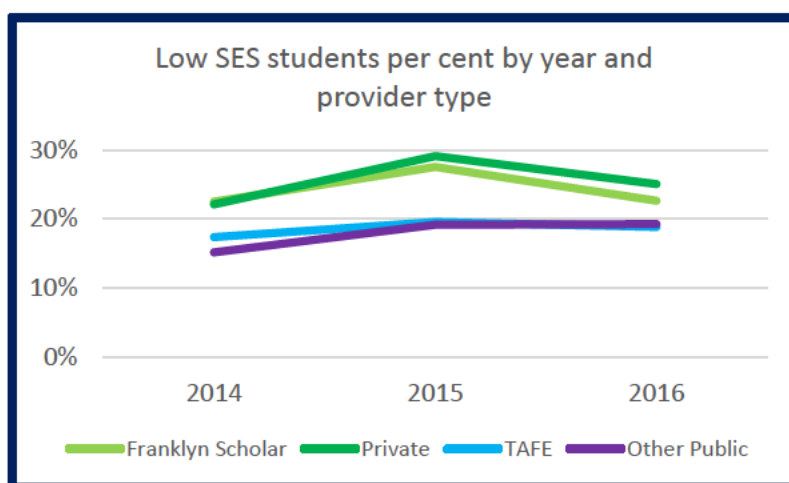
**Figure 1: Indigenous student numbers at Franklyn Scholar, by year, with a comparison with overall percentages for VET FEE-HELP provider types**

Year	Indigenous students	per cent increase on previous year	per cent of total students
2014	39	-	7
2015	298	664	10
2016	108	-64	7



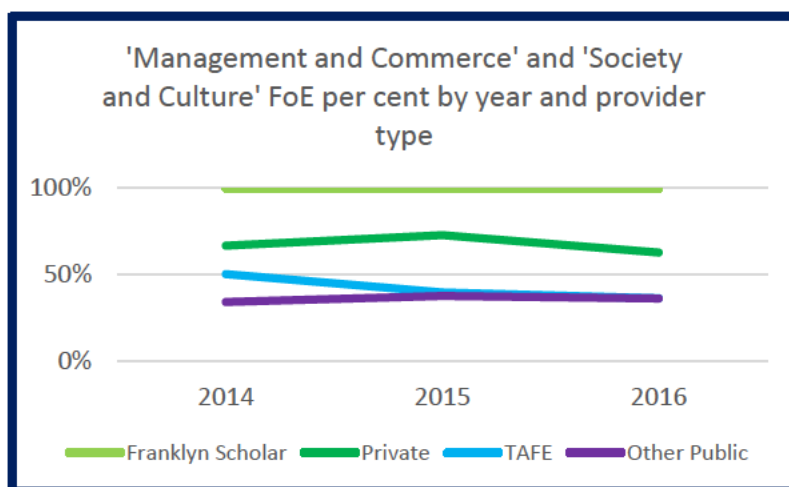
**Figure 2: Low SES student numbers (bottom 20 per cent) at Franklyn Scholar, by year, compared with overall percentages for VET FEE HELP provider types**

Year	Low SES students	per cent increase on previous year	per cent of total students
2014	126	-	23
2015	850	575	28
2016	344	-60	23



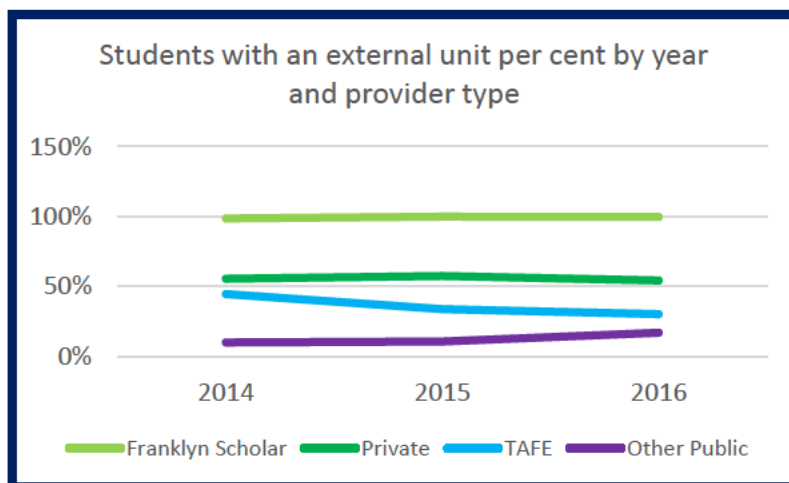
**Figure 3: Number of students studying in courses with fields of education suspected to be associated with inappropriate recruitment practices at Franklyn Scholar, by year, compared with overall percentages for VET FEE HELP provider types**

Year	Students with suspect FoE	per cent increase on previous year	per cent of total students
2014	560	-	100
2015	3,088	451	100
2016	1,519	-51	100



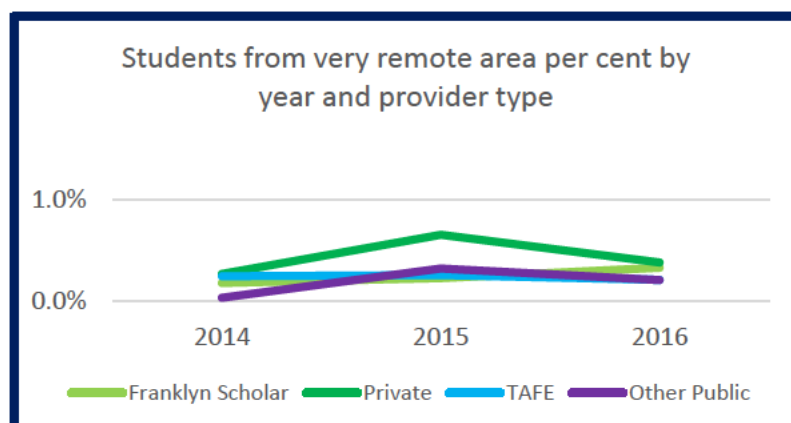
**Figure 4: Numbers of students with at least one unit being studied in external (online) mode at Franklyn Scholar, by year, compared with overall percentages for VET FEE HELP provider types**

Year	Students with an external unit	per cent increase on previous year	per cent of total students
2014	552	-	99
2015	3,084	459	100
2016	1,515	-51	100



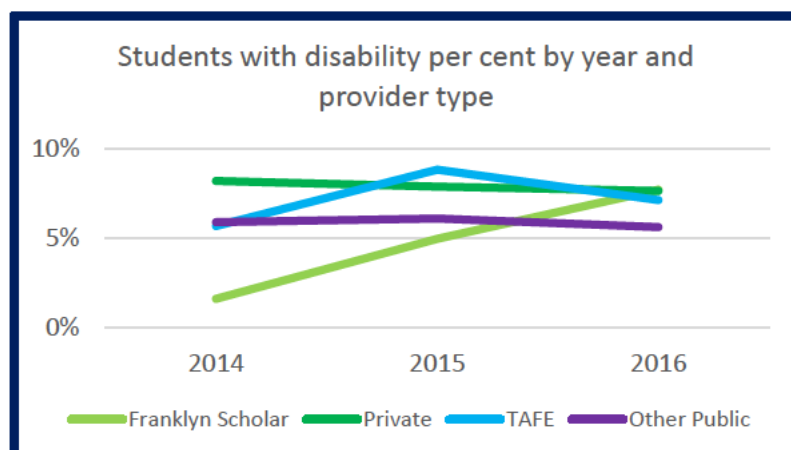
**Figure 5: Numbers of students from a very remote area studying at Franklyn Scholar, by year, compared with overall percentages for VET FEE HELP provider types**

Year	Very remote students	per cent increase on previous year	per cent of total students
2014	1	-	0
2015	7	600	0
2016	5	-29	0



**Figure 6: Numbers of students with a disability studying at Franklyn Scholar, by year, compared with overall percentages for VET FEE HELP provider types**

Year	Students with a disability	per cent increase on previous year	per cent of total students
2014	9	-	2
2015	153	1600	5
2016	117	-24	8



The above is consistent with student enrolment patterns nationally at that time, as reflected in the background to this paper.

#### **Data analysis criteria**

In considering whether a student was likely to be enrolled as a result of inappropriate conduct by Franklyn Scholar, the analysis of HEIMS data focused on four categories:

- A. *Course not completed, unit not successfully completed*: where it was reasonably likely the student was either not aware of their enrolment, did not engage in the course, may have been encouraged to sign up in return for inducements, or similar.
- B. *Course completed, not all units successfully completed because the student withdrew, failed, was ongoing or did not have a result reported*: indicating the student may have benefited from the course but not completed one or more units for common or plausible reasons.
- C. *Course not completed, unit successfully completed but students have two or more vulnerability indicators or potential targeting (e.g. Australian and Torres Strait Islander (ATSI), studying units online, English not spoken at home, humanitarian visa holder, disability, course with specific field of education, low SES (bottom 20 per cent), from a very remote area, multiple courses at Franklyn*

*Scholar*): indicating that these students may have been targeted for their 'vulnerability' and did not engage in or complete the course.

- D. *Course completed, unit successfully completed, but two or more indicators of potential vulnerability (e.g. ATSI, studying units online, English not spoken at home, humanitarian visa holder, disability, course with specific field of education, low SES (bottom 20 per cent), from a very remote area, multiple courses at Franklyn Scholar)*: indicating the student completed the course and the potential indicators of vulnerability are not relevant.
- E. *Units of study that do not fall into any of the above categories that have not been deleted.*

Table 2 below presents high level data against each of these four analysis categories, giving the number of units of study in each of the years 2014 to 2017.

**Table 2: Number of Franklyn Scholar units of study for each year that fall into each re-credit category**

Indicators	Census Year Summary (unit count)					VFH Debt
	2014	2015	2016	2017	Total	
A Course not completed, unit not successfully completed (withdrawn, failed, ongoing or not reported)	4,237	23,994	2,354	36	30,621	\$84,752,898.75
B Course completed, unit not successfully completed (withdrawn, failed, ongoing or not reported)	1	0	0	0	1	\$2,487.50
C Course not completed, unit completed, students have two or more vulnerability indicators of potential targeting (e.g. Aboriginal and Torres Strait Islander (ATSI), studying units online, English not spoken at home, humanitarian visa holder, disability, course with specific field of education, low socioeconomic status (bottom 20%), from a very remote area, multiple courses at Franklyn Scholar)	129	743	2	0	874	\$2,186,494.78
D Course completed, unit completed, students have two or more vulnerability indicators of potential targeting (e.g. Australian and Torres Strait Islander (ATSI), studying units online, English not spoken at home, humanitarian visa holder, disability, course with specific field of education, low socioeconomic status (bottom 20%), from a very remote area, multiple courses at Franklyn Scholar)	55	163	0	0	218	\$564,812.46
E None of the above criteria	4	0	0	0	4	\$5,541.82
<b>Total</b>					<b>31,718</b>	<b>\$87,512,235.31</b>

\*The inclusion of indicators of potential vulnerability in analysing students reasonably likely to have been enrolled as a result of Franklyn Scholar's inappropriate conduct is based on complaints to the VET Student Loans Ombudsman (VSLO) and audit findings (which included material drawn from HEIMS) that Franklyn Scholar:

- a) engaged, either directly or through its agents, in misleading and/or unconscionable conduct in an effort to increase its enrolments, including targeting certain populations, such as vulnerable and disadvantaged persons, low socio-economic communities with a high proportion of Indigenous Australians and those who on any objective assessment were, because of their suitability or personal circumstances, unlikely to be capable of completing a course; and
- b) encouraging those persons to enrol with Franklyn Scholar by providing them with inaccurate or incomplete information, including about the costs of undertaking study or the benefits of completing a course, and/or inducements.

### **Analysis outcomes**

The data in **Table 2** clearly demonstrate the significant ramping up and increase in enrolments at Franklyn Scholar from 2014 and into 2015 in circumstances where the student did not complete either units or the course. This sharp increase is corroborated by evidence regarding Franklyn Scholar's enrolment practices, in particular departmental and Australian Skills Quality Authority (ASQA) audits and VSLO complaints (see **Attachment B** to the minute).

Analysis of the data (detailed in **Attachment A**) suggests the following:

- 1) In 2015 the number of students enrolled in Franklyn Scholar courses rose dramatically, coinciding with inappropriate enrolment practices later revealed by audit and investigation by the department and ASQA.
- 2) The students associated with the units in Category A did not complete these units and therefore satisfy the requirement of subclause 46AA(1) of Schedule 1A to *Higher Education Support Act* (the person has not completed the requirements for the unit) for enrolments in the years 2014 to 2017.
- 3) The students associated with units in Category C demonstrated non-completions and vulnerability or potential targeting by Franklyn Scholar and could be considered for re-credit for commencements in the active years of 2014 to 2016.
- 4) Students associated with units in Categories D and E are out of scope, with students reported as having completed the course and passed the units.

### **Targeting of Vulnerability Points in Student and Study Characteristics**

**Table 3** and **Table 4** show the number and percentage, respectively, of units in each re-credit category for each vulnerability indicator or other cohorts considered to be targeted by Franklyn Scholar, across all years. It is evident from the results above that 100 per cent of units fell within suspect Fields of Education (FoE) and those being studied in external mode (online) are 100 per cent or close to 100 per cent in all categories, except E, which only had 4 units.

Although the percentage of Indigenous students at Franklyn Scholar was slightly lower than the average for private providers, it was well above that for TAFE and other public providers. As can be seen in **Table 3** and **Table 4**, 100 per cent of units associated with an Indigenous student are in one of the two categories (A and C), with the majority in Category A where neither the course nor the unit have been successfully completed. This suggests that Franklyn Scholar may have targeted Indigenous students.

All of the 82 units associated with students from a very remote area are in Category A, meaning they are deemed re-creditable. These 82 units are for 14 students, with 28 of the units being associated with five Indigenous students.

Analysis also revealed that, of the 30,717 units in Category A, 30,644 (99.8 per cent) of them had at least two vulnerability indicators. This is not surprising as Field of Education had 100 per cent coverage and external study had almost 100 per cent coverage. Further, 12,377 (39 per cent) of these units had three or more vulnerability indicators. This analysis shows that Category A students have been appropriately identified for re-credit.

In the case of Category C, the 874 units reported as completed were for students who had at least two vulnerability indicators. As 99.8 per cent of students with at least two vulnerability indicators had incomplete units and fell in Category A, it raises questions about unit completion rates for students with similar characteristics who fell in Category C but were reported as having completed units. These students had similar vulnerability indicators, i.e. Indigenous, low SES, disability and language other than English. Further, a large percentage of students in Category A were enrolled in online courses, lending further support to re-crediting the 874 units in Category C which were all delivered online in courses with suspect FoE. In light of this, and of the issues regarding veracity of data mentioned later in this document, students in Category C could also be eligible for re-credit.

**Table 3: Number of units by indicator for students commencing the course in 2015 or 2016**

Category	Units	FoE	Indigenous	External	Multiple enrolments	low SES	LOTE <sup>1</sup>	Disability	HVH <sup>2</sup>	Remote
A	30,717	30,717	2,900	30,614	445	8,098	1,700	1,416	0	82
B	1	1	0	1	0	1	0	0	0	0
C	874	874	54	874	49	257	74	34	0	0
D	218	218	0	218	27	31	25	17	0	0
E	4	4	0	0	0	0	0	0	0	0

**Table 4: Percentage of units with each vulnerability indicator, by re-credit category, for students commencing the course in 2015 or 2016**

Category	Units	FoE	Indigenous	External	Multiple enrolments	low SES	LOTE	Disability	HVH	Remote
A	30,717	100%	9.4%	99.7%	1.4%	26.4%	5.5%	4.6%	0%	0.3%
B	1	100%	0%	100%	0%	100%	0%	0%	0%	0%
C	874	100%	6.2%	100%	5.6%	29.4%	8.5%	3.9%	0%	0%
D	218	100%	0%	100%	12.4%	14.2%	11.5%	7.8%	0%	0%
E	4	100%	0%	0%	0%	0%	0%	0%	0%	0%

<sup>1</sup> Languages Other Than English (LOTE)

<sup>2</sup> Humanitarian Visa Holder (HVH)

## Data quality issues

Noting that data was entered by the provider, at Franklyn Scholar the units of study directly mapped to VET units of competency. That is, the names of their units of competency were identical to those prescribed for each course, as set out in the packaging rules found on [www.training.gov.au](http://www.training.gov.au). An analysis of the course structure relating to units of competency for a number of students who had been reported as Passed or RPL for all of their units, and who had been reported as having completed their course, was carried out. It was found that all of these completed courses met the requirements as set out in the packaging rules for the relevant course.

This course structure analysis enabled a better understanding of how to process the units for Franklyn Scholar students who had been reported as not having completed their course, and to determine those students who had anomalously been reported as having completed their course.

For the purposes of determining whether a unit was eligible for re-credit, the completion status of a course was changed if:

- the number of units of study reported for the student in the course was less than that required for course completion (e.g. only two units were reported with any outcome, when the data implied that three units were required to complete that course)
- the correct number of units of study were reported for the student in the course, but not all were reported as Passed or RPL.

There were three exceptions to the first rule. Both the Diploma of Business and the Diploma of Management were found to require eight units of study/competency for successful completion. There was one case where a student had undertaken and Passed the required eight units in the Diploma of Business, plus one unit in the Diploma of Management, and had been reported as having completed both diplomas. There were also two cases of students having 'Passed' seven units in the Diploma of Business and two in the Diploma of Management, but reported as having completed both courses. In both of these cases it was assumed that this was a system issue, where the provider's system was possibly set up to only report against certain diplomas, not allowing for the flexibility allowed in the packaging rules. Students are allowed to take two elective units in each of these diplomas that fall outside the prescribed units for each diploma. It was assumed therefore that, while these students were reported as having completed both diplomas when they had not completed the requirements for both, this was the provider's way of working around the lack of flexibility in their system. The first student was assumed to have simply studied an extra elective in their Diploma, and the other two students were assumed to have studied an extra unit within the Diploma of Business while undertaking two electives under the Diploma of Management.

The only exception to the second criteria was when the correct number of units had been reported for the student in the course, all but one had been reported as 'Passed' or RPL and the final unit had been reported as Ongoing. In this case the provider was given the benefit of the doubt and it was assumed that the student had passed the final unit but this had not been entered in the system. If the final unit was reported with a different outcome, such as Withdrawn or Failed, or the outcome was not reported at all, the benefit of the doubt was not afforded to the provider, and the course completion status was taken to be not complete.

There were five students who were reported as having completed their course but for whom the course completion status was changed to 'Not Complete'. These students all studied either the Diploma of Business or the Diploma of Management. All five students were reported for eight requisite units (40 units in total) for their diploma, but all five had at least three units with an outcome status of 'Ongoing'. The 20 units reported as 'Passed' fell into Category C, while the 20 units reported as 'Ongoing' fell into Category A. All of these units have been deemed re-creditable, as shown in Table 5.

**Table 5: Summary of number of units in each re-credit category where course completion status was changed**

	Category	Units	Course completion changed from Y to N	Course completion changed from Y to N
Course not completed, unit not successfully completed	A	30,717	20	0%
Course completed, unit not successfully completed	B	1	0	0%
Course not completed, unit successfully completed, two or more indicators	C	874	20	2%*
Course completed, unit successfully completed, two or more indicators	D	218	0	0%
No criteria currently meeting eligibility for re-credit	E	4	0	0%
<b>Totals</b>		<b>31,814</b>	<b>40</b>	<b>0%</b>

\*Relates to five students

## Background

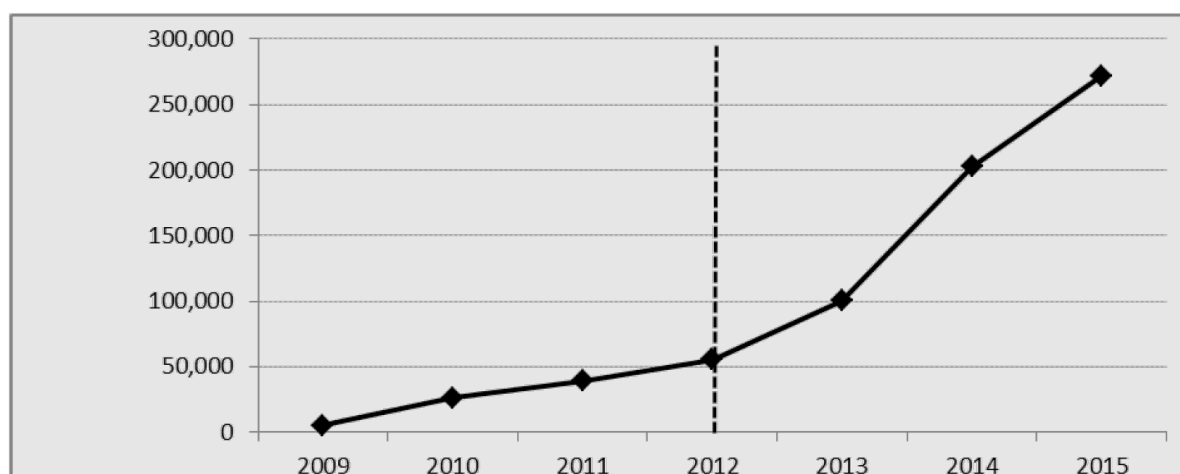
### Trends in the VET Sector over the period 2012-2015

Analysis done for the 'Redesigning VET FEE-HELP Discussion Paper' in early 2016 saw a number of trends in VET FEE-HELP provider behaviour, including the targeting of particular cohorts and providers offering certain types of courses. This analysis, summarised below, has informed the approach taken in identifying students who may have incurred VET FEE-HELP debts through the inappropriate conduct of their provider.

Departmental data shows that there was a substantial increase in the number of students accessing the VET FEE-HELP scheme from the time it commenced, with a rapid and marked increase in student take up following the 2012 expansion<sup>3</sup>, from around 55,000 in 2012 to more than 272,000 in 2015, (see Figure 1).

<sup>3</sup> In 2012 the rules for providers eligible to offer VET FEE-HELP were changed such that they no longer needed to have credit transfer arrangements with a higher education institution.



**Figure 1: Students accessing VET FEE-HELP since inception**

Source: VET FEE-HELP data collection

Note: 2015 data is unverified, extracted on 3 April 2016

Of particular note is the growth in disadvantaged students. **Table 6** provides a breakdown of enrolments by student characteristic, showing the percentage of enrolments for students with a disability was higher than those without a disability. Similarly, there was a marked increase in the percentage of Indigenous students being enrolled compared to non-Indigenous students. Students from very remote areas and of lower SES also grew markedly as a percentage of enrolments.

**Table 6: VET FEE-HELP enrolments by student characteristics**

Characteristic	2012	2015	Average Annual Growth (%)
With disability	3,207	20,638	181
Without disability	51,009	251,347	131
Indigenous	1,197	24,513	649
Non-Indigenous	51,276	242,919	125
Very remote	96	1,544	503
Major cities	43,606	188,145	110
Quintile 1 (Low SES)	12,014	74,049	172
Quintile 5 (High SES)	9,164	36,138	98
<b>All students</b>	<b>54,216</b>	<b>271,985</b>	<b>134</b>

Source: VET FEE-HELP data collection

Note: 2015 data is unverified, extracted on 3 April 2016

At the same time, as shown in **Table 7**, course completion rates were significantly lower for students with a disability, from Indigenous backgrounds and of low SES compared to the estimated completion rate for VET FEE-HELP supported students studying diploma level and above<sup>4</sup> (42.2 per cent).

<sup>4</sup> Certificate IV courses were trialled for VET FEE-HELP from 2014 until 31 December 2016

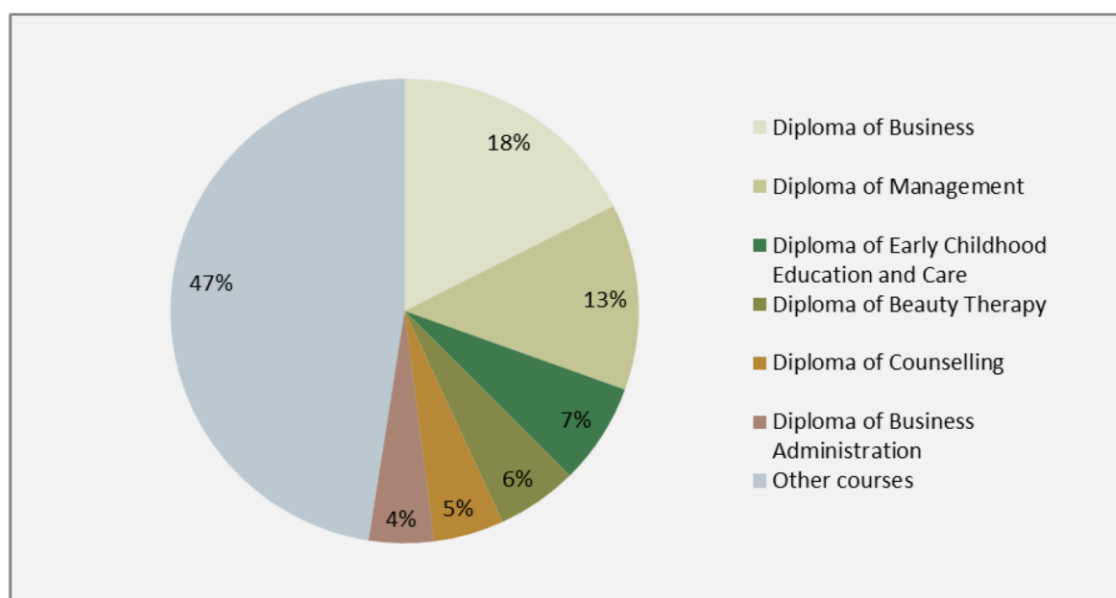
**Table 6: Course completion rates by various characteristics**

Characteristics		2013 completions (%)	2014 completions (%)
Student characteristics	With disability	29.5	21.5
	Indigenous	17.0	12.6
	Quintile 1 (Low SES)	26.5	21.9
	Quintile 5 (High SES)	28.3	24.1
Course characteristics	Internal (face to face)	38.8	31.6
	External (online)	7.0	7.0
<b>All students</b>		<b>26.1</b>	<b>22.0</b>

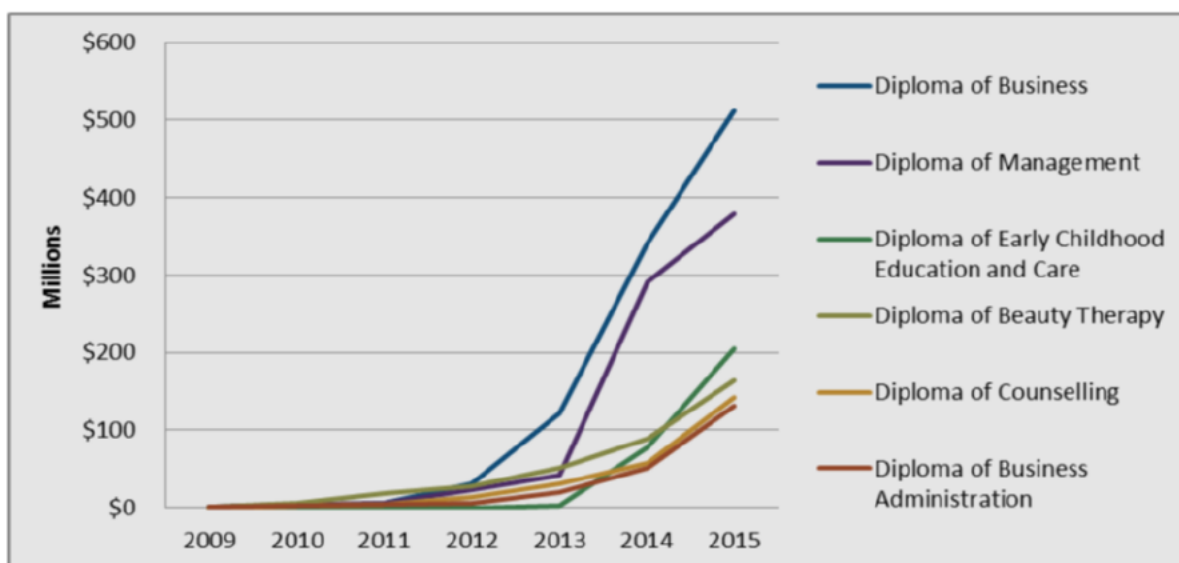
Source: VET FEE-HELP data collection

Note: 2015 data is unverified, extracted on 3 April 2016

The data also show that providers moved to training modes that attracted the highest subsidy or profit, at the lowest cost. This resulted in a steady increase in online training and a decrease in face-to-face delivery. As shown in **Figure 2**, VET FEE-HELP debt was primarily incurred for study in the fields of business and management, which could readily be delivered online without entry requirements. As is evident in **Figures 2 and 3**, only six course types accounted for over half of all VET FEE-HELP loans at that time. Some of those courses (particularly Diplomas of Management and Business) grew at a record rate following the expansion of VET FEE-HELP in 2012.

**Figure 2: Proportion of loans by course as percentage of total VET FEE-HELP loan amounts, 2015**

**Figure 3: Value of loans by largest six courses, 2009-2015**



Source: VET FEE-HELP data collection

Note: 2015 data is unverified, extracted on 3 April 2016

### **Trends in Franklyn Scholar student and study characteristics 2012-2016**

Tables 8 and 9 show changes in student numbers and percentages at Franklyn Scholar across several characteristics from 2014 to 2016. Note that student numbers had significantly declined by 2017, so 2017 data is not included in the tables or graphs below. As mentioned previously, there was a focus on courses with specific fields of education that could be taught online (external mode). In addition, students from low SES and Indigenous backgrounds appear to be the most prevalent indicating vulnerable cohorts were targeted by Franklyn Scholar. Figures 4 and 5 show the same information in a graphical form.

**Table 7: Time series of Franklyn Scholar student numbers by student/study characteristic**

Year	Totals	External mode	FoE	Low SES	Indigenous	Disability	Very remote
2014	560	552	560	126	39	9	1
2015	3,088	3,084	3,088	850	298	153	7
2016	1,519	1,515	1,519	344	108	117	5

**Table 8: Time series of percentages of Franklyn Scholar students by student/study characteristic**

Year	External mode	FoE	Low SES	Indigenous	Disability	Very remote
2014	99%	100%	23%	7%	2%	0%
2015	100%	100%	28%	10%	5%	0%
2016	100%	100%	23%	7%	8%	0%

Figure 4: Time series of student numbers by student/study characteristic

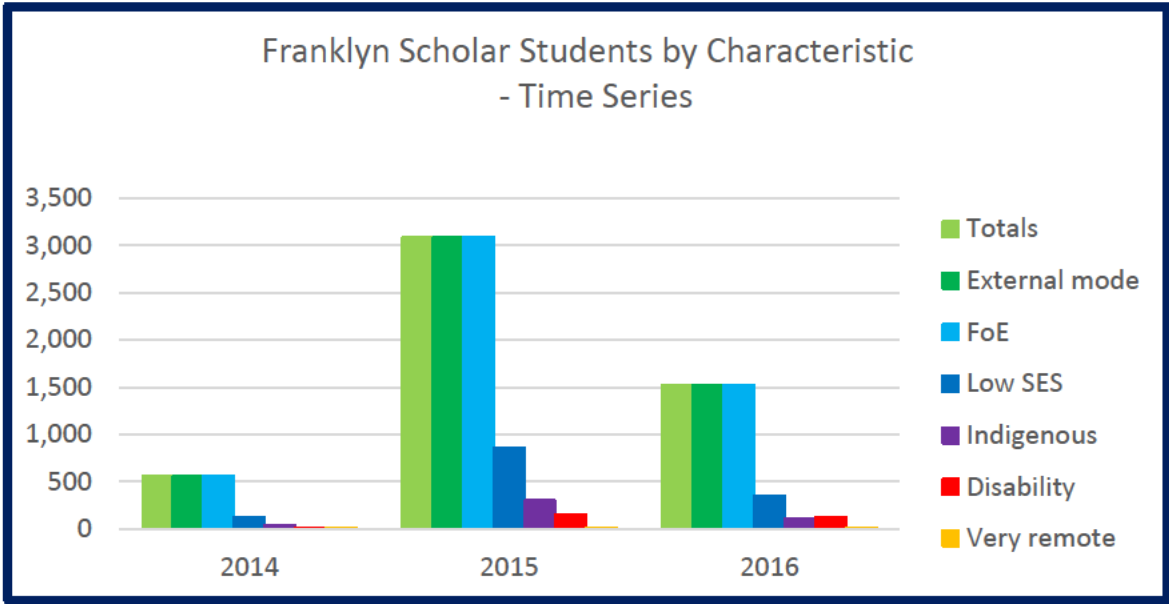
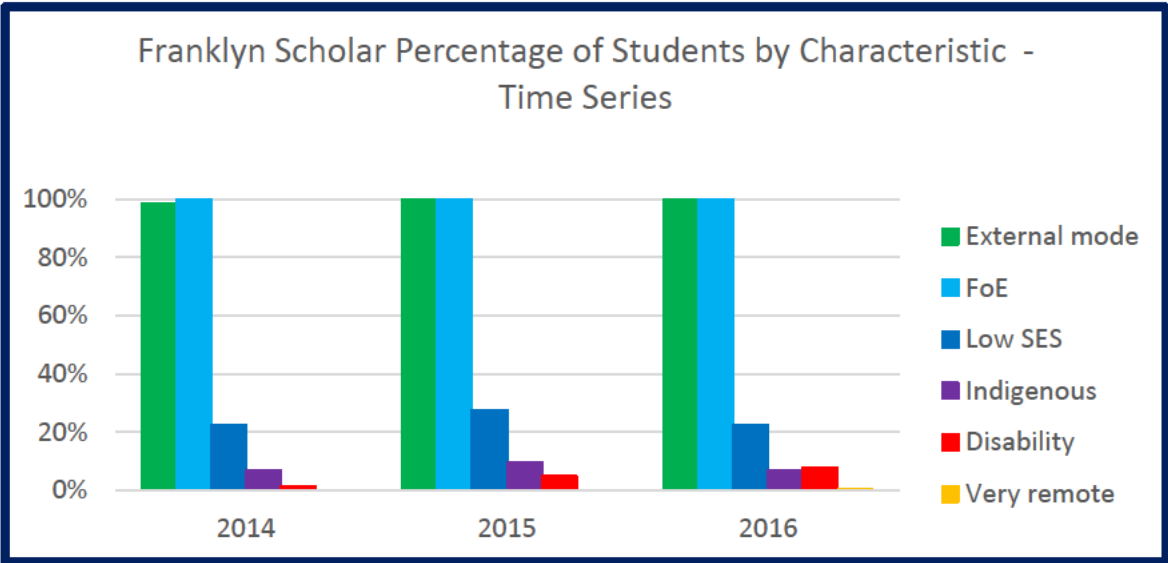


Figure 5: Time series of percentages of students by student/study characteristic



Finally, Tables 9 and 10 depicts Franklyn Scholar student numbers from 2014 to 2016 for all courses offered at Franklyn Scholar namely, Diploma of Leadership and Management<sup>5</sup>, Diploma of Business, Diploma of Project Management and Diploma of Human Resource Management. The bulk of enrolments in all years are in the first two qualifications, commanding 70 per cent and 30 per cent respectively of the total course enrolments at Franklyn Scholar in 2014, and 56 per cent and 45 per cent in 2015. Enrolments in the Diploma of Project Management increased significantly in 2016, at 21 per cent of all enrolments in that year. Figures 6 and 7 show the same information in a graphical form. This shows that enrolment trends relating to fields of education for Franklyn Scholar were consistent with general trends in the VET sector nationally.

<sup>5</sup> This course was called Diploma of Management prior to 2015

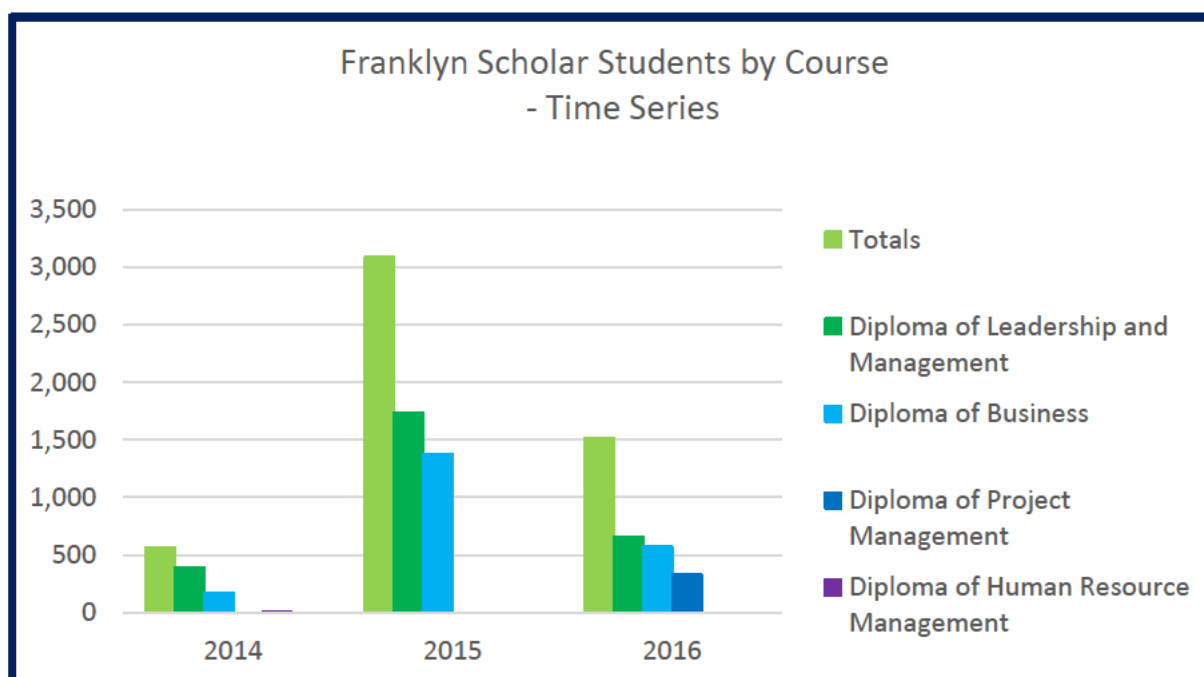
Table 9: Time series of student numbers by course

Year	Totals	Diploma of Leadership and Management	Diploma of Business	Diploma of Project Management	Diploma of Human Resource Management	Diploma of Events
2014	560	390	167	0	3	0
2015	3,088	1,739	1,377	0	0	0
2016	1,519	654	572	326	0	4

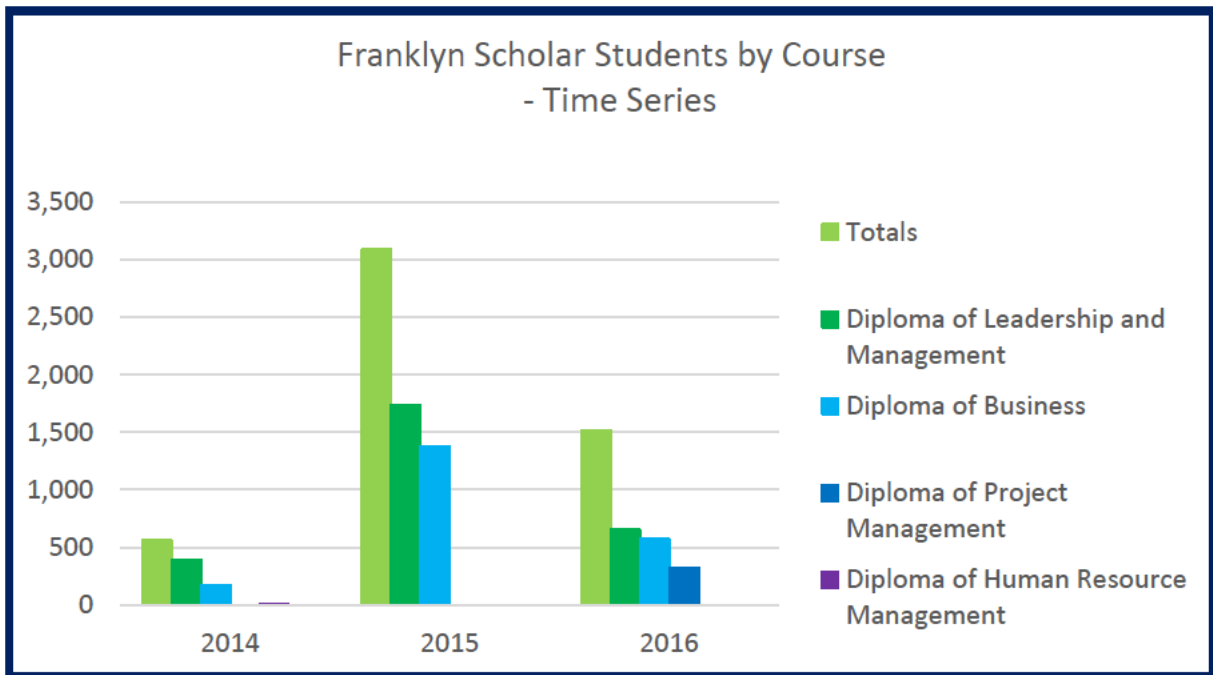
Table 10: Time series of percentages of students by course

Year	Diploma of Leadership and Management (per cent)	Diploma of Business (per cent)	Diploma of Project Management (per cent)	Diploma of Human Resource Management (per cent)	Diploma of Events (per cent)
2014	70%	30%	0%	1%	0%
2015	56%	45%	0%	0%	0%
2016	43%	38%	21%	0%	0%

Figure 6: Time series of student numbers by course



**Figure 7: Time series of percentages of students by course**





FINAL AUDIT REPORT  
OF  
*Franklyn Scholar (Australia) Pty Ltd*  
under  
Clause 26 of Schedule 1  
to the  
*Higher Education Support Act 2003*

DATES OF AUDIT: 12 July 2016 to 23 August 2016

LOCATION OF AUDIT: 600 Glenferrie Road, Hawthorn, VIC



## Introduction

The Department of Education and Training (the **department**) engaged Deloitte through Work Order Number ED16/008379 dated 2 June 2016 to perform a compliance audit under the *Higher Education Support Act 2003 (HESA)* and the *Higher Education Support (VET) Guideline 2015 (the VET Guideline)* of students reported to be enrolled by VET FEE-HELP provider Franklyn Scholar (Australia) Pty Ltd (**Franklyn Scholar**) for the period from July 2015 and May 2016. For the purposes of this report the period assessed was 1 July 2015 to 31 May 2016 (the **Period**).

## Background

The department engaged Deloitte to perform a compliance audit of Franklyn Scholar to:

1. Examine the practices used by Franklyn Scholar to enrol potential students
2. Use proxies for student engagement to identify enrolments that could be considered as being invalid
3. Identify Franklyn Scholar's compliance with specified requirements of HESA and the VET Guideline.

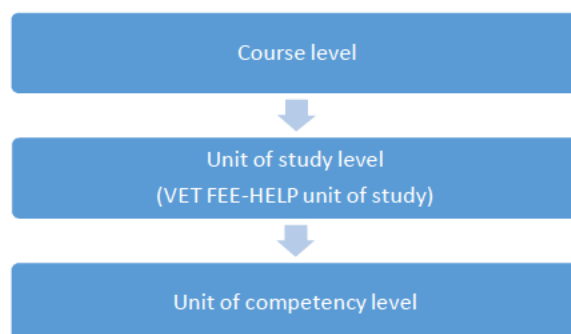
The procedures performed in undertaking this audit included:

- Inspection of relevant departmental information
- Attending Franklyn Scholar's premises at 600 Glenferrie road, Hawthorn VIC 3122 on 12 July 2016 to gain an understanding of their student enrolment and administrative practices and obtain relevant student data
- Analysis of Franklyn Scholar's student enrolment and administrative practices against specified requirements of HESA and the VET Guideline
- Performing data analytics on the data obtained from Franklyn Scholar.

The following is a summary of our key findings:

### Data analytics

Our analysis was conducted at the unit of competency level referred to as an enrolment throughout the report. In the first instance course census 1 date was used to filter data to the Period. Where course census 1 date was not available the unit of competency start date was used, or alternatively the course start date.







**Australian Government**  
**Department of Education and Training**

The data obtained from Franklyn Scholar for the Period identified 2,776 students enrolled in 23,730 units of competency. Of the 23,730 unit of competency enrolments the data analytics identified 86 percent (20,410) had no online activity for the Period; 4,323 in 2015 and 16,087 in 2016. For all years, of the 2,785<sup>1</sup> student enrolments the data analytics identified no activity for 2,398 students and 387 students who had undertaken activity.

Figure 1 Online activity of students – all years

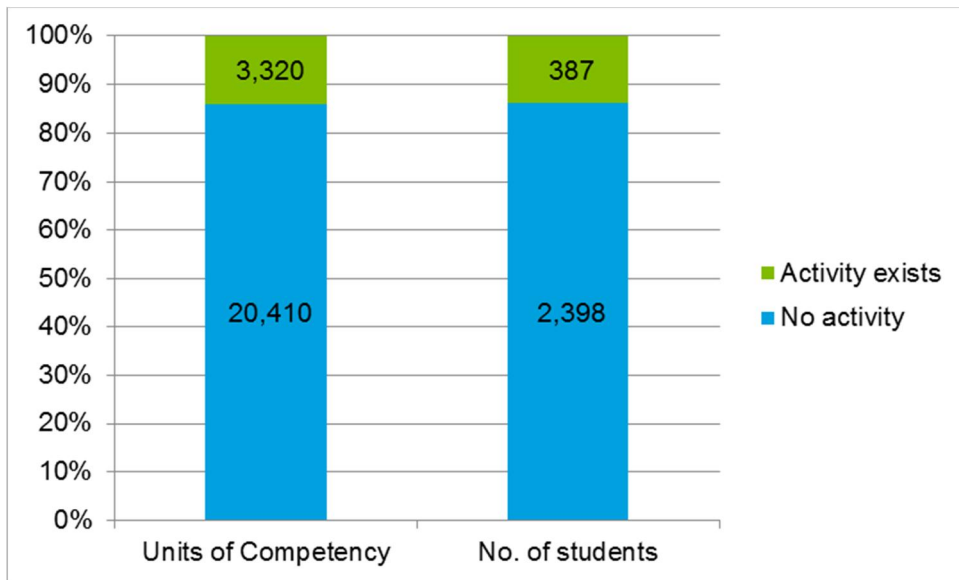
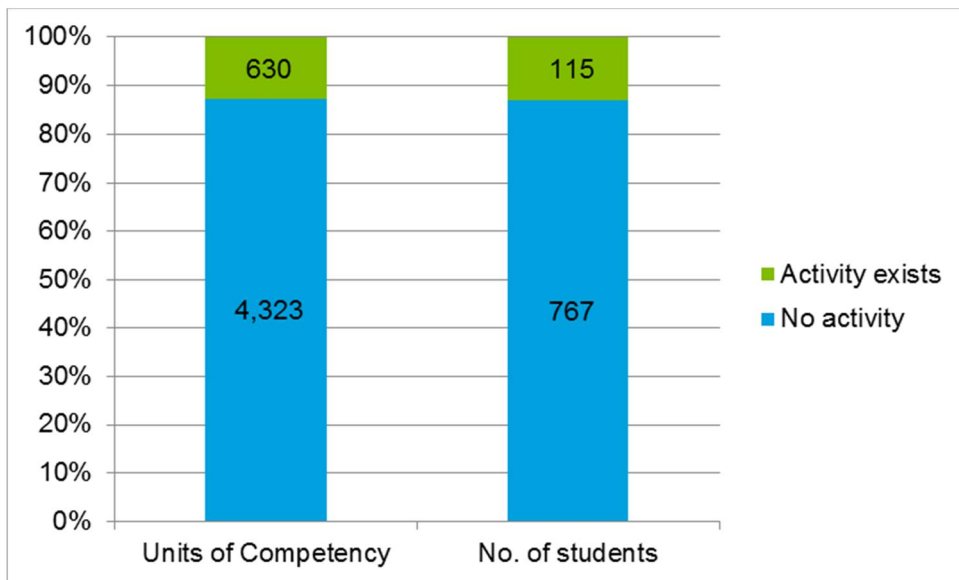


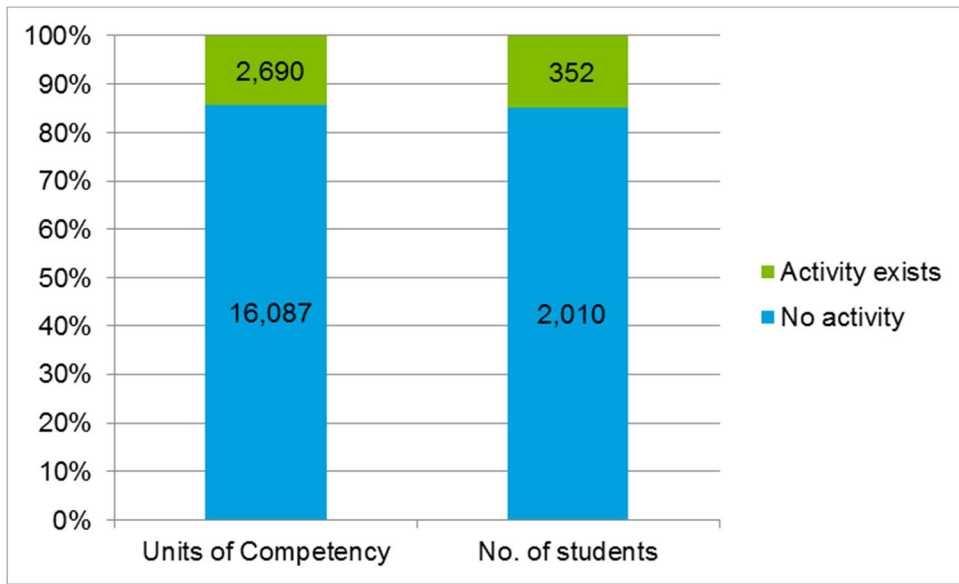
Figure 2 Online activity of students – 2015



<sup>1</sup> Nine students were enrolled in two courses each during the Period, resulting in a total of 2,776 student enrolments when summarised by course



Figure 3 Online activity of students – 2016



Of the 20,410 units of competency with no online activity 82 percent (16,738) had a grade of Withdrawn and 15 percent (3,147) had a grade of No Grade.

Figure 4 Grades for unit of competency with no online activity – all years

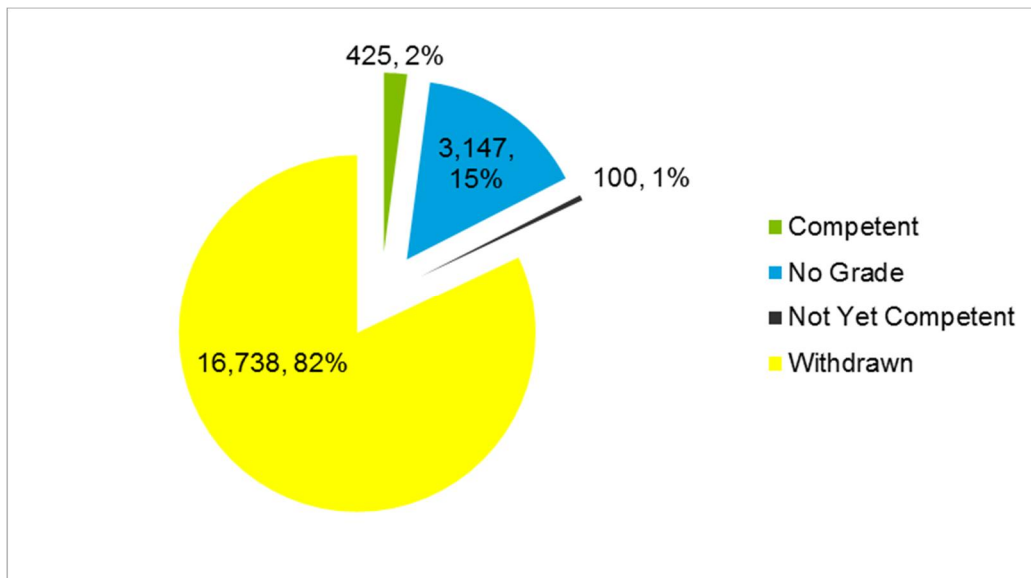




Figure 5 Grades for unit of competency with no online activity - 2015

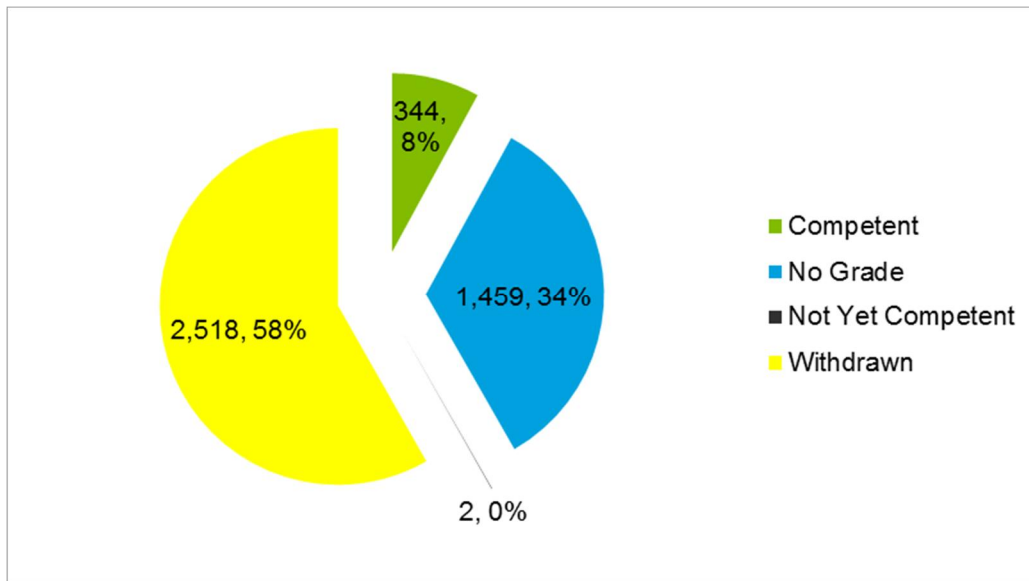
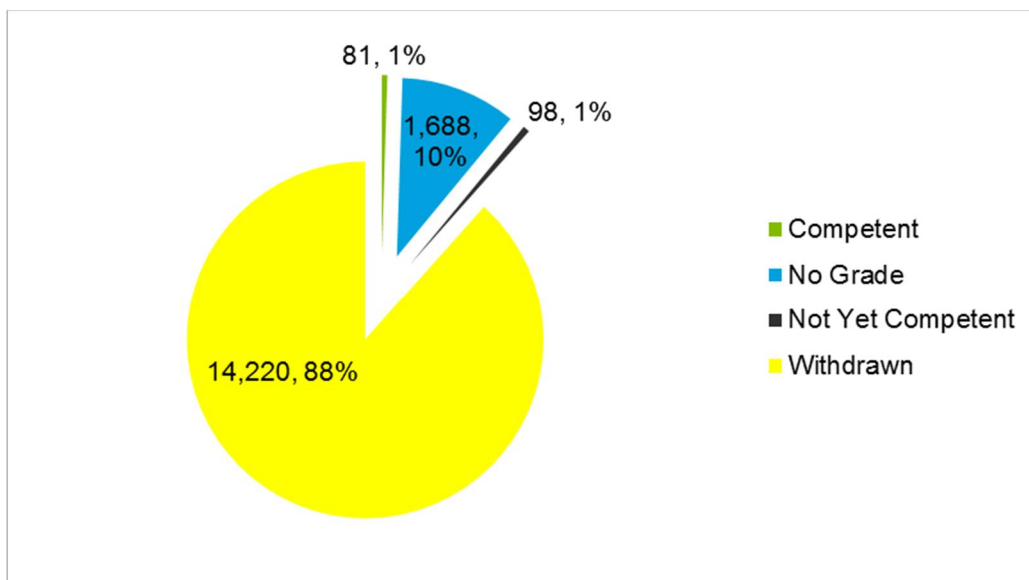


Figure 6 Grades for unit of competency with no online activity - 2016



### Compliance

Instances of non-compliance were noted with HESA and the VET Guideline. The areas of non-compliance included:

- The Student Entry Procedure did not specify "*how to report to the Secretary about the results of such assessments*"
- The name of the link to the Student Entry Procedure on the website as at 4 July 2016 did not include the words "*student entry procedure*"
- The policies and the Student Handbook do not outline the procedure for a student to re-enrol in a VET unit of competency with Franklyn Scholar, in the case where the student had earlier withdrawn from a VET unit of competency



- Franklyn Scholar did not include all the required information in three agent agreements.

## Summary

During our site visit to Franklyn Scholar on 12 July 2016 we were provided with an overview of their student enrolment and learning framework and were subsequently provided with the following documents:

- Student Handbook for 2015 and 2016
- 2015 VETFee Help Student Lifecycle – Brokers Partnership flowchart
- 2015 VETFee Help Student Lifecycle – Franklyn Scholar flowchart
- Course completion process flowchart
- eddi Admin operations manual April 2015
- Student Administration Operations Manual 2016
- Refund and Cancellation Policy, effective 1 July 2013
- Refund Policy for the purposes of the VET FEE-HELP Assistance Scheme V1.0 issued 29 June 2012
- Withdrawal Policy V1.0 – June 2016
- Literacy and Numeracy Assessment Fact Sheet V1.5, undated
- Student Entry Policy and Procedure V1.0 – June 2016
- Terms and Conditions of an Enrolment in a Course Delivered by Acquire Learning V1.0 – June 2106.

## Courses offered and delivery method

Based on the information provided by Franklyn Scholar during and subsequent to our site visit and information available on their website the courses available for study at Franklyn Scholar during the Period were as follows:

- Diploma of Business (BSB50207, BSB50215)
- Diploma of Business (EDDI) (BSB50215\_E)
- Diploma of Business (Online FinPa) (BSB50215FP)
- Diploma of Leadership and Management – v1 as at 03/03/2016(BSB51915VI)
- Diploma of Leadership and Management (EDDI) (BSB51915\_E)
- Diploma of Leadership and Management (Online FinPa) (BSB51915FP)
- Diploma of Management (BSB51107)
- Diploma of Management (Deluxe) Pty Group (BSB51107.).

These courses are predominantly delivered online with an option to attend face to face workshops in selected areas only.

## Student demographics

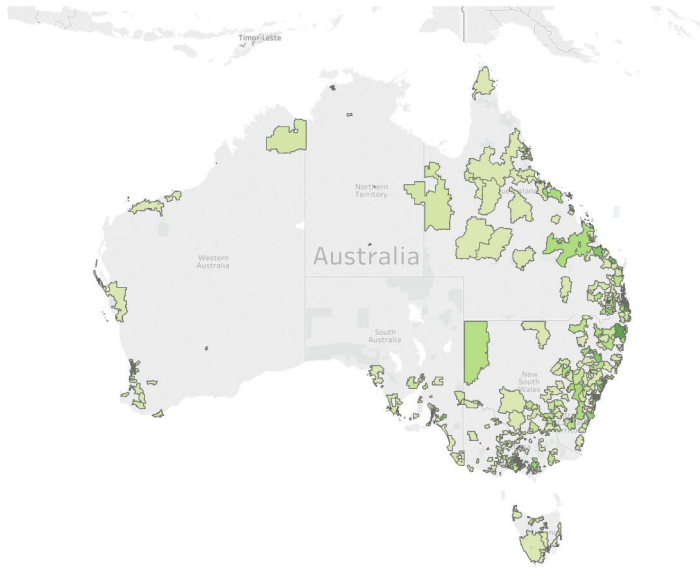
Based on the data analytics results we performed a trend analysis on the number of enrolments in each location across Australia based on the postcode of the student's residential address. The top five locations by postcode with the highest number of student enrolments are as follows, noting that the data did not include suburb name or state in the 'Suburb' and 'State' fields:



1. 4350
2. 3977
3. 5108
4. 5113
5. 4207.

Refer to Figure 7 for the location of student enrolments across Australia.

Figure 7 Student enrolments by postcode



## Systems

Franklyn Scholar uses three systems that cover the pre-enrolment, post-enrolment and student learning management activities:

- FinPa<sup>2</sup>: The online student learning management system. All coursework, assessments, login details, grading, participation and progress is logged on FinPa. Note there are several “instances” on FinPa, so the students do not all sit on the one platform
- MoodleRooms<sup>2</sup>: The online student learning management system. All coursework, assessments, login details, grading, participation and progress is logged on MoodleRooms.
- VETtrak: Franklyn Scholar’s student management system used to record student details pre-enrolment and post-enrolment.

Salesforce is also used as a customer relationship management system.

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<sup>2</sup> Students are setup in use either FinPa or MoodleRooms, not both



## Recruitment process


Franklyn Scholar engaged eight agents during the Period:

- Allied Learning Pty Ltd / Acquire Learning Pty Ltd
- Compare Courses Pty Ltd
- Path Careers Pty Ltd
- T3 Australia Pty Ltd
- Global Learning Support (GLS)
- Path Group Pty Ltd
- United Recruitment Pty Ltd t/a Octopus Academy
- Entice Engage Retain Pty Ltd.

## Enrolment process

The enrolment process, as described by Franklyn Scholar is summarised below in Figure 8 and Figure 9. More detailed information is contained in the Student Entry Policy and Procedure, Student Administration Operations Manual 2016 and Student Journey presentation.


Figure 8 Franklyn Scholar enrolment process 2015<sup>3</sup>

<p><b>Enrolment application</b></p> 	<ul style="list-style-type: none"> <li>• Prospective student completes the online enrolment form and customer commitment checklist; link emailed to the prospective student (along with course information, census dates and fees) after speaking to a career consultant</li> <li>• Enrolment confirmation email sent to the student</li> </ul>
<p><b>Student screening</b></p>	<ul style="list-style-type: none"> <li>• Career advisor recontacts student after 2 days to complete the enrolment process</li> <li>• Student completes the electronic Request for VET FEE-HELP Assistance Form and receives email confirmation</li> </ul>
<p><b>Student screening</b></p>	<ul style="list-style-type: none"> <li>• Consultant speaks to prospective student to determine suitability</li> <li>• Student is sent a welcome email with induction information, login details to the learning portal and details to book in a call with an Acquire Coach</li> </ul>

<sup>3</sup> Note this is the process from October/November 2015, prior to this the process was unknown



Figure 9 Franklyn Scholar enrolment process 2016

<b>Enrolment application</b> 	<b>Day 1</b> <ul style="list-style-type: none"> <li>Prospective student completes the online enrolment form and customer commitment checklist; link emailed to the prospective student (along with course information, census dates and fees) after speaking to a career consultant</li> <li>Enrolment confirmation email sent to the student</li> </ul>
	<b>Day 2</b> <ul style="list-style-type: none"> <li>Customer care consultant verifies information during the enrolment application process</li> </ul>
	<b>Day 3 (2 business days after enrolment)</b> <ul style="list-style-type: none"> <li>Student completes the electronic Request for VET FEE-HELP Assistance Form and receives email confirmation</li> </ul>
<b>Student screening</b>	<b>Day 1</b> <ul style="list-style-type: none"> <li>Consultant speaks to prospective student to determine suitability</li> </ul>
	<b>Day 2</b> <ul style="list-style-type: none"> <li>Customer care consultant calls student and verifies enrolment information, including Year 12 certificate</li> <li>Email sent to student with link to approved assessment tool if no Year 12 certificate</li> <li>Results of assessment communicated to student</li> </ul>
	<b>Day 3</b> <ul style="list-style-type: none"> <li>Student is sent a welcome email with induction information, login details to the learning portal and details to book in a call with an Acquire Coach</li> </ul>

### Assessment process

Assessments are submitted through the online learning management system portal. Two additional attempts are allowed to complete the assessment and achieve a Satisfactory outcome. Assessors provide feedback comments to students through the online learning management system portal.

### Student monitoring

Each week a report is generated from Salesforce, the customer relationship management system, which shows the login date for each student with reference to upcoming census dates. Over a six week period Franklyn Scholar will attempt to contact students that have not responded to their initial Coach welcome call or not logged in. Students that cannot be contacted during this six week period are cancelled from the course. The monitoring process takes place leading up to each census date and the actual cancellation is processed after census date without penalty.



## Approach to Audit

The approach used to undertake each audit activity included the following:

- Data analysis
  - Obtained from Franklyn Scholar on 13 July 2016, 14 July 2016, 19 July 2016, 20 July 2016 and 11 August 2016 from Ms Tanya Graham (Ms Graham) the following files for the Period via dropbox:
    - § Franklyn Scholar master list.xlsx
    - § Franklyn Scholar communication logs.xlsx
    - § Franklyn Scholar FinPa competent reports.xlsx
    - § FS Customer Commitment Checklist.xlsx
    - § FS Invoice sent 2016.xlsx
    - § FS student communications from VETtrak.xlsx
    - § FS Webinar Attendance.xlsx
    - § FS Webinar Recording Views.xlsx
    - § FS Workshop Attendance.xlsx
    - § FS YR 12 CSPA ENROLMENT VFH time date 2016.xlsx
    - § FS List 1A.XLSX
    - § FS Diploma of Events - LOGS.csv
    - § MR Forum posts (all providers).csv
    - § MR Franklyn Scholar submissions.csv
    - § FS - NEW - Diploma of Business - LOGS.csv
    - § FS - NEW - Diploma of Leadership and Management - LOGS.csv
    - § FS - NEW - Diploma of Leadership and Management Transition - LOGS.csv
    - § FS - NEW - Dual Diploma of Project Management and Business - LOGS.csv
    - § FS - NEW - Dual Diploma of Project Management and Leadership and Management - LOGS.csv
    - § FS - OLD - Diploma of Business - LOGS.csv
    - § FS - OLD - Diploma of Leadership and Management - LOGS.csv
    - § FS - OLD - Diploma of Project Management - LOGS.csv
    - § FS - OLD - Diploma of Leadership and Management Transition - LOGS.csv
    - § FS - OLD - Dual Diploma of Project Management and Business - LOGS.csv
    - § FS - OLD - Dual Diploma of Project management and Leadership and Management - LOGS.csv
  - Converted, cleansed and performed analysis of the data
  - Analysis was performed to assign risk categories for each student, based on their measures of student engagement and the validity of the student master data. Each enrolment from the student master list was tested against the three criteria below:
    - § Activity - The student had been active online during the period between the commencement and end dates for a unit
    - § Communication - The student received communication from Franklyn Scholar during the period between the commencement and end dates for a unit





- § Grades - The student received a grade for a unit of competency.
- Based on the three criteria outlined above each enrolment was placed into one of the eight categories listed below:
  - § Category 1 - Student online activity, grade and communications exists (grade is Competent, Credit Transfer)
  - § Category 2 - Student online activity, grade and communications exists (grade is Result not yet available)
  - § Category 3 - Student online activity and communications exists but no grade (grade is Continuing, Training Commenced, Withdrawn – not started, Withdrawn/discontinued)
  - § Category 4 - No student online activity but grade and communications exists (grade is Competent, Credit Transfer)
  - § Category 5 - No student online activity but grade and communications exists (grade is Result not yet available)
  - § Category 6 - No student online activity, no grade but communication exists (grade is Continuing, Training Commenced, Withdrawn – not started, Withdrawn/discontinued)
  - § Category 7 - Cancelled and suspended students (Grade is Withdrawn/discontinued, Withdrawn – not started and enrolment status is cancelled or withdrawn)
  - § Category 8 - None of the above.

### Compliance

- We developed a compliance checklist in accordance with the requirements of HESA and the VET Guideline
- Obtained relevant policies and procedures via dropbox on 13 July 2016, 14 July 2016 and 19 July 2016 and via email on 3 August 2016 and 5 August 2016
- Assessed compliance of relevant Franklyn Scholar activities against the compliance checklist.

### Issues / concerns

- Franklyn Scholar was acquired by Acquire Learning in October/ November 2015. Acquire Learning is unclear on the enrolment processes and procedures in place at Franklyn Scholar for the period 1 July 2015 to 30 September 2015. From October/November 2015 the process and systems were the same as Asia Pacific Training Institute 2015. Unless otherwise specified this report refers to the processes and procedures in place from October/November 2015.
- Limitations in data for the Period. Franklyn Scholar advised that the data available is not complete due to *"the system design and set up so not everything has been captured in a reportable fashion over the time period requested"*. For example:
  - Commonwealth Assistance Notices have not been recorded as an activity in the Franklyn Scholar systems and therefore can't be reported on
  - Invoice Notices for students enrolled through agents that follow a paper enrolment process are not recorded in Franklyn Scholar systems



- When a student is withdrawn, the data is entered at the course level, not the unit level which can result in a unit not displaying start and end dates in the data.

## Audit Findings

### Veracity of student enrolments

Franklyn Scholar had 2,776 students enrolled for the Period in three courses (nine course codes) and 23,730 units of competency. Of these students 55 percent (1,539) were enrolled in a Diploma of Business and 29 percent (823) were enrolled in a Diploma of Management.

Figure 10 Summary of student enrolments by course

Course code	Course name	Total enrolments <sup>4</sup>
BSB50207	Diploma of Business	1,219
BSB50215	Diploma of Business	11
BSB50215_E	Diploma of Business (EDDI)	305
BSB50215FP	Diploma of Business (Online FinPa)	4
BSB51107	Diploma of Management	819
BSB51107.	Diploma of Management (Deluxe) Path Group	4
BSB51915_E	Diploma of Leadership and Management (EDDI)	419
BSB51915FP	Diploma of Leadership and Management (Online FinPa)	1
BSB51915V1	Diploma of Leadership and Management - v1 as at 03/03/2016	3
<b>Total</b>		<b>2,785</b>

### Level of student engagement and participation

Analysis was performed to assign risk categories for each unit of competency, based on the measures of student engagement and the veracity of the student master file data. The results of the analysis are outlined in Table 1 to Table 3 below.

<sup>4</sup> Nine students were enrolled in two courses each during the Period, resulting in a total of 2,776 student enrolments when summarised by course



**Australian Government**  
**Department of Education and Training**

**Table 1 Summary of data analytics results at a unit of competency level – all years**

Category	Activity	Communication	Assessment	Total enrolments	% of Total enrolments
Category1	Activity exists	Communication exists	Competent	121	0.51%
Category2	Activity exists	Communication exists	Not Yet Competent	2	0.01%
Category3	Activity exists	Communication exists	No Grade	24	0.10%
			Withdrawn	180	0.76%
Category4	No activity	Communication exists	Competent	250	1.05%
Category6	No activity	Communication exists	No Grade	181	0.76%
			Withdrawn	678	2.86%
Category7	No activity	No communication	Withdrawn	6,656	28.05%
		Communication exists	Withdrawn	6,880	28.99%
	Activity exists	No communication	Withdrawn	55	0.23%
		Communication exists	Withdrawn	332	1.40%
Category8	No activity	No communication	Competent	175	0.74%
			No Grade	2,966	12.50%
			Not Yet Competent	100	0.42%
			Withdrawn	2,524	10.64%
	Activity exists	No communication	Competent	120	0.51%
			No Grade	1,847	7.78%
			Not Yet Competent	263	1.11%
			Withdrawn	376	1.58%
<b>Total</b>				<b>23,730</b>	<b>100.00%</b>

**Table 2 Summary of data analytics results at a unit of competency level - 2015**

Category	Activity	Communication	Assessment	Total enrolments	% of Total enrolments
Category1	Activity exists	Communication exists	Competent	108	2.18%
Category2	Activity exists	Communication exists	Not Yet Competent	2	0.04%
Category3	Activity exists	Communication exists	No Grade	19	0.38%
			Withdrawn	27	0.55%
Category4	No activity	Communication exists	Competent	207	4.18%
Category6	No activity	Communication exists	No Grade	176	3.55%
			Withdrawn	154	3.11%
Category7	No activity	No communication	Withdrawn	1,159	23.40%
		Communication exists	Withdrawn	942	19.02%
	Activity exists	No communication	Withdrawn	17	0.34%
		Communication exists	Withdrawn	46	0.93%
Category8	No activity	No communication	Competent	137	2.77%
			No Grade	1,283	25.90%
			Not Yet Competent	2	0.04%
			Withdrawn	263	5.31%
	Activity exists	No communication	Competent	52	1.05%
			No Grade	289	5.83%
			Not Yet Competent	6	0.12%
			Withdrawn	64	1.29%
<b>Total</b>				<b>4,953</b>	<b>100.00%</b>

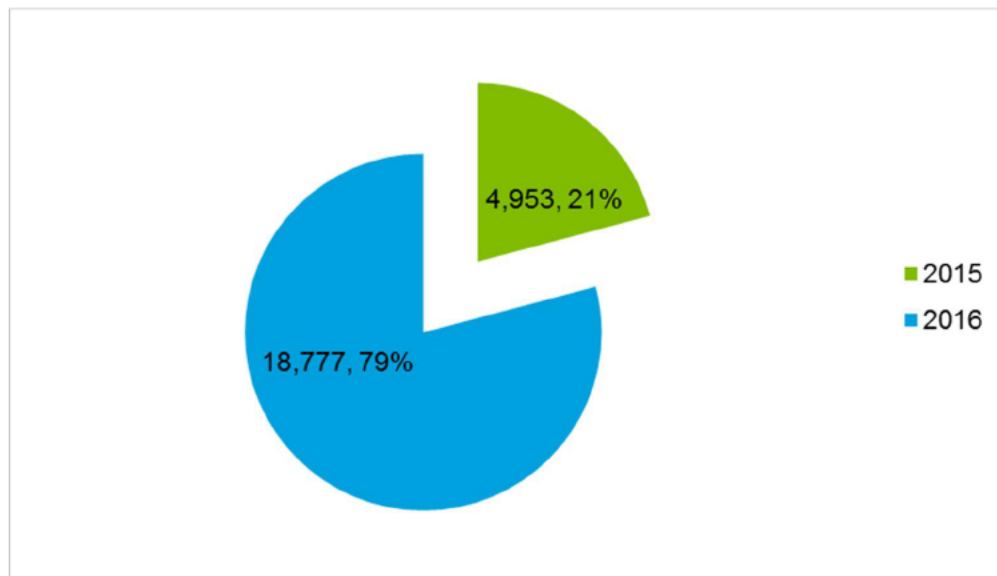


Table 3 Summary of data analytics results at a unit of competency level -2016

Category	Activity	Communication	Assessment	Total enrolments	% of Total enrolments
Category1	Activity exists	Communication exists	Competent	13	0.07%
Category3	Activity exists	Communication exists	No Grade	5	0.03%
			Withdrawn	153	0.81%
Category4	No activity	Communication exists	Competent	43	0.23%
Category6	No activity	Communication exists	No Grade	5	0.03%
			Withdrawn	524	2.79%
Category7	No activity	No communication	Withdrawn	5,497	29.28%
		Communication exists	Withdrawn	5,938	31.62%
	Activity exists	No communication	Withdrawn	38	0.20%
		Communication exists	Withdrawn	286	1.52%
Category8	No activity	No communication	Competent	38	0.20%
			No Grade	1,683	8.96%
			Not Yet Competent	98	0.52%
			Withdrawn	2,261	12.04%
	Activity exists	No communication	Competent	68	0.36%
			No Grade	1,558	8.30%
			Not Yet Competent	257	1.37%
			Withdrawn	312	1.66%
<b>Total</b>				<b>18,777</b>	<b>100.00%</b>

Of the 23,730 units of competency 21 percent (4,953) related to 2015 and 79 percent (18,777) to 2016.

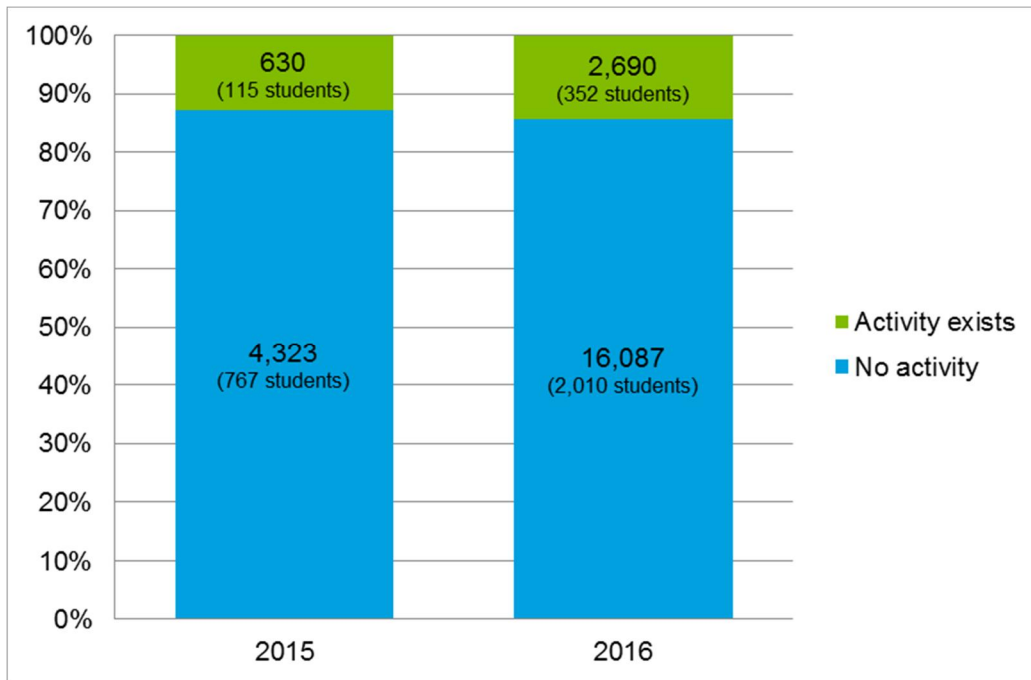
Figure 11 Enrolments by year and unit of competency



In 2015 87 percent (4,323) of units of competency had no online activity in the learning management systems FinPa or MoodleRooms. In 2016 86 percent (16,087) of units of competency had no online activity in the learning management systems FinPa or MoodleRooms.



Figure 12 Activity of units of competency by year



Franklyn Scholar offered three courses, with nine course codes, to students during the Period. Figure 13 to Figure 15 displays the online activity of students in relation to these courses.

Figure 13 Activity of units of competency by course – all years

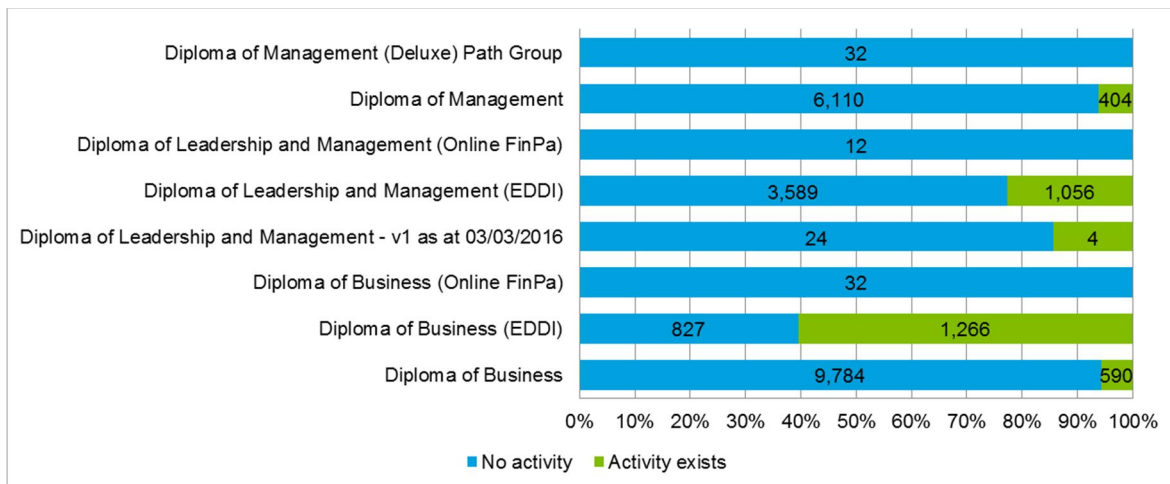




Figure 14 Activity of units of competency by course – 2015

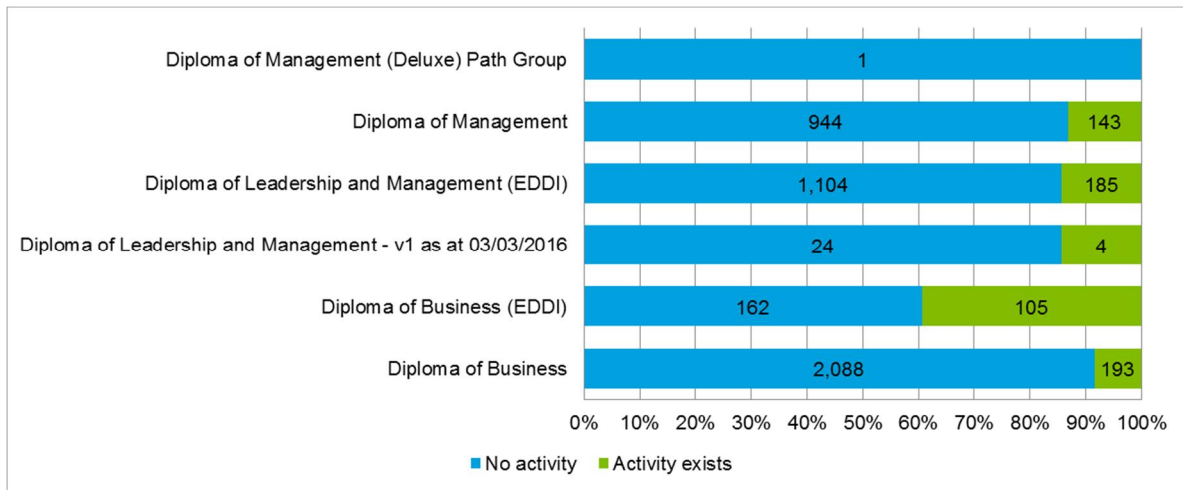
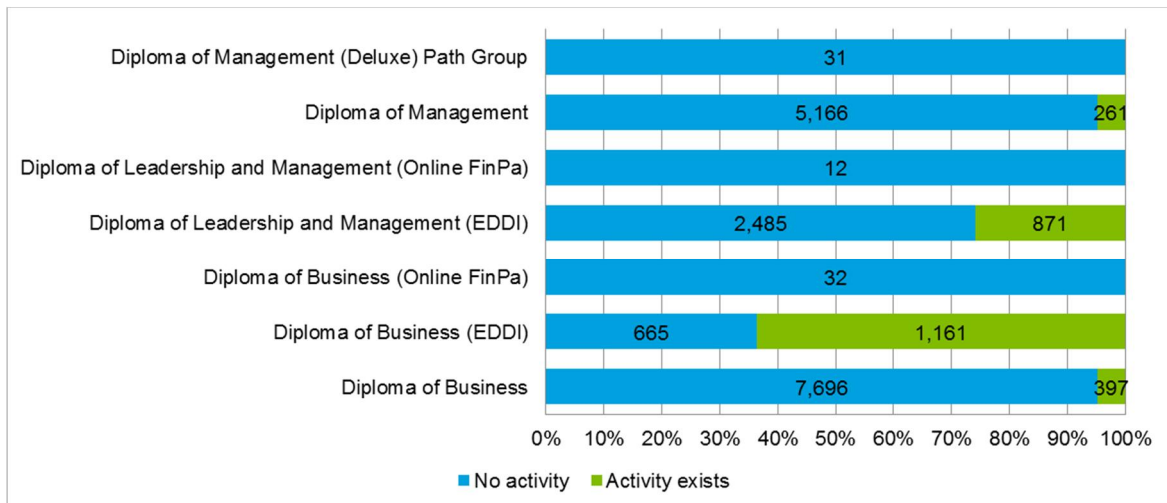


Figure 15 Activity of units of competency by course – 2016



Of the 3,320 units of competency which had online activity 68 percent (2,270, 321 student enrolments) had logged into FinPa or MoodleRooms five times or less; 511 (97 student enrolments) during 2015 and 1,759 (224 student enrolments) during 2016, with 45 percent (1,019, 152 student enrolments) representing one login; 255 (51 student enrolments) during 2015 and 764 (101 student enrolments) during 2016. Refer to Figure 16 to Figure 18 for a breakdown of logins by student enrolments and year.



Figure 16 Number of student enrolments with more than one login to FinPa or MoodleRooms – all years

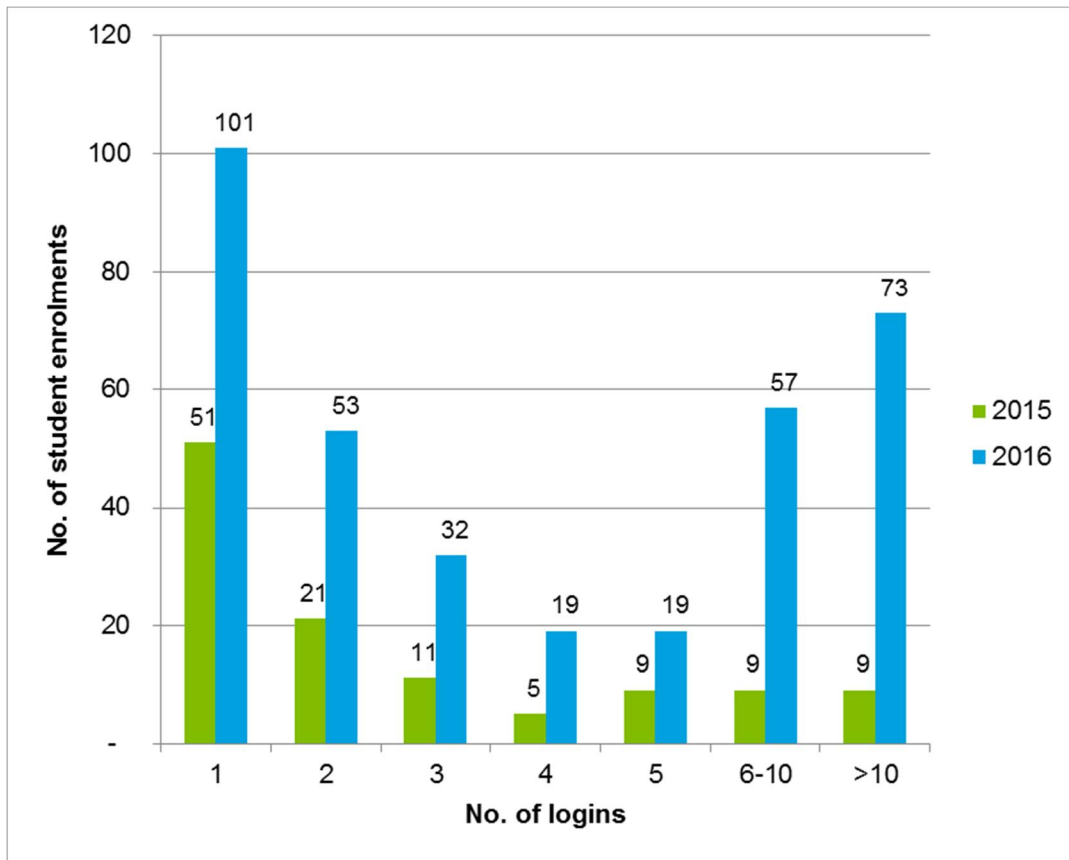


Figure 17 Number of student enrolments with more than one login to FinPa or MoodleRooms – 2015

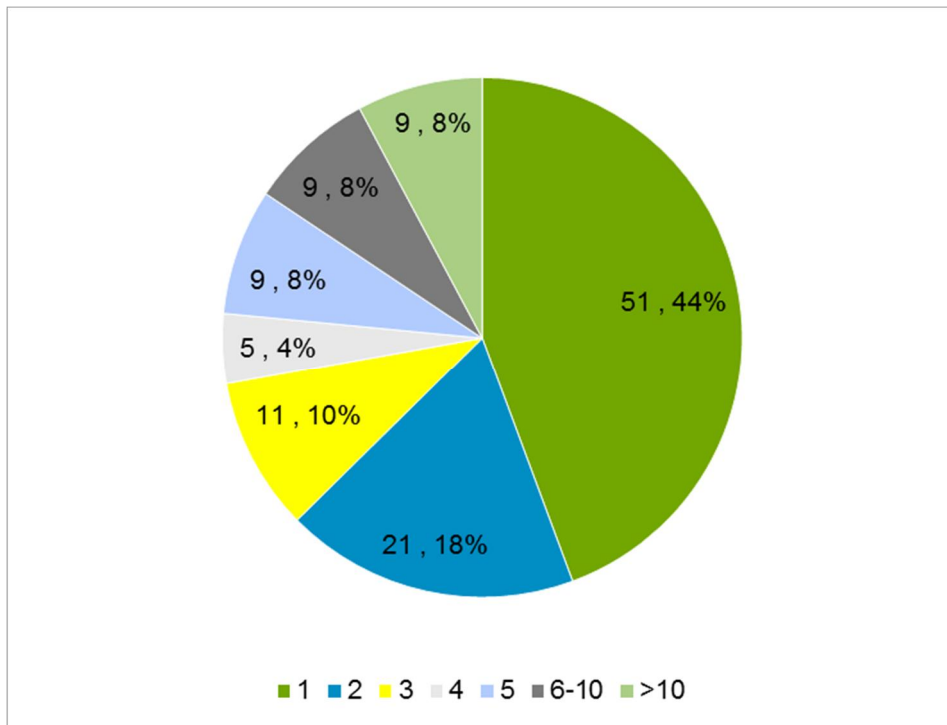
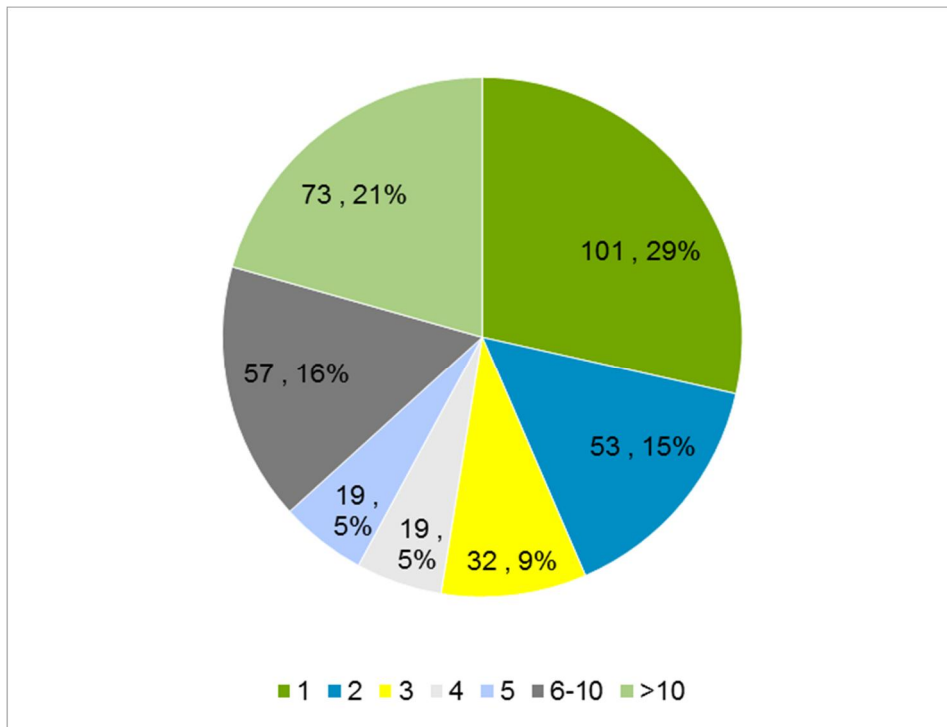


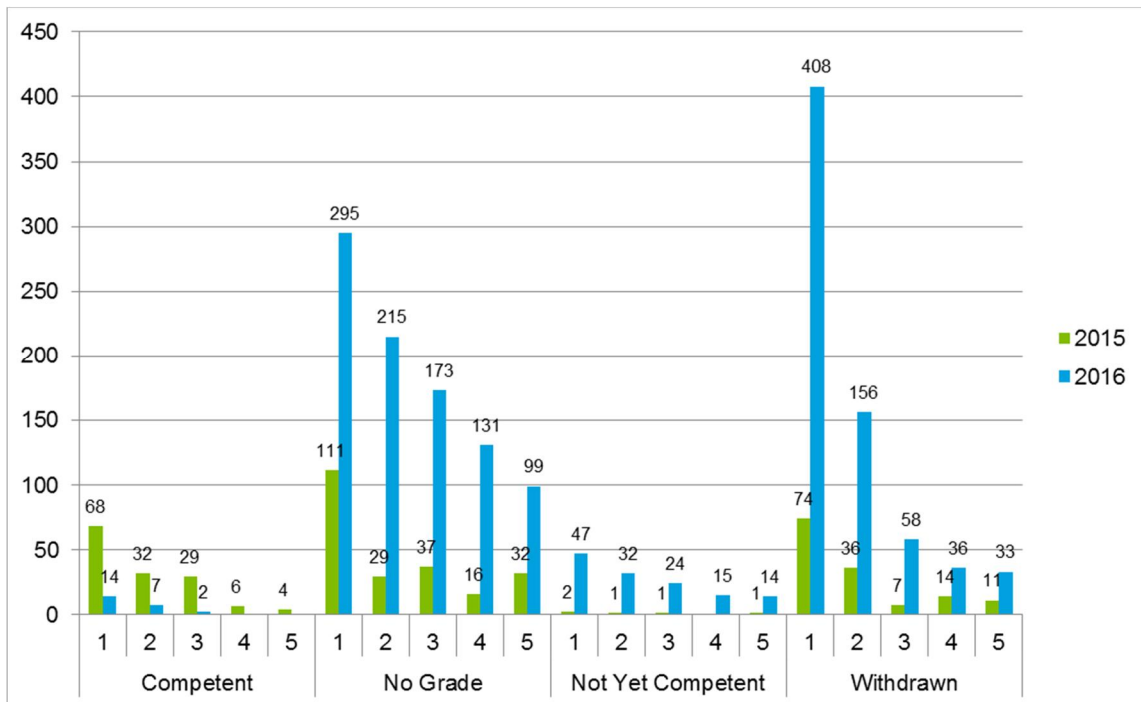


Figure 18 Number of student enrolments with more than one login to FinPa or MoodleRooms – 2016



Of these logins, the majority of units of competency had a grade of No grade, refer to Figure 19.

Figure 19 Grades for units of competency with up to five login to FinPa or MoodleRooms – all years







## Compliance with specified audit criteria

Franklyn Scholar has been assessed for compliance with Schedule 1 of HESA and the VET Guideline for the Period. Below is a timeline of changes that occurred to the HESA and the VET Guideline during the Period.

Figure 20 Timeline of HESA changes

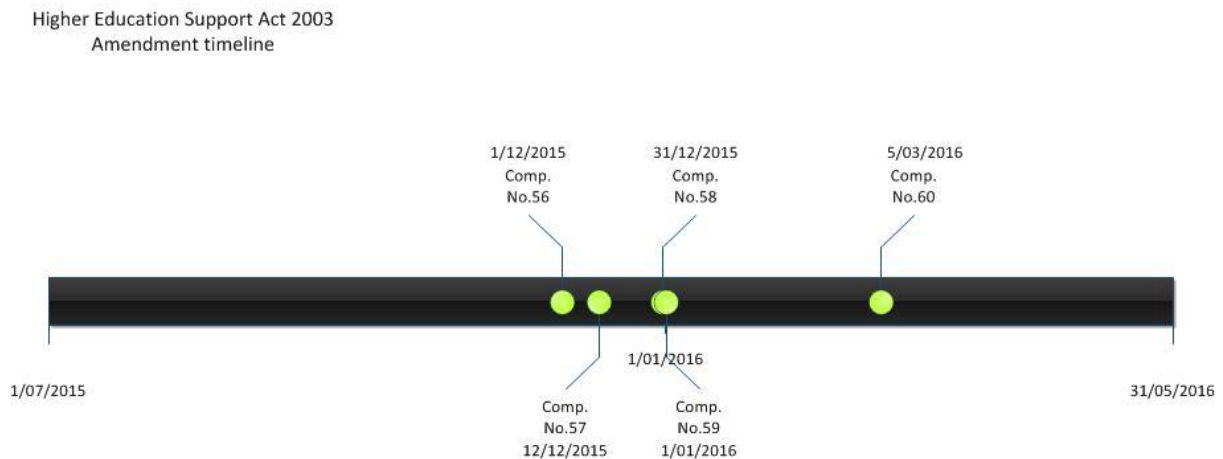
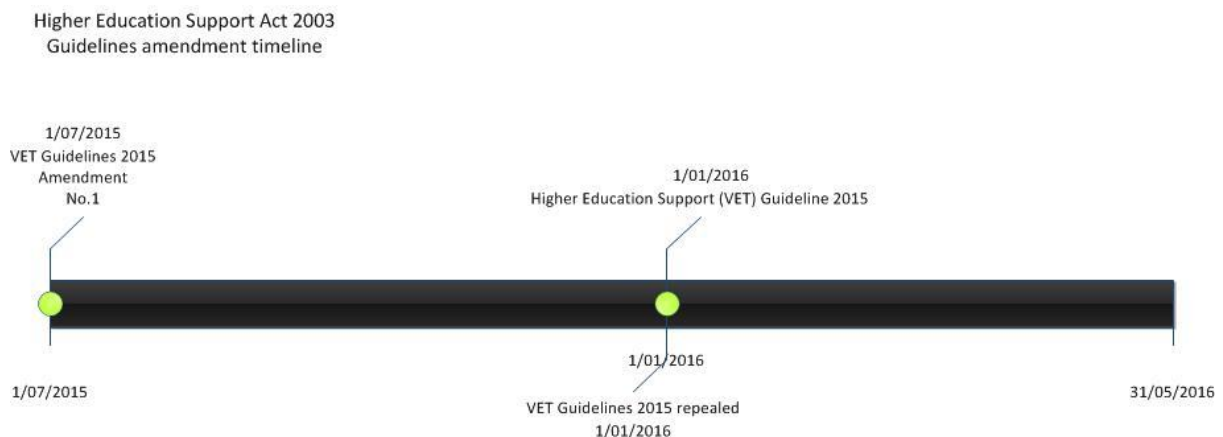


Figure 21 Timeline of VET Guideline changes



### *Student entry procedures*

From 1 January 2016 subdivision 4-E 23B of HESA outlines the requirements for the entry procedure of students and is supported by division 5 of the VET Guideline.

We viewed the Franklyn Scholar website on 4 July 2016 and noted that there was an 'Entry Policy and Procedure' listed on the 'Policies & Procedures' page. When we viewed the website on 22 August 2016 we noted that a 'Student Entry Policy and Procedure V1.0 – July 2016' was available on the 'Policies & Procedures' page. Section 36(b) of the VET Guideline requires the student entry procedure to be published on the website and to include the words "student entry procedure".

The earlier version of the policy and procedure was not available for assessment.



The July 2016 policy and procedure, although outside the Period, did not meet the following requirements of HESA and the VET Guideline:

- HESA subsection 23B(c) and VET Guideline subsection 39(1) (b) the student entry procedure does not specify " *how to report to the Secretary about the results of such assessments*".

The policy and procedure listed on the Franklyn Scholar website on 4 July 2016 did not meet the following requirements of the VET Guideline:

- VET Guideline subsection 36(b) the name of the link to the policy and procedure on the website did not include the words " *student entry procedure*".

### Conclusion

#### 2015

Subdivision 4-E 23B of HESA is applicable from 1 January 2016 and therefore no assessment has been performed before this period.

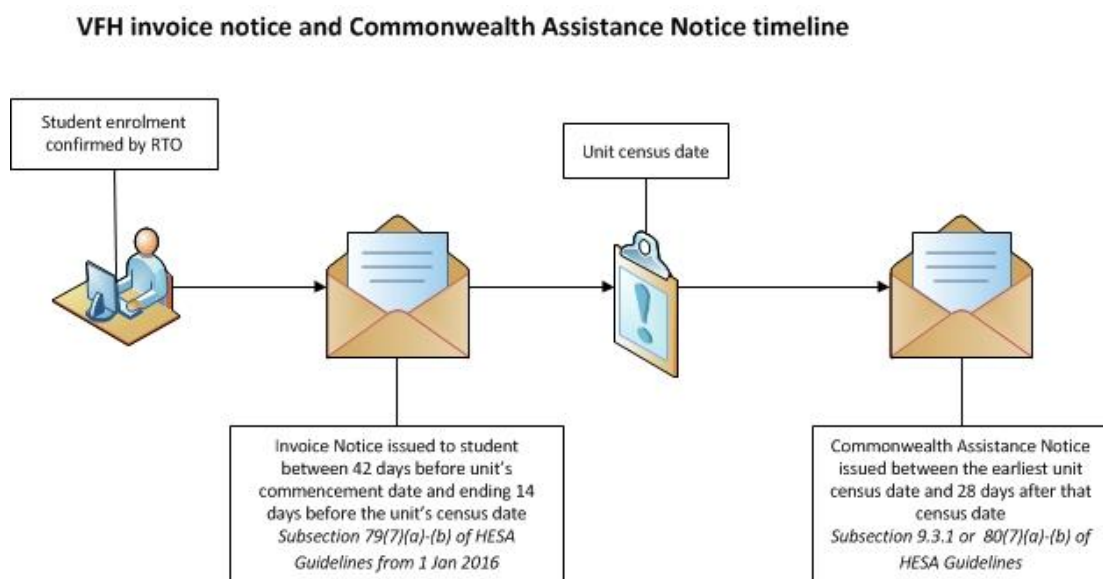
#### 2016

Franklyn Scholar is not in compliance with subsection 23B(c) of HESA and subsection 39(1) (b) of the VET Guideline.

#### *Provision of required information to persons seeking to enrol and students*

Registered Training Organisations are required to provide notices to students with regard to VET FEE-HELP invoices notices and Commonwealth Assistance Notices (CANs) within the timeframes indicated in Figure 22.

Figure 22 Student VET FEE-HELP invoice notice and Commonwealth Assistance Notice timeline





The Franklyn Scholar website has the following information available to prospective VET FEE-HELP students:

- Student handbook
- Policies and procedures
- Course prices
- VET FEE-HELP schedules
- VET FEE-HELP information, including links to the VET FEE-HELP information booklet.

We obtained the 2015 and 2016 versions of the Student Handbook. Each version contains links to the Franklyn Scholar website.

The CANs and invoice notices are emailed to the student. The invoice notices are emailed 15 days prior to census date. This meets the requirements of subsections 79(6), 79(7), 80(6) and 80(7) of the VET Guideline.

We sighted an example of a CAN and invoice notice issued during the Period in relation to the information requirements of section 9.2 and subsection 80(1)-(6) of the VET Guideline and did not find any instances of non-compliance.

### Conclusion

#### 2015

No instances of non-compliance were noted in relation to sections 4.7 and 9.2 of the VET Guideline.

#### 2016

No instances of non-compliance were noted in relation to section 31 and subsections 79(6)-(7) and 80(1)-(7) of the VET Guideline. Note that due to limitations in the data provided our audit was conducted at the unit of competency level and therefore we have not assessed compliance against subsections 79(7) and 80(7) of the VET Guideline.

#### *Student entitlement to VFH Assistance*

From January 2016 Franklyn Scholar's enrolment process includes a two business day holding period before a student can make a VET FEE-HELP request after the enrolment form has been completed. After the two business days have passed the electronic VET FEE-HELP Assistance Form can be completed up until term commencement.

As our audit was conducted at the unit of competency level assessment of compliance with section 45C (1) (b) of HESA was not conducted.

### Conclusion

Franklyn Scholar is in compliance with section 45C (1) (a) of HESA.



### *Implementation of compliant withdrawal procedures*

Franklyn Scholar published the 'Withdrawal Policy' on its website. We obtained V1.0 of the Withdrawal Policy from the Franklyn Scholar website which was dated June 2016. Franklyn Scholar provided us with the 'Refund Policy for the purposes of the VET FEE-HELP Assistance Scheme' V1.0 issued 29 June 2012.

The June 2012 policy states "*Franklyn Scholar will repay to a student who is, or would be, entitled to VET FEE-HELP assistance any VET tuition fees that he or she may have paid for a VET Unit of study if the student withdraws from that unit on or before the relevant census date. This does not apply where the VET tuition assurance arrangements have been activated and the student has elected the VET course assurance option for that unit. Where a student withdraws from a VET unit of study after the relevant census date, any refund of VET tuition fees is at the discretion of Franklyn Scholar.*"

The June 2016 policy states "*Any student who wishes to withdraw from a course must complete and submit a formal request for withdrawal. This request can be made by completing a Withdrawal Request Form*". A link is provided to the form. Students that withdraw "*from a unit of study on or before the census date for that unit of study...will not incur the VET FEE-HELP debt, or be financially liable for that unit of study.*" Further, "*If a student withdraws from a unit of study after the census date for that unit of study they will incur the VET FEE-HELP debt, and be financially liable for that unit of study.*"

The policies and the Student Handbook do not outline the procedure for a student to re-enrol in a VET unit of competency with Franklyn Scholar, in the case where the student had earlier withdrawn from a VET unit of competency undertaken, as required under subsection 32(1) (b) of the VET Guideline applicable from 1 January 2016.

### Conclusion

#### 2015

Franklyn Scholar is in compliance with the withdrawal requirements outlined in section 4.8 of the VET Guideline from 1 July 2015 to 31 December 2015.

#### 2016

Franklyn Scholar is not in compliance with the withdrawal requirements outlined in subsection 32(1) (b) of the VET Guideline applicable from 1 January 2016.

### *Actions of agents in relation to marketing*

During the period Franklyn Scholar engaged eight agents.

The agreement with T3 Australia Pty Ltd (T3) did not meet the requirements of subsections 4.6.4(a) (i) to 4.6.5, 29(2) (b)-(c), and 29(3) (b) to 29(4) of the VET Guideline. The agreement with T3 commenced on 10 February 2014 and was terminated when Acquire Learning acquired Franklyn Scholar<sup>5</sup>.

<sup>5</sup> We were provided with a printout, dated 23/03/2016, of a Notification of Material Change – Cessation of a service arrangement which had no effective date. During our site visit we were advised by Franklyn Scholar that all agent agreements were terminated following the acquisition by Acquire Learning



The agreement with Global Learning Support Group Pty Ltd did not meet the requirements of subsections 4.6.4(a) (i), 4.6.4(a) (iii) to 4.6.5 and 29(2) (b), 29(3) (b), and 29(3) (d) to 29(4) of the VET Guideline. The agreement does not specifically prevent Global Learning Support from sub-contracting its role as set out in the agreement, as required by subsections 4.6.4(a) (ii) and 29(3) (c) of the VET Guideline. The agreement, clause 15.5 Assignment states "No party may assign its rights under this Agreement without the prior written consent of each other party, except to a related body corporate (as defined under the Corporations Act 2001 (Cth))." The agreement with Global Learning Support commenced on 11 August 2014 and was terminated when Acquire Learning acquired Franklyn Scholar<sup>5</sup>.

The agreement with Path Group Pty Ltd did not meet the requirements of subsections 4.6.4(a) (iii), 4.6.4(a) (iv) (B) to 4.6.5 and 29(3) (d), 29(3) (e) (ii) to 29(4) of the VET Guideline. The agreement with Path Group commenced on 7 September 2015 and was terminated when Acquire Learning acquired Franklyn Scholar<sup>5</sup>.

All other agreements were, with the exceptions noted above, compliant with the requirements of sections 4.6 and 29 of the VET Guideline.

Agents are monitored by Franklyn Scholar through the review of a non-compliance register and weekly meetings.

### Conclusion

#### 2015

Franklyn Scholar has instances of non-compliance with section 4.6 of the VET Guideline.

#### 2016

Franklyn Scholar has instances of non-compliance with section 29 of the VET Guideline.

## AUDIT CONCLUSIONS

From the data analytics work performed we identified the following in the student master file data:

- 86 percent (20,410 units of competency, 2,398 student enrolments) had no online activity during the Period; 87 percent (4,323 units of competency, 767 student enrolments) in 2015 and 86 percent (16,087 units of competency, 2,010 student enrolments) in 2016
- Of the 20,410 units of competency with no online activity 82 percent (16,738) had a grade of Withdrawn and 15 percent (3,147) had a grade of No grade.

From the compliance work performed we noted instances of non-compliance with HESA and the VET Guideline, as follows:

- The Student Entry Procedure did not specify "how to report to the Secretary about the results of such assessments" as required by subsection 23B(c) of HESA and subsection 39(1)(b) of the VET Guideline
- The name of the link to the Student Entry Procedure on the website as at 4 July 2016 did not include the words "student entry procedure"



- The policies and the Student Handbook do not outline the procedure for a student to re-enrol in a VET unit of competency with Franklyn Scholar, in the case where the student had earlier withdrawn from a VET unit of competency undertaken, as required under subsection 32(1) (b) of the VET Guideline applicable from 1 January 2016
- Franklyn Scholar did not include all the required information in the agent agreements resulting in instances of non-compliance with sections 4.6 and 29 of the VET Guideline.

## Recommendation

It is recommended that further detailed analysis be undertaken on a targeted and random selection of student enrolment files where no activity and no communication exists. The recommended sample size is 150.



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## ATTACHMENTS



### Compliance overview - Attachment

Criteria	Scope	Assessment
Enrolments are not valid and student not engaged	<ul style="list-style-type: none"> <li>a. Is the student's enrolment valid?               <ul style="list-style-type: none"> <li>i. Does 'student' believe they enrolled?</li> <li>ii. Do provider's records indicate enrolment may not be valid?</li> </ul> </li> <li>b. Is the student engaged in the course of study?               <ul style="list-style-type: none"> <li>i. Submitted assignments or assessments</li> <li>ii. Record of response to student submissions</li> <li>iii. Record of assessments.</li> </ul> </li> </ul>	Refer to the report findings for details
Provider responsible for actions of agents  Inducements and agent behaviour	<ul style="list-style-type: none"> <li>a. Any benefits provided to the student were in accordance with the VET Guidelines (from July 15 prohibited inducements) and (from 1 Jan 16 Inappropriate inducements).</li> <li>b. Any agents mentioned in student files have a written agreement with provider and their name is listed on their website (1 July 15).</li> <li>c. Agents listed on provider website have up-to-date agreement with provider.</li> <li>d. Agreement meets requirements of VET Guidelines (1 April 2016).</li> </ul>	<ul style="list-style-type: none"> <li>a. During procedures performed no instances of benefits provided to students were noted</li> <li>b. Written agreements are in place with all agents outlined on the website</li> <li>c. Agents outlined on the website have written agreements in place</li> <li>d. Agreements partially met the requirements of the VET Guidelines, refer to report analysis</li> </ul>
Student is entitled to VFH assistance	<ul style="list-style-type: none"> <li>a. Obligatory two day gap between enrolment date and the date the student signed a Request for VFH assistance form was complied with (1 Jan 16);               <ul style="list-style-type: none"> <li>i. the request form was hard copy; or</li> <li>ii. in an electronic form (which met the requirements of the Electronic Transactions Act 1999 <a href="https://www.legislation.gov.au/Details/C2011C00445">https://www.legislation.gov.au/Details/C2011C00445</a> and DET's requirement that it match the hard copy file).</li> </ul> </li> <li>b. A student under the age of 18 years at the time of signing a VFH request form had written parental consent included on the request form (1 Jan 16).</li> <li>c. A student requesting VFH assistance for a VET course of study had provided his/her Tax File Number prior to the first census date for the first unit of competency in that course (always a requirement).</li> <li>d. A student's file contained evidence that that student was an Australian citizen or a holder of the relevant Permanent Humanitarian Visa at the time of entitlement crystallising at the end of the census date (always a requirement)(TFN is not evidence).</li> </ul>	<ul style="list-style-type: none"> <li>a. A two business day hold is placed on the enrolment application. The request is electronic</li> <li>b. Franklyn Scholar does not accept students under the age of 18. No students under the age of 18 at the time of enrolment were identified in the data</li> <li>c. A student is required to provide their tax file number during the enrolment process at the point the VET FEE-HELP Assistance Form is completed</li> <li>d. Refer to the report findings for detail</li> <li>e. The data had a field "Highest education participation". 37 percent (8,698) of units of competency had a status of 'No prior educational attainment' of which all had entry in the "Postcode of Year 12 permanent home residence" field.</li> </ul>





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Criteria	Scope	Assessment
	<ul style="list-style-type: none"> <li>e. A student has met the entry assessment requirements               <ul style="list-style-type: none"> <li>i. recorded evidence of year 12 attainment; or evidence of assessment and outcome 1 Jan 16</li> </ul> </li> </ul>	
Student has been provided with all required information and that information was retained by provider	<ul style="list-style-type: none"> <li>a. Written information regarding fees for the course, VFH information; course duration etc. (1 July 2015)               <ul style="list-style-type: none"> <li>i. The written information is retained for five years (1 Jan 16)</li> </ul> </li> <li>b. The student was provided with either a paper or electronic VET FEE-HELP Invoice Notice 14 days prior to the census date for any units of competency (from 1 Jan 16);               <ul style="list-style-type: none"> <li>i. the student's Invoice Notice was sent to the personal email address of that student (1 Jan 16);</li> <li>ii. the record of that student's Invoice Notice was kept by the provider (1 Jan 16);</li> <li>iii. the student's Invoice Notice contained all details specified in the VET Guidelines (1 Jan 16);</li> </ul> </li> <li>c. The student had been provided with either a paper or electronic Commonwealth Assistance Notice(CAN) 14 days after the census date for any units of competency (always):               <ul style="list-style-type: none"> <li>i. the CAN had been sent to the personal email address of the student and that a record was kept of the Notice (1 April 2016);</li> <li>ii. the CAN contained all details specified in the VET Guidelines (always a requirement).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>a. The fees, VFH information and course duration are available on the Franklyn Scholar website</li> <li>b. Assessment was completed at the unit of competency level.               <ul style="list-style-type: none"> <li>i. The invoice notice is provided to the student via email</li> <li>ii. The invoice notice included all the details as specified in the VET Guidelines. Refer to the report findings for detail</li> </ul> </li> <li>c. Assessment was completed at the unit of competency level.               <ul style="list-style-type: none"> <li>i. The CAN is provided to the student via email. Refer to report findings for detail</li> <li>ii. The CAN included all the details as specified in the VET Guidelines. Refer to the report findings for detail.</li> </ul> </li> </ul>
Provider has assessed student as academically suitable to undertake the course (from 1 Jan 16)	<ul style="list-style-type: none"> <li>a. The entry requirements and procedure are published in line with VET Guidelines.</li> <li>b. The entry requirements for admission to the course (and hence entitlement to VFH assistance) had been met before the census date for the first unit of competency.</li> <li>c. The entry assessment tool used to undertake a VET student's academic capability was valid under the VET Guidelines requirements.</li> <li>d. The student's academic assessment outcomes had been recorded.</li> <li>e. The student had been provided with the outcome.</li> <li>f. The student's assessment process, outcome and notice to the student were recorded by the provider.</li> </ul>	<ul style="list-style-type: none"> <li>a. The student entry procedure was published in line with the VET Guideline. Refer to the report findings for detail</li> <li>b. Entry requirements are required to be met before enrolment in the course</li> <li>c. Franklyn Scholar uses the Core Skills Profile for Adults reading and numeracy test a valid tool under the VET Guidelines</li> <li>d. The student master file data does not contain this information</li> <li>e. These details were not available in the student master file data</li> <li>f. The assessment process, outcome and notice to the student are recorded in the Salesforce. The student master file obtained did not include the date the notice was sent to the student.</li> </ul>
Provider has, and	<ul style="list-style-type: none"> <li>a. Provider has published withdrawal</li> </ul>	<ul style="list-style-type: none"> <li>a. The 'Withdrawal Policy' is available on the</li> </ul>



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Criteria	Scope	Assessment
uses withdrawal procedures	<p>procedures in easily accessible place.</p> <p>b. Student has been able to withdraw, if requested, without financial penalty or administrative barrier.</p>	<p>Franklyn Scholar website. The policy is also available in 2015 as a 'Refund Policy for the purposes of the VET FEE-HELP Assistance Scheme'</p> <p>b. No financial penalty or administrative barrier is noted in the Withdrawal Policy or Refund Policy for the purposes of the VET FEE-HELP Assistance Scheme.</p>

**DEPARTMENT OF EDUCATION AND TRAINING**

**FINDINGS OF ENROLMENT DATA VERIFICATION  
INTERVIEWS FOR STUDENTS ENROLLED AT  
FRANKLYN SCHOLAR (FRANKLYN)**

**FINAL REPORT – 12 OCTOBER 2016**

Melbourne Canberra Sydney  
[www.orima.com](http://www.orima.com)



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Appendix A: Interview Questionnaire

Appendix B: Frequency Tables

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# I. Introduction

## Research objectives

The Department engaged ORIMA Research and our quality-accredited fieldwork partner Action Market Research (**AMR**) to conduct Computer Assisted Telephone Interviews (CATIs) with persons reported as enrolling in units of study with the Franklyn Scholar (**Franklyn**) since 1 July 2015. These interviews were conducted in order to: verify the enrolment with Franklyn and gauge the level of non-compliance and incorrect enrolment reporting risk, as defined by the department.

This report presents the overall findings of these interviews. The interview questionnaire is at Appendix A and interview response frequency tables at Appendix B. All interview data collected by AMR has been provided to the Department of Education and Training.

Both ORIMA Research and AMR are accredited under the international quality standard ISO 20252. Our senior consultants belong to the Australian Market and Social Research Society (AMSRS) and adhere to the Society's Code of Professional Behaviour. This project was conducted in accordance with the international quality standard ISO 20252 and the Australian Privacy Principles contained in the Privacy Act 1988.

## The number of interview participants

The department provided ORIMA Research with electronic records for 1,297 people who were reported as enrolled in units of study with Franklyn units of study with Census dates of between 1 July 2015 and 9 March 2016 for which Franklyn had provided contact details (a mobile phone and/or home phone). Of these, ORIMA Research selected a random sample of 636<sup>1</sup> persons for interview over the fieldwork period of 19 April – 11 May 2016 and AMR were given a sample target of 300.

Table 1 shows that of the random sample of 636:

- 188 (30%) were unable to be contacted within the fieldwork period:
  - 70 had mobile numbers that were disconnected
  - 16 were not known at the contact number provided, and
  - the remaining 102 could not be contacted within the fieldwork period for other reasons.
  
- 448 (70%) were able to be contacted within the fieldwork period – of which:
  - 329 (73%) completed the interview
  - 38 (8%) were unable to participate/complete the interview during the fieldwork period, and
  - 81 (18%) refused to participate in the interview.

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<sup>1</sup> A random sample of 900 was selected from the population of 1849 students who reported as undertaking units of study since 1 July 2015. Of these, 636 were reported enrolling since 1 July 2015`.

**Table 1: Number of Franklyn enrolment data verification interview participants**

	# Persons	% of Total Sample	% of Contactable Sample
<b>Total Sample</b>	<b>636</b>	<b>100%</b>	
<b>Uncontactable Sample</b>	<b>188</b>	<b>30%</b>	
Disconnected number	70	11%	
Answering machine only	74	12%	
No answer	23	4%	
Not known at number/ wrong number	16	3%	
Uncontactable for other reasons	5	1%	
<b>Contacted Sample</b>	<b>448</b>	<b>70%</b>	<b>100%</b>
Completed interviews	329		73%
Contactable but unable to complete during the fieldwork period	38		8%
Refusals	81		18%

The following analysis is based on the responses of the 329 persons who completed the interview (referred to as 'interview participants'). The 81 people who refused to participate in the interviews were asked why they did not want to participate.

## Interview questionnaire

Interview participants were asked if they were currently or previously enrolled in a training course with Franklyn. Depending upon their reported enrolment status, interview participants were asked a range of questions relating to their enrolment. Table 2 summarises the topics/questions asked of interview participants. The full interview questionnaire is at Appendix A.

**Table 2: Enrolment data verification interview questions**

Question #	Topic/question summary
QS1	Verbatim reasons for refusal to participate in interview
<b>B. Course Enrolment and Participation</b>	
Q1	Franklyn enrolment status confirmation: course names and dates
	If Q1=2 (denial of enrolment in Franklyn Course): go to Section H
<b>C. Enrolment Incentives</b>	
Q2 (a)-(b)	If Q1=Yes: Questions about being offered anything of value to enrol and what these were
Q3 (a)-(c)	If Q2a=Yes: Questions about whether different incentives were to keep or on loan during training
Q4	Who offered you these enrolment incentives?
Q5	Did you get these enrolment incentives?
<b>D. Enrolment Process</b>	
Q6	When you enrolled, did you give Franklyn your personal email address?
Q7	What is your personal email address?
Q8	If Q7=1 and is same as Franklyn email address: Do you regularly access this email address?
Q9 (a)-(c)	If Q6=2 or 3: Questions about email address provided by Franklyn (confirm, creation, access)
Q10 (a)-(e)	Questions about schooling and entrance into Franklyn (certificate, written test – assistance)
Q11 (a)-(b)	Questions about participation in course
<b>E. Feedback on Training Quality (Participating Students Only)</b>	
Q12 (a)-(c)	Questions about satisfaction with Franklyn (materials, responsiveness, tutor access)
Q13 (a)-(c)	Questions about satisfaction with assessments feedback and marking
Q14	Overall, how satisfied are you with the training provided to you by Franklyn?
Q15	Reasons for overall satisfaction/dissatisfaction.
<b>F. Cancellation of Course/Withdrawal from Units of Study</b>	
Q16 (a)-(f)	Questions about withdrawal from courses/ units of study
<b>G. Course Information and Payment</b>	
Q17 (a)-(c), Q18	Questions about provision of course information (contents, fees, payment options)
Q19(a)-(d)	Questions about Request for VET FEE-HELP Assistance/Loan form
Q20 (a)-(b)	Questions about awareness of VET FEE-HELP debt and repayment obligation
<b>H. Students Reporting Incorrect Enrolment Details (If Q1=2)</b>	
Q21, Q23 - Q26	Confirming enrolment details (RTO name, course names and enrolment dates) If RTO = Franklyn, go to Section C.
Q22	Would you like someone from the Department to investigate the accuracy of these enrolments and debts further and call you back?
<b>I. End of Survey</b>	
Q27	Any further comments you would like to make about Franklyn or the enrolment process?
Q28	Should the Department or the Australian Skills Quality Authority have further question about your enrolment with Franklyn, is this phone number the best way to contact you?
Q29	Do you consent to your individual responses being shared with Franklyn?

## II. Interview findings

### Confirming Course Enrolment and Participation

Interview participants were informed of the courses that Franklyn had reported that they were enrolled in since 1 July 2015. They were then asked whether these enrolment details sounded correct to them. Of the 329 interview participants, 291 (88%) reported that these enrolment details sounded correct. Of the 38 (12%) who reported that these enrolment details did not sound correct:

- 37 reported they had not enrolled with Franklyn. Of these:
  - 28 reported they had not undertaken a training course with any other training organisation
  - 9 reported they had undertaken a training course with another training organisation, in particular:
    - 1 reported undertaking a full-time university course at university in January 2015
    - 1 reported undertaking a Bachelor of Social Science, Criminology with Swinburne University in July 2015
    - 1 reported enrolling in a nursing course with Captain Cook, Brisbane and Bundamba TAFE in July 2015
    - 1 reported undertaking a Diploma of Business with Upskill in August 2015
    - 1 reported undertaking a Diploma of Business & Management with TABB in October 2015
    - 1 reported undertaking a Cert 111 in Hospitality with Set Solutions in February 2016
    - 1 reported undertaking a First Aid course with Allans Training in February 2016
    - 1 reported undertaking a Certificate 3 in Early Childhood Education & Care with TAFE in March 2016, and
    - 1 reported undertaking a Diploma of Business with Acquire Learning in April 2016.
- 1 reported enrolling in a training course with Franklyn but with a wrong enrolment date, and
- 37 requested that someone from the department investigate the accuracy of their enrolments and VET FEE-HELP debts further and call them back. Of these, 34 consented for their individual responses to the interview questions being shared with Franklyn. The responses and contact details of these students have been provided to the department for further investigation.

In total, 293<sup>2</sup> interview participants indicated that they were enrolled with Franklyn and the following sections summarise their interview responses.

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<sup>2</sup> Includes 1 student who reported they enrolled with Acquire Learning, which owns Franklyn and another who reported enrolling in a training course with Franklyn but with a wrong enrolment date.



## Enrolment Incentives

Of the 293 Franklyn students who participated in an interview:

- 272 (93%) reported they were not offered anything of value to enrol in their course with Franklyn and a further 7 (2%) could not recall, and
- 14 (5%) reported they were offered something of value to enrol in their course with Franklyn.<sup>3</sup>  
In particular:
  - 10 reported being offered laptops. Of these:
    - 5 reported the laptop was provided to them just to use during their training and 5 reported the laptop was theirs to keep, and
    - 6 reported that the laptop was offered by someone from Franklyn, 2 reported that it was offered by a door-to-door salesperson or education adviser, 1 reported it was offered by a representative from Acquire Learning and 1 did not remember who offered them the laptop, and
  - 4 reported being offered other incentives, in particular:
    - 1 reported being offered a transport voucher worth \$20
    - 1 reported receiving help with the resume and obtaining a job in the future, and
    - 2 reported being offered a job.

Only 6 of these 14 reported receiving the enrolment incentive that was offered to them.

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<sup>3</sup>The related enrolment incentive interview question (see question 2b at Attachment A) allowed for multiple responses – for example, an interview participant might respond that they were offered a laptop and money. Consequently, the number of persons reporting each of the following kinds of incentive typically sums to more than the number of persons reporting having been offered an enrolment incentive (of any kind).

## Enrolment Process

Interview participants were asked some questions about the enrolment process to ascertain whether:

- the **email address** reported by Franklyn was correct and whether the student regularly accessed this email address
- the student had **provided a copy of their school certificate and/or sat a written test** to enrol in their course with Franklyn, and
- students had **participated in the course** they had enrolled in – for example, by attending classes or undertaking online training modules.

### *Confirmation of email addresses provided by Franklyn*

Of the 293 Franklyn students who participated in an interview:

- 279 (95%) reported that they had given their personal email address to Franklyn when they enrolled
- 284 (97%) reported that the personal email address reported to the Department by Franklyn was correct, and
- 270 (92%) reported that they regularly accessed the email address reported to the Department by Franklyn.

Of those 46 students who reported that they had not provided their email address to Franklyn and/or reported a different personal email address that reported by Franklyn:

- 37 (80%) reported that the email address reported by Franklyn to the Department was correct. Of these:
  - 34 (92%) reported they had created the email address themselves
  - 1 (3%) reported the email was created by a door-to-door salesperson or education adviser, and
  - 2 (5%) reported that the email was created by a family member.
- 9 (20%) reported that the email address reported by Franklyn was incorrect.

### ***Educational requirements or written tests to enrol with Franklyn***

Of the 293 Franklyn students who participated in an interview:

- 21 (7%) reported they provided a copy of their school certificate to Franklyn when they enrolled. Of these:
  - 17 (81%) reported their highest level of schooling was Year 12, and
  - 4 (19%) reported other responses, with all of these undertaking certificates in various courses.
  
- 272 (93%) reported they had not provided a copy of their school certificate or could not recall providing a copy of their school certificate to Franklyn when they enrolled. Of these:
  - 16 (6%) reported their highest level of schooling was less than Year 10
  - 67 (25%) reported their highest level of schooling was Year 10
  - 34 (13%) reported their highest level of schooling was Year 11
  - 110 (40%) reported their highest level of schooling was Year 12, and
  - 45 (17%) reported other responses, such as completing other VET or university courses.
  
- 107 (37%) reported Franklyn had made them sit a written test to enrol in the course. Of these:
  - 7 (7%) reported that someone had helped them to do the test. All 7 students who had reported they had been helped by someone from Franklyn.

Since 1 January 2016, in order to enrol in a VET course and receive a VET FEE-HELP loan, applicants must demonstrate their academic suitability by either having completed Year 12 or passing a written Literacy, Language and Numeracy (LLN) entry test. Of the 53 students who enrolled with Franklyn since 1 January 2016, 1 (2%) did not meet these requirements in that they had not completed Year 12 and had not sat a written entry test.

### ***Participation in Franklyn courses – reasons for non-participation***

Of the 293 interview participants who reported they had enrolled in training with Franklyn, 164 (56%) reported they had not participated in the training course (by, for example, attending classes or taking online training modules). These participants were asked why they had not participated in the training course. The main reasons given by students for not participating in the training course were as follows.

- A number of students had withdrawn from their course with Franklyn, however, some noted that they had difficulties in withdrawing from these courses and some noted they had been unsuccessfully in withdrawing.
- The student was misinformed about the course content and had decided not to participate in the course.
- A number of students said that they did not have enough time to study for various reasons.
- A number of students noted that they did not think that they were enrolled with Franklyn. Some commented about inappropriate enrolment practices. One student noted that their enrolment was accidental.
- A number of students said that they had been prevented from participating in the course for personal reasons, such as ill health or carer responsibilities.
- Others noted that they could not participate in the online courses offered by Franklyn because of internet/computer access issues.

### **Feedback on training quality (participating students only)**

Of the 293 interview participants who reported they had enrolled in training with Franklyn, 129 (44%) reported they had participated in the training course – for example, by attending classes or undertaking online training modules. Of these 129 participating students:

- 106 (82%) reported they were satisfied with the course materials provided (18% were dissatisfied)
- 104 (81%) reported they were satisfied with how Franklyn had responded to any questions they had about the course (15% were dissatisfied), and
- 104 (81%) thought they had enough access to teachers and tutors to assist them with their studies (19% thought they did not have enough access to teachers and tutors).

Of the 129 students who reported that they had participated in their training course with Franklyn, 72 (56%) reported having undertaken assessments (such as exams or assignments). Of these:

- 64 (89%) were satisfied with the level of feedback they were given (11% were dissatisfied), and
- 65 (90%) were satisfied that these assessments were properly marked (10% were dissatisfied).

Overall, of the 129 students who reported they had participated in their training course with Franklyn:

- 94 (73%) reported they were satisfied with the training provided by Franklyn. These students were asked why they were satisfied with the quality of the training provided. The main reasons given were related to:
  - tutors being approachable, responsive and helpful in giving timely feedback, advice and support
  - learning materials being easily accessible, well-structured and informative, and
  - other positive feedback, including allowing students to undertake their studies at their own pace, but nevertheless providing adequate support through tutors and coaches.
- 20 (16%) reported they were neither satisfied nor dissatisfied with the training provided by Franklyn overall, and
- 15 (12%) reported they were dissatisfied with the training provided by Franklyn overall. These students commented that:
  - the course was too difficult for them given their educational background
  - they were provided insufficient feedback and support by Franklyn assessors and tutors, and
  - they felt that they had been misled and enrolled on the basis of misinformation or false promises. Some had unsuccessfully attempted to withdraw and were annoyed at being charged for these courses.

## Withdrawal from Course/ Units of Study

Of the 293 Franklyn students who participated in an interview, 129 (44%) reported they had tried to withdraw from a course or a unit of study at Franklyn. Of these:

- 77 (60%) reported they were successful in withdrawing from the course, of which:
  - 1 (1%) reported he successfully in 2014, 39 (51%) reported they successfully withdrew in 2015 and 37 (49%) reported they successfully withdrew in 2016
  - 4 reported they had been charged a fee to withdraw from a course or unit of study, and
  - 1 reported that although they had withdrawn before the Census date, they were still charged for the unit of study that they withdrew from.
- 59 (77%) reported it was very or fairly easy to withdraw, while 18 (23%) reported it was not easy at all to withdraw.

## Course information and payment

Of the 293 Franklyn students who participated in an interview:

- 70 (24%) reported they were not provided with information about course contents and subjects before enrolment and a further 35 (12%) could not recall being provided this information
- 61 (21%) reported they were not provided with information about course fees and charges before enrolment and a further 24 (8%) could not recall being provided this information, and

- 77 (26%) reported they were not provided with information about different options for paying for the course and a further 26 (9%) could not recall being provided this information. Of those 184 who did recall being provided with information about specific options for paying for the course:
  - 174 (95%) recalled being informed about the option of receiving a VET FEE-HELP loan from the Government
  - 62 (34%) recalled being informed about the option of full fee upfront payment
  - 50 (27%) recalled being informed about the option to pay as you go
  - 7 (4%) recalled being informed the course was free and no payment was required, and
  - 3 (2%) recalled being informed about other payment options, all citing 'HECS' as a form of payment.

Interview participants were informed that students who want a government loan to pay their course fees can fill in and sign a *Request for VET FEE-HELP Assistance or Loan* form. Of the 293 Franklyn students who participated in the interview, 105 (36%) reported they did not remember filling in and signing a *Request for VET FEE-HELP loan* form. Of the 188 (64%) who reported they had filled in and signed a *Request for VET FEE-HELP loan* form, 72 (38%) reported receiving help from someone to fill in the form. Of these:

- 49 (68%) reported that they received help from someone from Franklyn
- 7 (10%) reported that they received help from a door-to-door salesperson or education adviser
- 13 (18%) reported that they received help from another source, such as: family members, representatives from Career One and Acquire Learning and,
- 3 (4%) could not recall who had helped them.

Of the 188 (64%) who reported they had filled in and signed a *Request for VET FEE-HELP loan* form:

- 85 (45%) reported they had signed the form on the same day as they had signed up for the course.

Of the 293 Franklyn students who participated in the interview:

- 163 (56%) were not aware that they had received a loan from the Australian Government to pay for this training course, and
- 71 (24%) were not aware that they would be required to pay the loan back through the tax system when their income would reach a certain level.

## Other comments made by Franklyn students

At the end of the interview, interview participants were asked whether they had any further comments that they would like to make about Franklyn or the enrolment process. Of the 153 (47%) interview participants who did provide further comments, 26 (17%) provided positive feedback on their experience of training with Franklyn.

However, others provided less favourable feedback: and a number of interview respondents complained about inappropriate enrolment practices by Franklyn representatives and third-party salespersons:

- A number of interview respondents complained about inappropriate enrolment practices by Franklyn representatives and third-party salespersons
- A number commented on being misinformed about the course and the fees and charges associated with the course, and
- Some noted that the withdrawal process was very difficult.

## Consent to share individual survey responses with Franklyn

Of the 329 interview participants, 303 (92%) consented to their individual responses being shared with Franklyn. The department has been provided with individual surveys responses, including an indicator of whether the student has provided their consent to share this information with Franklyn. As noted above, 37 interview participants requested that someone from the Department contact them in relation to their Franklyn enrolment and associated VET FEE-HELP debt.

### III. Key indicators of compliance/ enrolment reporting risk

Based on the VET FEE-HELP regulations, the department has specified a number of indicators that flag whether an enrolment data verification interview suggest there is a high risk of non-compliance or incorrect enrolment reporting. These are summarised in the table below. Overall, of the 329 interview participants, 200 (61%) provided responses that indicate a compliance and/or enrolment reporting risk.

<b>Compliance Risk Indicator</b>	<b>Number (Percentage) of interview participants</b>
Not enrolled in the course (i.e. enrolment reporting risk)	36 (11%)
Not participated in the course, although enrolled in 2015	142 (43%)
Did not meet entry requirements (i.e. enrolled since 1 January 2016, reported highest level of schooling is Year 11 or less and did not sit for written test)	1 (0.3%)
Offered an inappropriate enrolment incentive (i.e. laptop, tablet computer or mobile phone to keep)	5 (2%)
Do not regularly access email address provided by Franklyn	23 (7%)
Charged fee to withdraw from course or unit of study	4 (1%)
Charged for unit of study for which they withdrew before the Census date	1 (0.3%)
Not aware that they would be required to repay VET FEE-HELP loan through the tax system when their income reached a certain level	71 (22%)
<b>Interview participants reporting at least one of the above compliance/ reporting risks</b>	<b>200 (61%)</b>



## **Appendix A: Interview Questionnaire**

**Department of Education and Training**  
**ENROLMENT DATA VERIFICATION INTERVIEW OF STUDENTS:**  
**Franklyn**

## A. Introduction

Good [morning/ afternoon/ evening], my name is [INTERVIEWER NAME].

I am from Action Market Research and on behalf of ORIMA Research, the Department of Education and Training and the Australian Skills Quality Authority.

Am I speaking to [NAME OF INTENDED RESPONDENT]?

**[IF NOT, ASK: May I please speak to [NAME OF INTENDED RESPONDENT]?**

**[ONCE THE INTENDED RESPONDENT ANSWERS, REPEAT INTRODUCTION ABOVE]**

The Department would like to confirm some information that training organisations have provided to it. In particular, we are checking that students are correctly being reported as enrolled and only charged for study they have undertaken. We are also seeking feedback from students on the quality of training courses they are being provided.

This interview should take around 10 minutes. The information you provide will be treated as private and confidential by Action Market Research and the project sponsors. This call may be monitored for quality control purposes.

**Interviewer note: record call outcomes. Probe and record verbatim reasons for refusal**

<b>IF REFUSE TO PARTICIPATE</b> QS1. Can you please tell me why you won't take part? <b>MULTIPLE RESPONSE</b>	Busy <b>(MAKE APPOINTMENT)</b> _____ 1
	Refused to continue <b>(SPECIFY REASON) – PROBE FULLY</b> _____ 2
	Other <b>(PLEASE SPECIFY) – PROBE FULLY</b> _____ 3

If asked, inform respondent that:

Your contact details were provided to us by the Department of Education and Training. If you have any questions about the study, you may contact Elaine McCauley from the Department on (02) 6240 6907.

The Australian Market and Social Research Society has a phone line that you can call if you wish to confirm our credentials. The number is 1300 364 830 or you can email them on [amsrs@amsrs.com.au](mailto:amsrs@amsrs.com.au).

## B. Course enrolment and participation

I would like to start by quickly checking some of your course enrolment details.

Franklyn have told the Department that you enrolled in:		
<ul style="list-style-type: none"> <li>a &lt;Course Name 1&gt; on &lt;Enrolment Date 1&gt;</li> <li>a &lt;Course Name 2&gt; on &lt;Enrolment Date 2&gt; – if enrolled in two courses.</li> <li>a &lt;Course Name 3&gt; on &lt;Enrolment Date 3&gt; – if enrolled in three courses.</li> </ul>		
	Yes	No
Q1. Does this sound correct to you?	1	2
Q1 = No (Enrolment details do not sound correct): GO TO SECTION H.		

Today, I would like to talk to you about your enrolment in the <Course name>.

Note: <Course name> used here and below is:

- most recent course (Course Name 1 above) if respondent agrees this is correct (Q1=1); or
- course nominated by respondent in Section I.

Note: FRANKLYN used below is:

- FRANKLYN above if respondent agrees that this is correct (Q1=1); or
- FRANKLYN nominated by respondent in Section I.

## C. Enrolment Incentives

Q2a. Were you <b>offered anything of value to enrol in this course</b> , such as a laptop, iPad, cash or a shopping voucher or money?	Yes	1
	No	2
	Can't recall	3

<b>IF Q2 = 1 (Yes – offered something):</b> Q2b. <b>What were you offered?</b> <b>MULTIPLE RESPONSE</b>	Laptop or computer	1
	iPad or other tablet	2
	Mobile phone	3
	Shopping voucher	4
	Money	5
	Other ( <b>PLEASE SPECIFY</b> )	6

Q3.		
	To Keep	While training only
a. <b>IF Q2b=1:</b> Was the <b>laptop or computer</b> provided for you to keep or just to use during your training?	1	2
b. <b>IF Q2b=2:</b> Was the <b>iPad or tablet computer</b> provided for you to keep or as a loan to use during your training?	1	2
c. <b>IF Q2b=3:</b> Was the <b>Mobile phone</b> provided for you to keep or as a loan to use during your training?	1	2

Q4. <b>Who offered you [these things]?</b> Use "laptop", "computer", "mobile phone" etc as appropriate based on Q2b response.	<u>Someone from FRANKLYN</u> 1 <u>Door-to-door salesperson or education adviser</u> 2 <u>Other: OE description</u> 3 <u>Don't remember</u> 4
Q5. <b>Did you get [the things]?</b> Use "laptop", "computer", "mobile phone" as appropriate.	<u>Yes</u> 1 <u>No</u> 2

## D. Enrolment Process

I now have some questions about the enrolment process.

	Yes	No	Can't recall								
Q6. When you enrolled, did you give FRANKLYN your personal email address?	1	2	3								
Q7. What is your personal email address?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black;"><u>Record email address</u></td> <td style="text-align: right; border-bottom: 1px solid black;">1</td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Don't know email address</u></td> <td style="text-align: right; border-bottom: 1px solid black;">2</td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Don't have email address</u></td> <td style="text-align: right; border-bottom: 1px solid black;">3</td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Refused to provide email address</u></td> <td style="text-align: right; border-bottom: 1px solid black;">4</td> </tr> </table>			<u>Record email address</u>	1	<u>Don't know email address</u>	2	<u>Don't have email address</u>	3	<u>Refused to provide email address</u>	4
<u>Record email address</u>	1										
<u>Don't know email address</u>	2										
<u>Don't have email address</u>	3										
<u>Refused to provide email address</u>	4										

IF email address is exactly the same as RTO-provided email address of: <email address> (Skip Q8 if Q6=2 or 3 or 4)

	Yes	No
Q8. Do you regularly access this email address?	1	2

IF email address is not exactly same as RTO-provided email address or if respondent did not report providing email address (Q6=2 or 3):

FRANKLYN has informed the Department that your email address is:  
 <email address>

Q9.	Yes	No										
a. Is that correct?	1	2										
b. Was this email address created by:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black;"><u>You create email yourself</u></td> <td style="text-align: right; border-bottom: 1px solid black;">1</td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Someone from FRANKLYN</u></td> <td style="text-align: right; border-bottom: 1px solid black;">2</td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Door-to-door salesperson or education adviser</u></td> <td style="text-align: right; border-bottom: 1px solid black;">3</td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Other: OE description</u></td> <td style="text-align: right; border-bottom: 1px solid black;">4</td> </tr> <tr> <td style="border-bottom: 1px solid black;"><u>Don't remember</u></td> <td style="text-align: right; border-bottom: 1px solid black;">5</td> </tr> </table>		<u>You create email yourself</u>	1	<u>Someone from FRANKLYN</u>	2	<u>Door-to-door salesperson or education adviser</u>	3	<u>Other: OE description</u>	4	<u>Don't remember</u>	5
<u>You create email yourself</u>	1											
<u>Someone from FRANKLYN</u>	2											
<u>Door-to-door salesperson or education adviser</u>	3											
<u>Other: OE description</u>	4											
<u>Don't remember</u>	5											
c. Do you regularly access this email address?	1	2										

Commercial-in-Confidence

Q10a. What is your <b>highest level of schooling</b> ?	<u>Less than Year 10</u>	<u>1</u>
	<u>Year 10</u>	<u>2</u>
	<u>Year 12</u>	<u>3</u>
	<u>Other: Please specify</u>	<u>4</u>
Q10b. Did you provide a <b>copy of your school certificate to FRANKLYN</b> when you enrolled?	<u>Yes</u>	<u>1</u>
	<u>No</u>	<u>2</u>
	<u>Can't recall</u>	<u>3</u>
Q10c. Did FRANKLYN make you sit a <b>written test</b> to enrol in the course?	<u>Yes</u>	<u>1</u>
	<u>No</u>	<u>2</u>
	<u>Can't recall</u>	<u>3</u>
<b>IF Q10c = 1 (Yes – did test):</b>	<u>Yes</u>	<u>1</u>
Q10d. Did <b>anyone help</b> you do that test?	<u>No</u>	<u>2</u>
	<u>Can't recall</u>	<u>3</u>
<b>IF Q10d = 1 (Yes – someone helped do test):</b>	<u>Someone from FRANKLYN</u>	<u>1</u>
Q10e. Can you remember who helped you? Was it:	<u>Door-to-door salesperson or education adviser</u>	<u>2</u>
	<u>Other: OE description</u>	<u>3</u>
	<u>Don't remember</u>	<u>4</u>

	Yes	No
Q11a. <b>Have you participated in this course</b> – for example, by attending classes or undertaking online training modules?	1	2
<b>IF Q11a=2 (No – have not participated):</b>		
Q11b. <b>Why is that?</b>	<b>OE response.</b>	

## E. Feedback on training quality (participating students only)

This set of questions only asked of people who have participated in course – i.e. those who answered Q11a=1 (Yes – have participated in this training course).

I would now like to get your feedback on the quality of training provided to you.

Q12a. Are you <b>satisfied with the quality of course materials</b> that you have been provided?	Yes <u>1</u> No <u>2</u>
Q12b. Are you <b>satisfied with how FRANKLYN has responded to any questions</b> you have had about the course?	Yes <u>1</u> No <u>2</u> N/A <u>3</u>
Q12c. Do you think that you have <b>enough access to teachers and tutors</b> to assist you with your studies?	Yes <u>1</u> No <u>2</u>
Q13a. Have you undertaken <b>any assessments</b> , for example done exams or assignments, for this course?	Yes <u>1</u> No <u>2</u>
<b>IF Q13a=1 (Yes – have undertaken assessments):</b>	
Q13b. Were you satisfied with the <b>level of feedback</b> you were given on these assessments?	Yes <u>1</u> No <u>2</u>
<b>IF Q13a=1 (Yes – have undertaken assessments):</b>	
Q13c. Were you satisfied that these assessments were <b>properly marked</b> ?	Yes <u>1</u> No <u>2</u>
Q14. <b>Overall, how satisfied are you with the training provided to you by FRANKLYN?</b>	<u>Very satisfied</u> 1 <u>Satisfied</u> 2 <u>Neither satisfied nor dissatisfied</u> 3 <u>Dissatisfied</u> 4 <u>Very dissatisfied</u> 5
Q15. <b>Why are you &lt; answer from Q14&gt; about the quality of the training course?</b>	<u>Open-ended response.</u> <b>PROBE FULLY</b>

## F. Cancellation of Course / Withdrawal from Units of Study

Q16a. Have you ever tried to <b>withdraw from a course or unit of study</b> at FRANKLYN?	Yes _____ <u>1</u> No <b>GO TO SECTION G</b> _____ <u>2</u>
<b>ASK IF Q16a=1 (TRIED TO WITHDRAW):</b>	Yes <b>(Please specify month/year or year)</b> _____ <u>1</u>
Q16b. Were you <b>successful in managing to withdraw</b> from the course or unit of study?	No _____ <u>2</u>
<b>ASK IF Q16b=1 (Yes – successful in withdrawing)</b>	Yes _____ <u>1</u>
Q16c. Have you ever been <b>charged any fee to withdraw</b> from a course or unit of study?	No _____ <u>2</u> Can't recall _____ <u>3</u>
<b>ASK IF Q16b=1 (Yes – successful in withdrawing)</b>	Very easy _____ <u>1</u>
Q16d. <b>How easy was it to withdraw</b> from the course or unit of study?	Fairly easy _____ <u>2</u> Not easy at all _____ <u>3</u>
<b>ASK IF Q16b=1 (Yes – successful in withdrawing)</b>	Before _____ <u>1</u>
Q16e. Did you <b>withdraw before or after the Census date</b> ?	After <b>Go to SECTION I</b> _____ <u>2</u> Can't recall <b>Go to SECTION I</b> _____ <u>3</u>
<small>Prompt if necessary: The Census date is the date after which you can no longer withdraw from your course – usually one-fifth of the way through the course.</small>	
<b>ASK IF Q16e=1 (BEFORE)</b>	Yes _____ <u>1</u>
Q16f. Did <b>&lt;RTO provider&gt; still charge you</b> for the unit of study that you withdrew from?	No _____ <u>2</u> Don't know _____ <u>3</u>

## G. Course information and payment

17. Before you enrolled in the <Course Name>, were you provided with information about ...	Yes	No	Can't recall
a. The course <b>contents and subjects</b>	1	2	3
b. The <b>amount of course fees and charges</b>	1	2	3
c. <b>Different options for paying</b> course fees and charges	1	2	3

<b>IF Q17c=1 (Payment options described):</b>	<b>Pay everything at the start</b>	<u>1</u>
Q18. <b>What payment options</b> were offered to you?	<b>Pay as you go</b>	<u>2</u>
<b>MULTIPLE RESPONSE (FIRST UNPROMPTED, THEN PROMPT 1 – 3 IF NECESSARY)</b>	<b>A VET FEE-HELP loan from the government</b>	<u>3</u>
	A free course – no payment required	<u>4</u>
	Other: Specify	<u>5</u>
	Can't recall	<u>6</u>

Students who want a government loan to pay their course fees can fill in and sign a *Request for VET FEE-HELP Assistance or Loan* form.

Q19.	Yes	No	Can't recall
a. Do you remember <b>filling in and signing</b> this form?	1	2	
<b>IF Q19a = 1 (Yes – signed form):</b>			
b. Did <b>anyone help you to fill in</b> the form?	1	2	3
<b>IF Q19b = 1 (Yes – someone help fill in form):</b>			
c. Can you remember <b>who helped you? Was it:</b>	<b>Someone from FRANKLYN</b>	<u>1</u>	
	<b>Door-to-door salesperson or education adviser</b>	<u>2</u>	
	<b>Other: OE description</b>	<u>3</u>	
	<b>Don't remember</b>	<u>4</u>	
	Yes	No	Can't recall
<b>IF Q19a = 1 (Yes – signed form):</b>			
d. Did you <b>sign the form on the same day</b> as you signed up for the course?	1	2	3

Q20. <b>Prior to today:</b>	Yes	No
a. Did you know that you had <b>received a loan from the government</b> to pay for your course?	1	2
b. Did you know that you will be required to <b>pay the loan back</b> via the tax system when your income reaches a certain level?	1	2

If you want more information about your VET FEE HELP loan you can contact **Study Assist on 13 38 73**. Would you me like to repeat that phone number for you? **Give number to respondent if they would like this.**



## H. Students reporting incorrect enrolment details (Q1=2)

Q21. Let me check each of those enrolment details with you. Were you enrolled:	Correct	Incorrect	Comment (optional)
a. with FRANKLYN?	1	2	OE
b. in a <Course name 1>?	1	2	OE
c. on <Enrolment date 1>?	1	2	OE
d. in a <Course name 2>?	1	2	OE
e. on <Enrolment date 2>?	1	2	OE
f. in a <Course name 3>?	1	2	OE
g. on <Enrolment date 3>?	1	2	OE

**FRANKLYN have reported to the Department that you are enrolled in this course (or these courses) and that you have applied for a VET FEE-HELP loan. This means you will be required to pay the loan back through the tax system when your income reaches a certain level.**

Q22. Would you like someone from the Department to investigate the accuracy of these enrolments and debts further and call you back?	Yes <u>          1</u>
	No <u>          2</u>

**IF Q21a = 1 (correct RTO name) and at least one course name is correct (Q21b=1, Q21d=1 or Q21f=1) then: Let <Course name> equal first correct <Course name #> and state:  
I would like to ask you about your enrolment in <Course name>.  
**GO TO QUESTION 2a.****

**IF Q21a = 1 (correct RTO name) but all course name(s) incorrect (Q21b=2, Q21d=2 and Q21f=2) then ask:**

Q23. Since July 2015, have you enrolled in another course with Franklyn?	Yes <u>          1</u>
	No <u>          2</u>
<b>If Yes:</b> Q24. What is the name of that course?	OE = <Course name>

**I would like to ask you about your enrolment in <Course name>.  
**GO TO QUESTION 2a.****

**IF Q21a = 2 (incorrect RTO name) then ask:**

Q25. Since July 2015, have you undertaken a training course with any other training organisation?	Yes <u>          1</u>
	No <u>          2</u>
<b>IF Q25=1 (YES – have undertaken a course with another provider):</b> Q26a. What course have you undertaken?	OE = <Course name>
Q26b. What provider have you undertaken this course with?	OE = FRANKLYN
Q26c. When did you commence this course?	MMM YYYY

**IF Q25=1 (YES – undertaken a course with another provider): GO TO QUESTION 2a and ask questions in relation to <Course name> and FRANKLYN provided in Q26.**

## I. End of survey

Q27. Do you have **any further comments** you would like to make about FRANKLYN or the enrolment process?

Open ended

### [THANK AND END]

Thank you very much for your time and assistance with this study. You can find out more information about how the Department will deal with your personal information at [www.education.gov.au/privacy-policy](http://www.education.gov.au/privacy-policy).

Q28. Should the Department or the Australian Skills Quality Authority have further questions about your enrolment with FRANKLYN, is <b>this phone number the best way to contact you?</b>	Yes: Call this number	<u>1</u>
	No: Alternative contact details	<u>2</u>
	No: Please don't contact again	<u>3</u>
Q29. Do you <b>consent to your individual responses being shared with Franklyn?</b>	Yes: Consent	<u>1</u>
	No: Do not consent	<u>2</u>

**CLOSE:** Thanks so much for your help. Just in case you missed it my name is [INTERVIEWER NAME] and this survey was conducted by Action Market Research on behalf of the Department of Education and Training.

**IF NECESSARY:** If you have any queries about this study, or would like any further information, you can call ORIMA Research on 1800 806 950.

Our Privacy Policy is available at [www.orima.com](http://www.orima.com) and contains further details regarding how you can access or correct information we hold about you, how you can make a privacy related complaint and how that complaint will be dealt with. Should you have any questions about our privacy policy or how we will treat your information, you may contact our Privacy Officer, Liesel van Straaten on (03) 9526 9000.

You have the right to access the information that we hold about you as a result of this interview. You may request at any time to have this information de-identified or destroyed.

## Appendix B: Frequency Tables

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Student status and enrolment year.

**Is respondent a student enrolled with Franklyn Scholar?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	36	10.9	10.9	10.9
	Yes	293	89.1	89.1	100.0
	Total	329	100.0	100.0	

Section B. Course enrolment and participation

**q1. [Franklyn Scholar course details provided to respondent.] Do these course details sound correct to you?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	291	88.4	88.4	88.4
	No	38	11.6	11.6	100.0
	Total	329	100.0	100.0	

Section H. Students reporting incorrect enrolment details

**q22. Would you like someone from the Department to investigate the accuracy of these enrolments and debts further and call you back?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	37	11.2	97.4	97.4
	No	1	.3	2.6	100.0
	Total	38	11.6	100.0	
Missing	System	291	88.4		
Total		329	100.0		

**q25. Since July 2015, have you undertaken a training course with any other training organisation?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	9	2.7	24.3	24.3
	No, [NOT DOING ANY OTHER TRAINING WITH ANY OTHER ORGANISATION]	28	8.5	75.7	100.0
	Total	37	11.2	100.0	
Missing	System	292	88.8		
Total		329	100.0		

Commercial-in-Confidence

Section C. Enrolment Incentives

(Those who said that they were enrolled with RTO in the nominated course)

**q2a. Were you offered anything of value to enrol in this course, such as a laptop, iPad, cash or a shopping voucher or money?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	14	4.8	4.8	4.8
	No	272	92.8	92.8	97.6
	Can't recall	7	2.4	2.4	100.0
	Total	293	100.0	100.0	

(Those who were offered something of value to enrol in this course)

**q2b\_mr. What were you offered?**

		Frequency	% of respondents
Valid	Laptop or computer	10	71.4
	iPad or other tablet		
	Mobile phone		
	Shopping voucher		
	Money		
	Other (Please specify)	4	28.6
Number of Respondents		14	100.0

(Those who were offered laptop or computer)

**q3a. Was the laptop or computer provided for you to keep or just to use during your training?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	To keep	5	50.0	50.0	50.0
	While training only	5	50.0	50.0	100.0
	Total	10	100.0	100.0	

Commercial-in-Confidence

(Those who were offered laptop or computer, iPad or other tablet, or mobile phone)

**q4. Who offered you these [enrolment incentives]?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Someone from Franklyn Scholar	6	60.0	60.0	60.0
	Door-to-door salesperson or education adviser	2	20.0	20.0	80.0
	Other (Please specify)	1	10.0	10.0	90.0
	Don't remember	1	10.0	10.0	100.0
	Total	10	100.0	100.0	

(Those who were offered something of value to enrol in this course)

**q5. Did you get the [enrolment incentives]?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	6	42.9	42.9	42.9
	No	8	57.1	57.1	100.0
	Total	14	100.0	100.0	

Section D. Enrolment Process

(Those who said that they were enrolled with RTO in the nominated course)

**q6. When you enrolled, did you give Franklyn Scholar your personal email address?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	279	95.2	95.2	95.2
	No	3	1.0	1.0	96.2
	Can't recall	11	3.8	3.8	100.0
	Total	293	100.0	100.0	

(Those whose email addresses are the same)

**q8. Do you regularly access this email address?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	234	94.7	94.7	94.7
	No	13	5.3	5.3	100.0
	Total	247	100.0	100.0	

Commercial-in-Confidence

(Those who did not report providing email address or whose email addresses are not the same)

**q9a. Franklyn Scholar has informed the Department that your email address is: ... Is that correct?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	37	80.4	80.4	80.4
	No	9	19.6	19.6	100.0
	Total	46	100.0	100.0	

**q9b. Was this email address created by:**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	You created email address yourself	34	91.9	91.9	91.9
	Door-to-door salesperson or education adviser	1	2.7	2.7	94.6
	Other (Please specify)	2	5.4	5.4	100.0
	Total	37	100.0	100.0	

**q9c. Do you regularly access this email address?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	36	78.3	78.3	78.3
	No	10	21.7	21.7	100.0
	Total	46	100.0	100.0	

(Those who said that they were enrolled with RTO in the nominated course)

**q9a@. Is the email address exactly the same as Franklyn Scholar provided email address?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	284	96.9	96.9	96.9
	No	9	3.1	3.1	100.0
	Total	293	100.0	100.0	

Commercial-in-Confidence

**q8@. Do you regularly access this email address?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	270	92.2	92.2	92.2
	No	23	7.8	7.8	100.0
	Total	293	100.0	100.0	

(Those who said that they were enrolled with RTO in the nominated course)

**q10a. What is your highest level of schooling?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less than Year 10	13	4.4	4.4	4.4
	Year 10	67	22.9	22.9	27.3
	Year 12	127	43.3	43.3	70.6
	Other (Please specify)	86	29.4	29.4	100.0
	Total	293	100.0	100.0	

**q10b. Did you provide a copy of your school certificate to Franklyn Scholar when you enrolled?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	21	7.2	7.2	7.2
	No	245	83.6	83.6	90.8
	Can't recall	27	9.2	9.2	100.0
	Total	293	100.0	100.0	

**q10c. Did Franklyn Scholar make you sit a written test to enrol in your course?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	107	36.5	36.5	36.5
	No	168	57.3	57.3	93.9
	Can't recall	18	6.1	6.1	100.0
	Total	293	100.0	100.0	



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(Those who sat a written test)

**q10d. Did anyone help you do that test?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	7	6.5	6.5	6.5
	No	100	93.5	93.5	100.0
	Total	107	100.0	100.0	

(Those who received help doing that test)

**q10e. Can you remember who helped you? Was it:**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Someone from Franklyn Scholar	7	100.0	100.0	100.0

(Those who said that they were enrolled with RTO in the nominated course)

**q11a. Have you participated in this course - for example, by attending classes or undertaking online training modules?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	129	44.0	44.0	44.0
	No	164	56.0	56.0	100.0
	Total	293	100.0	100.0	

Section E. Feedback on training quality (participating students only)

(Those who have participated in the nominated course)

**q12a. I would now like to get your feedback on the quality of training provided to you. ? Are you satisfied with the quality of course materials that you have been provided?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	106	82.2	82.2	82.2
	No	23	17.8	17.8	100.0
	Total	129	100.0	100.0	

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**q12b. Are you satisfied with how Franklyn Scholar has responded to any questions you have had about the course?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	104	80.6	80.6	80.6
	No	19	14.7	14.7	95.3
	N/A	6	4.7	4.7	100.0
	Total	129	100.0	100.0	

**q12c. Do you think that you have enough access to teachers and tutors to assist you with your studies?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	104	80.6	80.6	80.6
	No	25	19.4	19.4	100.0
	Total	129	100.0	100.0	

**q13a. Have you undertaken any assessments, for example done exams or assignments, for this course?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	72	55.8	55.8	55.8
	No	57	44.2	44.2	100.0
	Total	129	100.0	100.0	

(Those who have undertaken assessments)

**q13b. Were you satisfied with the level of feedback you were given on these assessments?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	64	88.9	88.9	88.9
	No	8	11.1	11.1	100.0
	Total	72	100.0	100.0	

**q13c. Were you satisfied that these assessments were properly marked?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	65	90.3	90.3	90.3
	No	7	9.7	9.7	100.0
	Total	72	100.0	100.0	

Commercial-in-Confidence

(Those who have participated in the nominated course)

**q14. Overall, how satisfied are you with the training provided to you by Franklyn Scholar?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very satisfied	31	24.0	24.0	24.0
	Satisfied	63	48.8	48.8	72.9
	Neither satisfied nor dissatisfied	20	15.5	15.5	88.4
	Dissatisfied	8	6.2	6.2	94.6
	Very dissatisfied	7	5.4	5.4	100.0
	Total	129	100.0	100.0	

Section F. Cancellation of Course/ Withdrawal from Units of Study

(Those who have participated in the nominated course)

**q16a. Have you ever tried to withdraw from a course or unit of study at Franklyn Scholar?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	129	44.0	44.0	44.0
	No	164	56.0	56.0	100.0
	Total	293	100.0	100.0	

(Those who tried to withdraw)

**q16b. Were you successful in managing to withdraw from the course or unit of study?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes (Please specify month/year)	77	59.7	59.7	59.7
	No	52	40.3	40.3	100.0
	Total	129	100.0	100.0	

Commercial-in-Confidence

(Those who tried and successfully withdrew)

**q16c. Have you ever been charged any fee to withdraw from a course or unit of study?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	4	5.2	5.2	5.2
	No	68	88.3	88.3	93.5
	Can't recall	5	6.5	6.5	100.0
	Total	77	100.0	100.0	

**q16d. How easy was it to withdraw from the course or unit of study?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Very easy	27	35.1	35.1	35.1
	Fairly easy	32	41.6	41.6	76.6
	Not easy at all	18	23.4	23.4	100.0
	Total	77	100.0	100.0	

**q16e. Did you withdraw before or after the Census date?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Before	45	58.4	58.4	58.4
	After	13	16.9	16.9	75.3
	Can't recall	19	24.7	24.7	100.0
	Total	77	100.0	100.0	

(Those who tried and successfully withdrew before the Census date)

**q16f. Did Franklyn Scholar still charge you for the unit of study that you withdrew from?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	1	2.2	2.2	2.2
	No	37	82.2	82.2	84.4
	Don't know	7	15.6	15.6	100.0
	Total	45	100.0	100.0	

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Section G. Course information and payment

(Those who have participated in the nominated course)

**q17a. Before you enrolled in the course, were you provided with information about the course contents and subjects?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	188	64.2	64.2	64.2
	No	70	23.9	23.9	88.1
	Can't recall	35	11.9	11.9	100.0
	Total	293	100.0	100.0	

**q17b. Before you enrolled in the course, were you provided with information about the amount of course fees and charges?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	208	71.0	71.0	71.0
	No	61	20.8	20.8	91.8
	Can't recall	24	8.2	8.2	100.0
	Total	293	100.0	100.0	

**q17c. Before you enrolled in the course, were you provided with information about different options for paying course fees and charges?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	190	64.8	64.8	64.8
	No	77	26.3	26.3	91.1
	Can't recall	26	8.9	8.9	100.0
	Total	293	100.0	100.0	

(Those who were provided with information about payment options)

**Q18 mr. What payment options were offered to you?**

		Frequency	% of respondents
Valid	Pay everything at the start	62	32.6
	Pay as you go	50	26.3
	A VET FEE-HELP loan from the government	174	91.6
	A free course - no payment required	7	3.7
	Other (Please specify)	3	1.6
	Can't recall	6	3.2
Number of Respondents		190	100.0

(Those who have participated in the nominated course)

**q19a. Students who want a government loan to pay their course fees can fill in and sign a Request for VET FEE-HELP Assistance or Loan form. ? Do you remember filling in and signing this form?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	188	64.2	64.2	64.2
	No	105	35.8	35.8	100.0
	Total	293	100.0	100.0	

(Those who remember filling in and signing VET FEE-HELP Assistance or Loan form)

**q19b. Did anyone help you to fill in the form?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	72	38.3	38.3	38.3
	No	112	59.6	59.6	97.9
	Can't recall	4	2.1	2.1	100.0
	Total	188	100.0	100.0	

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(Those who received help filling in and signing VET FEE-HELP Assistance or Loan form)

**q19c. Can you remember who helped you? ? Was it:**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Someone from Franklyn Scholar	49	68.1	68.1	68.1
	Door-to-door salesperson or education adviser	7	9.7	9.7	77.8
	Other (Please specify)	13	18.1	18.1	95.8
	Don't remember	3	4.2	4.2	100.0
	Total	72	100.0	100.0	

(Those who remember filling in and signing VET FEE-HELP Assistance or Loan form)

**q19d. Did you sign the form on the same day as you signed up for the course?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	85	45.2	45.2	45.2
	No	61	32.4	32.4	77.7
	Can't recall	42	22.3	22.3	100.0
	Total	188	100.0	100.0	

(Those who have participated in the nominated course)

**q20a. Prior to today, did you know that you had received a loan from the government to pay for your course?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	130	44.4	44.4	44.4
	No	163	55.6	55.6	100.0
	Total	293	100.0	100.0	

**q20b. Prior to today, did you know that you will be required to pay the loan back via the tax system when your income reaches a certain level?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	222	75.8	75.8	75.8
	No	71	24.2	24.2	100.0
	Total	293	100.0	100.0	

Section I. End of survey

**q28. Should the Department or the Australian Skills Quality Authority have further questions about your enrolment with Franklyn Scholar, is this phone number the best way to contact you?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes: Call this number	326	99.1	99.1	99.1
	No: Alternative contact details	3	.9	.9	100.0
	Total	329	100.0	100.0	

**q29. Do you consent to your individual responses being shared with Franklyn Scholar?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes: I consent	303	92.1	92.1	92.1
	No: I do NOT consent	26	7.9	7.9	100.0
	Total	329	100.0	100.0	



## **Appendix C: Cross-tabulations (by Enrolment Year)**

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Student status and enrolment year.

**Is respondent a student enrolled with Franklyn Scholar?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	No	35	12.7	12.7	12.7
		Yes	240	87.3	87.3	100.0
		Total	275	100.0	100.0	
2016	Valid	No	1	1.9	1.9	1.9
		Yes	53	98.1	98.1	100.0
		Total	54	100.0	100.0	

Section B. Course enrolment and participation

**q1. [Franklyn Scholar course details provided to respondent.] Do these course details sound correct to you?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	238	86.5	86.5	86.5
		No	37	13.5	13.5	100.0
		Total	275	100.0	100.0	
2016	Valid	Yes	53	98.1	98.1	98.1
		No	1	1.9	1.9	100.0
		Total	54	100.0	100.0	

Section H. Students reporting incorrect enrolment details

**q22. Would you like someone from the Department to investigate the accuracy of these enrolments and debts further and call you back?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent	
2015	Valid	Yes	36	13.1	97.3	97.3	
		No	1	.4	2.7	100.0	
		Total	37	13.5	100.0		
	Missing	System	238	86.5			
	Total		275	100.0			
2016	Valid	Yes	1	1.9	100.0	100.0	
		Missing	System	53	98.1		
		Total	54	100.0			

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**q25. Since July 2015, have you undertaken a training course with any other training organisation?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	9	3.3	25.0	25.0
		No, [NOT DOING ANY OTHER TRAINING WITH ANY OTHER ORGANISATION]	27	9.8	75.0	100.0
		Total	36	13.1	100.0	
	Missing	System	239	86.9		
	Total	275	100.0			
2016	Valid	No, [NOT DOING ANY OTHER TRAINING WITH ANY OTHER ORGANISATION]	1	1.9	100.0	100.0
		Missing	System	53	98.1	
	Total	54	100.0			

Section C. Enrolment Incentives

(Those who said that they were enrolled with RTO in the nominated course)

**q2a. Were you offered anything of value to enrol in this course, such as a laptop, iPad, cash or a shopping voucher or money?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	13	5.4	5.4	5.4
		No	220	91.7	91.7	97.1
		Can't recall	7	2.9	2.9	100.0
	Total	240	100.0	100.0		
2016	Valid	Yes	1	1.9	1.9	1.9
		No	52	98.1	98.1	100.0
	Total	53	100.0	100.0		

(Those who were offered something of value to enrol in this course)

**q2b\_mr. What were you offered?**

Enrolment Year			Frequency	% of respondents
2015	Valid	Laptop or computer	9	69.2
		iPad or other tablet		
		Mobile phone		
		Shopping voucher		
		Money		
		Other (Please specify)		
Number of Respondents			13	100.0
2016	Valid	Laptop or computer	1	100.0
		iPad or other tablet		
		Mobile phone		
		Shopping voucher		
		Money		
		Other (Please specify)		
Number of Respondents			1	100.0

(Those who were offered laptop or computer)

**q3a. Was the laptop or computer provided for you to keep or just to use during your training?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	To keep	5	55.6	55.6	55.6
		While training only	4	44.4	44.4	100.0
		Total	9	100.0	100.0	
2016	Valid	While training only	1	100.0	100.0	100.0

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(Those who were offered laptop or computer, iPad or other tablet, or mobile phone)

**q4. Who offered you these [enrolment incentives]?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Someone from Franklyn Scholar	6	66.7	66.7	66.7
		Door-to-door salesperson or education adviser	2	22.2	22.2	88.9
		Don't remember	1	11.1	11.1	100.0
		Total	9	100.0	100.0	
2016	Valid	Other (Please specify)	1	100.0	100.0	100.0

(Those who were offered something of value to enrol in this course)

**q5. Did you get the [enrolment incentives]?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	5	38.5	38.5	38.5
		No	8	61.5	61.5	100.0
		Total	13	100.0	100.0	
2016	Valid	Yes	1	100.0	100.0	100.0

## Section D. Enrolment Process

(Those who said that they were enrolled with RTO in the nominated course)

**q6. When you enrolled, did you give Franklyn Scholar your personal email address?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	227	94.6	94.6	94.6
		No	3	1.3	1.3	95.8
		Can't recall	10	4.2	4.2	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	52	98.1	98.1	98.1
		Can't recall	1	1.9	1.9	100.0
		Total	53	100.0	100.0	

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(Those whose email addresses are the same)

**q8. Do you regularly access this email address?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	185	93.4	93.4	93.4
		No	13	6.6	6.6	100.0
		Total	198	100.0	100.0	
2016	Valid	Yes	49	100.0	100.0	100.0

(Those who did not report providing email address or whose email addresses are not the same)

**q9a. Franklyn Scholar has informed the Department that your email address is: ... Is that correct?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	34	81.0	81.0	81.0
		No	8	19.0	19.0	100.0
		Total	42	100.0	100.0	
2016	Valid	Yes	3	75.0	75.0	75.0
		No	1	25.0	25.0	100.0
		Total	4	100.0	100.0	

**q9b. Was this email address created by:**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	You created email address yourself	31	91.2	91.2	91.2
		Door-to-door salesperson or education adviser	1	2.9	2.9	94.1
		Other (Please specify)	2	5.9	5.9	100.0
		Total	34	100.0	100.0	
2016	Valid	You created email address yourself	3	100.0	100.0	100.0

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**q9c. Do you regularly access this email address?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	33	78.6	78.6	78.6
		No	9	21.4	21.4	100.0
		Total	42	100.0	100.0	
2016	Valid	Yes	3	75.0	75.0	75.0
		No	1	25.0	25.0	100.0
		Total	4	100.0	100.0	

(Those who said that they were enrolled with RTO in the nominated course)

**q9a@. Is the email address exactly the same as Franklyn Scholar provided email address?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	232	96.7	96.7	96.7
		No	8	3.3	3.3	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	52	98.1	98.1	98.1
		No	1	1.9	1.9	100.0
		Total	53	100.0	100.0	

**q8@. Do you regularly access this email address?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	218	90.8	90.8	90.8
		No	22	9.2	9.2	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	52	98.1	98.1	98.1
		No	1	1.9	1.9	100.0
		Total	53	100.0	100.0	

Commercial-in-Confidence

(Those who said that they were enrolled with RTO in the nominated course)

**q10a. What is your highest level of schooling?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Less than Year 10	11	4.6	4.6	4.6
		Year 10	50	20.8	20.8	25.4
		Year 12	103	42.9	42.9	68.3
		Other (Please specify)	76	31.7	31.7	100.0
		Total	240	100.0	100.0	
2016	Valid	Less than Year 10	2	3.8	3.8	3.8
		Year 10	17	32.1	32.1	35.8
		Year 12	24	45.3	45.3	81.1
		Other (Please specify)	10	18.9	18.9	100.0
		Total	53	100.0	100.0	

**q10b. Did you provide a copy of your school certificate to Franklyn Scholar when you enrolled?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	7	2.9	2.9	2.9
		No	206	85.8	85.8	88.8
		Can't recall	27	11.3	11.3	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	14	26.4	26.4	26.4
		No	39	73.6	73.6	100.0
		Total	53	100.0	100.0	

**q10c. Did Franklyn Scholar make you sit a written test to enrol in your course?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	70	29.2	29.2	29.2
		No	154	64.2	64.2	93.3
		Can't recall	16	6.7	6.7	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	37	69.8	69.8	69.8
		No	14	26.4	26.4	96.2
		Can't recall	2	3.8	3.8	100.0
		Total	53	100.0	100.0	

(Those who sat a written test)



Commercial-in-Confidence

**q10d. Did anyone help you do that test?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	4	5.7	5.7	5.7
		No	66	94.3	94.3	100.0
		Total	70	100.0	100.0	
2016	Valid	Yes	3	8.1	8.1	8.1
		No	34	91.9	91.9	100.0
		Total	37	100.0	100.0	

(Those who received help doing that test)

**q10e. Can you remember who helped you? Was it:**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Someone from Franklyn Scholar	4	100.0	100.0	100.0
		Someone from Franklyn Scholar	3	100.0	100.0	100.0

(Those who said that they were enrolled with RTO in the nominated course)

**q11a. Have you participated in this course - for example, by attending classes or undertaking online training modules?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	98	40.8	40.8	40.8
		No	142	59.2	59.2	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	31	58.5	58.5	58.5
		No	22	41.5	41.5	100.0
		Total	53	100.0	100.0	

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Section E. Feedback on training quality (participating students only)  
 (Those who have participated in the nominated course)

**q12a. I would now like to get your feedback on the quality of training provided to you. ? Are you satisfied with the quality of course materials that you have been provided?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	78	79.6	79.6	79.6
		No	20	20.4	20.4	100.0
		Total	98	100.0	100.0	
2016	Valid	Yes	28	90.3	90.3	90.3
		No	3	9.7	9.7	100.0
		Total	31	100.0	100.0	

**q12b. Are you satisfied with how Franklyn Scholar has responded to any questions you have had about the course?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	77	78.6	78.6	78.6
		No	16	16.3	16.3	94.9
		N/A	5	5.1	5.1	100.0
		Total	98	100.0	100.0	
2016	Valid	Yes	27	87.1	87.1	87.1
		No	3	9.7	9.7	96.8
		N/A	1	3.2	3.2	100.0
		Total	31	100.0	100.0	

**q12c. Do you think that you have enough access to teachers and tutors to assist you with your studies?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	77	78.6	78.6	78.6
		No	21	21.4	21.4	100.0
		Total	98	100.0	100.0	
2016	Valid	Yes	27	87.1	87.1	87.1
		No	4	12.9	12.9	100.0
		Total	31	100.0	100.0	

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**q13a. Have you undertaken any assessments, for example done exams or assignments, for this course?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	59	60.2	60.2	60.2
		No	39	39.8	39.8	100.0
		Total	98	100.0	100.0	
2016	Valid	Yes	13	41.9	41.9	41.9
		No	18	58.1	58.1	100.0
		Total	31	100.0	100.0	

(Those who have undertaken assessments)

**q13b. Were you satisfied with the level of feedback you were given on these assessments?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	53	89.8	89.8	89.8
		No	6	10.2	10.2	100.0
		Total	59	100.0	100.0	
2016	Valid	Yes	11	84.6	84.6	84.6
		No	2	15.4	15.4	100.0
		Total	13	100.0	100.0	

**q13c. Were you satisfied that these assessments were properly marked?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	55	93.2	93.2	93.2
		No	4	6.8	6.8	100.0
		Total	59	100.0	100.0	
2016	Valid	Yes	10	76.9	76.9	76.9
		No	3	23.1	23.1	100.0
		Total	13	100.0	100.0	

Commercial-in-Confidence

(Those who have participated in the nominated course)

**q14. Overall, how satisfied are you with the training provided to you by Franklyn Scholar?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Very satisfied	23	23.5	23.5	23.5
		Satisfied	47	48.0	48.0	71.4
		Neither satisfied nor dissatisfied	15	15.3	15.3	86.7
		Dissatisfied	6	6.1	6.1	92.9
		Very dissatisfied	7	7.1	7.1	100.0
		Total	98	100.0	100.0	
		2016	Valid	Very satisfied	8	25.8
Satisfied	16			51.6	51.6	77.4
Neither satisfied nor dissatisfied	5			16.1	16.1	93.5
Dissatisfied	2			6.5	6.5	100.0
Total	31			100.0	100.0	

Section F. Cancellation of Course/ Withdrawal from Units of Study

(Those who have participated in the nominated course)

**q16a. Have you ever tried to withdraw from a course or unit of study at Franklyn Scholar?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	100	41.7	41.7	41.7
		No	140	58.3	58.3	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	29	54.7	54.7	54.7
		No	24	45.3	45.3	100.0
		Total	53	100.0	100.0	

Commercial-in-Confidence

(Those who tried to withdraw)

**q16b. Were you successful in managing to withdraw from the course or unit of study?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes (Please specify month/year)	54	54.0	54.0	54.0
		No	46	46.0	46.0	100.0
		Total	100	100.0	100.0	
2016	Valid	Yes (Please specify month/year)	23	79.3	79.3	79.3
		No	6	20.7	20.7	100.0
		Total	29	100.0	100.0	

(Those who tried and successfully withdrew)

**q16c. Have you ever been charged any fee to withdraw from a course or unit of study?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	4	7.4	7.4	7.4
		No	47	87.0	87.0	94.4
		Can't recall	3	5.6	5.6	100.0
		Total	54	100.0	100.0	
2016	Valid	No	21	91.3	91.3	91.3
		Can't recall	2	8.7	8.7	100.0
		Total	23	100.0	100.0	

**q16d. How easy was it to withdraw from the course or unit of study?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Very easy	19	35.2	35.2	35.2
		Fairly easy	22	40.7	40.7	75.9
		Not easy at all	13	24.1	24.1	100.0
		Total	54	100.0	100.0	
2016	Valid	Very easy	8	34.8	34.8	34.8
		Fairly easy	10	43.5	43.5	78.3
		Not easy at all	5	21.7	21.7	100.0
		Total	23	100.0	100.0	

Commercial-in-Confidence

**q16e. Did you withdraw before or after the Census date?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Before	29	53.7	53.7	53.7
		After	8	14.8	14.8	68.5
		Can't recall	17	31.5	31.5	100.0
		Total	54	100.0	100.0	
2016	Valid	Before	16	69.6	69.6	69.6
		After	5	21.7	21.7	91.3
		Can't recall	2	8.7	8.7	100.0
		Total	23	100.0	100.0	

(Those who tried and successfully withdrew before the Census date)

**q16f. Did Franklyn Scholar still charge you for the unit of study that you withdrew from?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	1	3.4	3.4	3.4
		No	23	79.3	79.3	82.8
		Don't know	5	17.2	17.2	100.0
		Total	29	100.0	100.0	
2016	Valid	No	14	87.5	87.5	87.5
		Don't know	2	12.5	12.5	100.0
		Total	16	100.0	100.0	

Section G. Course information and payment

(Those who have participated in the nominated course)

**q17a. Before you enrolled in the course, were you provided with information about the course contents and subjects?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	142	59.2	59.2	59.2
		No	68	28.3	28.3	87.5
		Can't recall	30	12.5	12.5	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	46	86.8	86.8	86.8
		No	2	3.8	3.8	90.6
		Can't recall	5	9.4	9.4	100.0
		Total	53	100.0	100.0	

Commercial-in-Confidence

**q17b. Before you enrolled in the course, were you provided with information about the amount of course fees and charges?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	160	66.7	66.7	66.7
		No	59	24.6	24.6	91.3
		Can't recall	21	8.8	8.8	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	48	90.6	90.6	90.6
		No	2	3.8	3.8	94.3
		Can't recall	3	5.7	5.7	100.0
		Total	53	100.0	100.0	

**q17c. Before you enrolled in the course, were you provided with information about different options for paying course fees and charges?**

Enrolment_Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	147	61.3	61.3	61.3
		No	70	29.2	29.2	90.4
		Can't recall	23	9.6	9.6	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	43	81.1	81.1	81.1
		No	7	13.2	13.2	94.3
		Can't recall	3	5.7	5.7	100.0
		Total	53	100.0	100.0	

Commercial-in-Confidence

(Those who were provided with information about payment options)

**Q18\_mr. What payment options were offered to you?**

Enrolment Year			Frequency	% of respondents
2015	Valid	Pay everything at the start	45	30.6
		Pay as you go	36	24.5
		A VET FEE-HELP loan from the government	132	89.8
		A free course - no payment required	7	4.8
		Other (Please specify)	3	2.0
		Can't recall	5	3.4
		Number of Respondents	147	100.0
2016	Valid	Pay everything at the start	17	39.5
		Pay as you go	14	32.6
		A VET FEE-HELP loan from the government	42	97.7
		A free course - no payment required		
		Other (Please specify)		
		Can't recall	1	2.3
		Number of Respondents	43	100.0

(Those who have participated in the nominated course)

**q19a. Students who want a government loan to pay their course fees can fill in and sign a Request for VET FEE-HELP Assistance or Loan form. ? Do you remember filling in and signing this form?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	139	57.9	57.9	57.9
		No	101	42.1	42.1	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	49	92.5	92.5	92.5
		No	4	7.5	7.5	100.0
		Total	53	100.0	100.0	



## Commercial-in-Confidence

(Those who remember filling in and signing VET FEE-HELP Assistance or Loan form)

**q19b. Did anyone help you to fill in the form?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	51	36.7	36.7	36.7
		No	84	60.4	60.4	97.1
		Can't recall	4	2.9	2.9	100.0
		Total	139	100.0	100.0	
2016	Valid	Yes	21	42.9	42.9	42.9
		No	28	57.1	57.1	100.0
		Total	49	100.0	100.0	

(Those who received help filling in and signing VET FEE-HELP Assistance or Loan form)

**q19c. Can you remember who helped you? ? Was it:**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Someone from Franklyn Scholar	33	64.7	64.7	64.7
		Door-to-door salesperson or education adviser	6	11.8	11.8	76.5
		Other (Please specify)	11	21.6	21.6	98.0
		Don't remember	1	2.0	2.0	100.0
		Total	51	100.0	100.0	
2016	Valid	Someone from Franklyn Scholar	16	76.2	76.2	76.2
		Door-to-door salesperson or education adviser	1	4.8	4.8	81.0
		Other (Please specify)	2	9.5	9.5	90.5
		Don't remember	2	9.5	9.5	100.0
		Total	21	100.0	100.0	

Commercial-in-Confidence

(Those who remember filling in and signing VET FEE-HELP Assistance or Loan form)

**q19d. Did you sign the form on the same day as you signed up for the course?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	66	47.5	47.5	47.5
		No	46	33.1	33.1	80.6
		Can't recall	27	19.4	19.4	100.0
		Total	139	100.0	100.0	
2016	Valid	Yes	19	38.8	38.8	38.8
		No	15	30.6	30.6	69.4
		Can't recall	15	30.6	30.6	100.0
		Total	49	100.0	100.0	

(Those who have participated in the nominated course)

**q20a. Prior to today, did you know that you had received a loan from the government to pay for your course?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	92	38.3	38.3	38.3
		No	148	61.7	61.7	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	38	71.7	71.7	71.7
		No	15	28.3	28.3	100.0
		Total	53	100.0	100.0	

**q20b. Prior to today, did you know that you will be required to pay the loan back via the tax system when your income reaches a certain level?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes	175	72.9	72.9	72.9
		No	65	27.1	27.1	100.0
		Total	240	100.0	100.0	
2016	Valid	Yes	47	88.7	88.7	88.7
		No	6	11.3	11.3	100.0
		Total	53	100.0	100.0	

## Commercial-in-Confidence

Section I. End of survey

**q28. Should the Department or the Australian Skills Quality Authority have further questions about your enrolment with Franklyn Scholar, is this phone number the best way to contact you?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes: Call this number	272	98.9	98.9	98.9
		No: Alternative contact details	3	1.1	1.1	100.0
		Total	275	100.0	100.0	
2016	Valid	Yes: Call this number	54	100.0	100.0	100.0

**q29. Do you consent to your individual responses being shared with Franklyn Scholar?**

Enrolment Year			Frequency	Percent	Valid Percent	Cumulative Percent
2015	Valid	Yes: I consent	254	92.4	92.4	92.4
		No: I do NOT consent	21	7.6	7.6	100.0
		Total	275	100.0	100.0	
2016	Valid	Yes: I consent	49	90.7	90.7	90.7
		No: I do NOT consent	5	9.3	9.3	100.0
		Total	54	100.0	100.0	



**Australian Government**  
**Department of Education and Training**

Ms Jodi Sanders  
Franklyn Scholar  
Chief Executive Officer  
600 Glenferrie  
Hawthorn  
VIC 3122  
Jodi.sanders@acquirelearning.com.au

Dear Ms Sanders

**Compliance audit into Franklyn Scholar (Australia) Pty Ltd**

As you may be aware, the department has undertaken an audit of:

- (a) the enrolment data reported by Franklyn Scholar (Australia) Pty Ltd (**Franklyn Scholar**) for the 2015 calendar year; and
- (b) Franklyn's compliance with the VET Guidelines 2015 (**VET Guidelines**), Higher Education Support (**VET**) Guideline 2015 (**VET Guidelines**) and *Higher Education Support Act 2003* (**HESA**).

We **enclose** a final copy of the audit report prepared by Deloitte, together with a copy of the Orima Student Telephone Survey for Franklyn Scholar

**Deloitte Audit**

On the basis of the findings of the audit the department has identified a number of concerns which include:

- (a) 87% of students enrolled in 2015 had no on-line activity
- (b) Only 8% of students were competent, 34% received no grade and 58% withdrew

**Orima Phone Survey**

The department also identified concerns from the telephone survey including:

- (a) 11% of interview participants were not enrolled on a course
- (b) 43% had not participated on a course
- (c) 22% were not aware that they would have to repay the VET FEE-HELP loan

**Compliance issues**

The department notes serious concerns with Deloitte's findings that 86% of students had no online activity and Orima's findings that 11% of those surveyed reported that they were not enrolled with Franklyn Scholar, and may take further compliance action based on these findings.

On the basis of the findings of the audit, the department has further concerns that Franklyn Scholar is non-compliant in the following areas:

- (a) Subsection 39(1)(b) of the Guidelines requires the provider's entry procedure to specify how the results of assessing a student's competency are to be reported to the Secretary. The audit undertaken by the department found that Franklyn Scholar's student entry procedure does not specify "*how to report to the Secretary about the results of such assessments*".
- (b) Clause 23B(1) of Sch 1A of the HESA requires providers to make and publish a student entry procedure in accordance with the guidelines. Clause 36(b) of the Guidelines (post 1 January 2016) requires that a provider's student entry procedure must be published on the provider's website in such a way that each link to the procedure includes the words "*student entry procedure*". The audit undertaken by the department found that Franklyn Scholar's Student Entry Procedure does not include the words "student entry procedure".
- (c) Subsection 32(1)(b) of the Guidelines provides that a VET provider must clearly and prominently publish on its website its procedure for a student to enroll in a VET unit of study with the VET provider, in a case where the student had earlier withdrawn from a VET unit of study undertaken with the VET provider. The policies and the Student Handbook do not outline the procedure for a student to re-enrol in a VET unit of competency with Franklyn Scholar, in the case where the student had earlier withdrawn from a VET unit of competency.

#### **Notice of requirement to correct non-compliance with the VET Guidelines and HESA**

In light of the findings outline above, the department requires you to correct the wording on Franklyn Scholar's website to comply with subsections 32(1)(b) and 39(1)(b) of the Guidelines and clause 23B(1) of Sch 1A of the HESA within 14 days of the date of this letter.

If Franklyn Scholar fails to correct or provide this information within the required time, the department may take compliance action.

#### **Notice of Payments Decision**

On the basis of the findings of the audit and the survey, the department has undertaken a preliminary estimate of amounts owing to Franklyn under Schedule 1A to the HESA. Based on the information presently available, the department estimates Franklyn Scholar is only entitled to the sum of \$56,347,928 for 2015, substantially less than the \$63,312,279 claimed. The department has issued a notice of estimate of entitlement to payments under clause 55 of Schedule 1A to the HESA, enclosed at **Annexure A**. You are invited to supply further information or submissions as set out in the notice within 28 days of the date of this letter before a final reconciliation is made.

The department is very concerned by the Deloitte finding that 87% of students had no online activity. The department will be undertaking further investigations in light of the audit findings into student enrolment data and based on this work may seek the repayment of further funds where it is identified entitlement to funds has been overstated, in addition to possible compliance action referenced above.

## Ongoing Monitoring

As a result of the audit and survey findings, Frankly Scholar will continue to be monitored by the department as a 'provider of significant concern'. The department reserves the right to further investigate findings from the reports and progress further payment recovery or compliance work as required.

Please contact <sup>s 22(1)(a)(ii)</sup>  
should you have any queries in regard to this letter.

Yours sincerely  
<sup>s 22(1)(a)(ii)</sup>

Group Manager  
Skills Programs Group  
**Delegate of the Minister for Education and Training**

13 October 2016

## NOTICE OF PROPOSED PAYMENTS DECISION

### Clause 55 of Schedule 1A to the Higher Education Support Act 2003 (Cth)

#### Franklyn Scholar (Australia) Pty Ltd

#### 1. Summary

- 1.1 The Department of Education and Training (**Department**) has undertaken a preliminary estimate of the entitlement of Franklyn Scholar (Australia) Pty Ltd (**Franklyn Scholar**) under Schedule 1A to the *Higher Education Support Act 2003 (Cth)* (**Schedule 1A**). The purpose of this notice is to give notice of the Department's preliminary findings and to invite Franklyn Scholar to supply further information or submissions before a final reconciliation is made.
- 1.2 On the basis of the information presently available to the Department, and for the reasons set out in this notice, the Department considers that Franklyn Scholar is only entitled to the following amount of VET FEE-HELP payments for 2015 pursuant to Schedule 1A: \$56,347,928.
- 1.3 Franklyn Scholar was paid (by way of advance payments) \$66,535,650 for 2015, meaning that the preliminary estimate is that an overpayment of \$10,187,722 has occurred.
- 1.4 Information available to the department also raises serious concerns with Franklyn Scholar's entitlements to payment in 2016. These issues will be taken into consideration as part of 2016 reconciliation processes.
- 1.5 The Department invites Franklyn Scholar to make any submissions and provide any information in response to this letter within 28 days of the date of this notice.

#### 2. Background

- 2.1 The Department is responsible for administering the *Higher Education Support Act 2003 (HESA)*, which includes responsibility for administering the VET FEE-HELP scheme.
- 2.2 Schedule 1A provides for the VET FEE-HELP scheme. It is a scheme which provides Commonwealth financial assistance, by way of loan, to students to undertake vocational education and training with VET providers. The relevant legislative provisions are discussed further in section 3.
- 2.3 Franklyn Scholar was first approved as a VET provider (for the purposes of Schedule 1A) on 17 July 2013.
- 2.4 The Department engaged Deloitte Australia to conduct an audit of Franklyn Scholar pursuant to cl 26 of Schedule 1A.

#### 3. Relevant legislation

- 3.1 The VET FEE-HELP scheme involves the administration of large amounts of public monies. In administering public monies, the Department is bound by the Commonwealth's financial management obligations, which include its obligations in the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*.
- 3.2 Under ss 15(1)(a) and 21 of the PGPA Act, the Department must be governed in a way which promotes the proper use and management of public resources, in a way which is not inconsistent with the policies of the Australian Government. When used in relation to the use or management of public resources, the word 'proper' means efficient, effective, economical and ethical (s 8 of the PGPA Act).

- 3.3 The Commonwealth's obligation to lend VET FEE-HELP assistance to students, and pay the amounts lent to VET providers, is set out in cl 55 of Schedule 1A. Clause 55 provides as follows:

**55 Payments**

*If a student is entitled to an amount of \*VET FEE-HELP assistance for a \*VET unit of study with a \*VET provider, the Commonwealth must:*

- (a) *as a benefit to the student, lend to the student the amount of VET FEE-HELP assistance; and*
- (b) *pay the amount lent to the provider in discharge of the student's liability to pay his or her \* VET tuition fee for the unit.*

*Note: Amounts of assistance under this Part may form part of a person's HELP debts that the Commonwealth recovers under Chapter 4.*

- 3.4 Division 11 of Part 3 of Schedule 1A provides for administrative matters relating to payments under Schedule 1A, including the manner and timing of payments, and the payment of advances to VET providers on account of amounts which are expected to become payable.
- 3.5 A student's entitlement to an amount of VET FEE-HELP assistance (for the purposes of cl 55) is determined by cl 43 of Schedule 1A. Clause 43 was amended in 2015 by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015 (Amendment Act)*, with effect from 31 December 2015.
- 3.6 For the duration of 2015, cl 43 provided as follows:

**43 Entitlement to VET FEE-HELP assistance**

- (1) *Subject to this clause, a student is entitled to \*VET FEE-HELP assistance for a \*VET unit of study if:*
  - (a) *the student meets the citizenship or residency requirements under clause 44; and*
  - (b) *the student's \*FEE-HELP balance is greater than zero; and*
  - (c) *the \*census date for the unit is on or after 1 January 2008; and*
  - (d) *the unit meets the course requirements under clause 45; and*
  - (e) *the unit is, or is to be, undertaken as part of a \*VET course of study; and*
  - (f) *the student:*
    - (i) *enrolled in the unit on or before the census date for the unit; and*
    - (ii) *at the end of the census date, remained so enrolled; and*
  - (g) *the student \*meets the tax file number requirements (see clause 80); and*
  - (h) *the student has, on or before the census date, completed, signed and given to an \*appropriate officer of the \*VET provider a \*request for Commonwealth assistance in relation to the unit or, where the VET course of study of which the unit*



*forms a part is, or is to be, undertaken with the provider, in relation to the VET course of study; and*

- (i) *the student meets any other requirements set out in the \*VET Guidelines.*

*Note: Clause 45A affects whether a person undertakes a VET unit of study as part of a VET course of study.*

- (2) *A student is not entitled to \*VET FEE-HELP assistance for a \*VET unit of study if:*

- (a) *the unit forms a part of a \*VET course of study; and*
- (b) *the VET course of study is, or is to be, undertaken by the student primarily at an overseas campus.*

3.7 Following the amendments to cl 43 effected by the Amendment Act, clause 43 currently provides as follows:

**43 Entitlement to VET FEE-HELP assistance**

- (1) *Subject to this clause, a student is entitled to \*VET FEE-HELP assistance for a \*VET unit of study if:*

- (a) *the student meets the citizenship or residency requirements under clause 44; and*
- (b) *the student's \*FEE-HELP balance is greater than zero; and*
- (c) *the \*census date for the unit is on or after 1 January 2008; and*
- (d) *the unit meets the course requirements under clause 45; and*
- (e) *the unit is, or is to be, undertaken as part of a \*VET course of study; and*
- (ea) *the student meets the entry procedure requirements under clause 45B; and*
- (f) *the student:*
  - (i) *enrols in the unit at least 2 business days before the census date for the unit; and*
  - (ii) *at the end of the census date, remained so enrolled; and*
- (fa) *in a case where the student is not already entitled to VET FEE-HELP assistance for another VET unit of study forming part of the course—the body with whom the student is enrolled is approved as a \*VET provider:*
  - (i) *for the day of the enrolment; or*
  - (ii) *if that day falls within a period when the body's approval as a VET provider is suspended under subclause 36(5)—for a later day because that suspension has ended; and*

- (fb) if the VET provider was approved as a VET provider after 2015, the course is:
  - (i) one of the \*qualifying VET courses that enabled paragraph 6(1)(ca) or (1A)(da) to be satisfied for the purposes of that approval; or
  - (ii) a qualifying VET course that superseded such a course directly or indirectly without interruption; and
- (g) the student \*meets the tax file number requirements (see clause 80); and
- (h) the student meets the request for Commonwealth assistance requirements under clause 45C; and
- (i) the student meets any other requirements set out in the \*VET Guidelines.

Note 1: For the purposes of paragraph (e), clause 45A affects whether a person undertakes a VET unit of study as part of a VET course of study.

Note 2: For the purposes of paragraph (fa), a body's approval as a VET provider ceases while the approval is suspended (see clause 29). If this approval is suspended when the student first enrolls in units forming part of the course, the student can only become entitled to VET FEE-HELP assistance when that suspension ends.

- (2) A student is not entitled to \*VET FEE-HELP assistance for a \*VET unit of study if:
  - (a) the unit forms a part of a \*VET course of study; and
  - (b) the VET course of study is, or is to be, undertaken by the student primarily at an overseas campus.

3.8 "Student" is defined in cl 1(1) of Schedule 1 to the *Higher Education Act 2013* to relevantly mean "a person who is enrolled in a VET course of study with a VET provider". "Enrolled" is defined as follows:

*a person enrolled in a VET course of study includes a person undertaking the VET course of study.*

#### 4. Franklyn Scholar's reported enrolments

4.1 For the 2015 calendar year, Franklyn Scholar claims that it is entitled to payment of the following amounts of VET FEE-HELP assistance:

	<b>Number of students enrolled</b>	<b>Amount of VET FEE-HELP assistance claimed</b>	<b>Advance payments made<sup>1</sup></b>	<b>Amount claimed less advance payments</b>
<b>2015</b>	882	\$63,312,279	\$66,535,650	\$-3,223,371 <sup>2</sup>

<sup>1</sup> In 2015, Franklyn Scholar has been paid amounts pursuant to an advance payment determination under cl 61 of Schedule 1A .

- 4.2 Therefore, Franklyn Scholar claims that it is entitled to a total of \$63,312,279 by way of VET FEE-HELP assistance.
- 4.3 In summary, the Department's position (on the basis of the information presently available to it) is that, on the basis of material presently available, Franklyn Scholar is only entitled to \$56,347,928 rather than the \$63,312,279 claimed
- 4.4 This is because the Department considers that the data reported by Franklyn Scholar does not represent its entitlement to VET FEE-HELP. Franklyn Scholar's reported data is not consistent with the information available to the Department as set out in the following sections of this notice.

## 5. Compliance audit of Franklyn Scholar completed by Deloitte

- 5.1 On 30 May 2016 the Department engaged Deloitte to conduct a compliance audit of Franklyn Scholar pursuant to clause 26 of Schedule 1A. The objectives of the audit were to:
- (a) examine the practices used by Franklyn Scholar to enrol potential students during 2015 and 2016;
  - (b) use proxies for student engagement to identify enrolments that could be considered as being invalid; and
  - (c) assess the compliance or non-compliance of Franklyn Scholar in relation to the specified provisions of HESA and the Higher Education Support (VET) Guidelines 2015 (**VET Guidelines**).
- 5.2 The Department notes that, in 2015:
- (a) 767 students out of 882 students (87%) showed "no activity".
  - (b) 4323 "units of competency" (i.e. enrolments) out of 4953 "units of competency" (87%) showed "no activity".<sup>3</sup>
  - (c) The proxy for "no activity" is no online activity in the learning management systems FinPa or MoodleRooms.
  - (d) 8% of students were "competent", 34% received no grade, and 58% withdrew.
- 5.3 A copy of the audit report is at **Attachment A**
- 5.4 In light of the terms of cl 43 of Schedule 1A, and the definition of "enrolled" in cl 1(1) of Schedule 1, the Department considers that information about whether a student has undertaken, or intends to undertake, a unit for which they are enrolled is relevant to whether they are entitled to VET FEE-HELP assistance for that unit. In the context of online courses, that invites attention to whether a student has engaged in any activity in relation to the unit of study.
- 5.5 In these circumstances, the Department has considered the results of Deloitte's testing of student enrolment. This is because engagement by a student in a course would be material which is indicative of the veracity of an enrolment. That material would also be indicative of whether the student undertook, or intended to undertake, the unit of study so as to be entitled to VET FEE-HELP assistance.

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<sup>2</sup> To avoid doubt, Franklyn Scholar's claimed entitlement exceeded the amount paid by way of advance payment. This means that an overpayment occurred even if the Department proposed to accept the veracity of all of Franklyn Scholar's reported data.

<sup>3</sup> Deloitte Report, p 3, Figure 2 and p 14.

## 6. Report of ORIMA Research - student survey

- 6.1 On 11 May 2016 the Department engaged ORIMA Research (**ORIMA**) to conduct Computer Assisted Telephone Interviews (CATIs) with persons reported as enrolling in units of study with Franklyn Scholar since 1 July 2015. These interviews were conducted in order to verify the enrolment with Franklyn Scholar and gauge the level of non-compliance and incorrect enrolment reporting risk. A copy of the audit report is at **Attachment B**
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- 6.2 For the purposes of the CATIs, the Department provided ORIMA with electronic records for 1,297 people who were reported as enrolled in units of study with Census dates of between 1 July 2015 and 9 March 2016 for which Franklyn Scholar had provided contact details. Of these, ORIMA selected a random sample of 636 persons who reported as enrolling since 1 July 2015.
- 6.3 Of this random sample, 448 (70%) were able to be contacted within the fieldwork period (19 April 2016 - 11 May 2016). Of this figure, 329 completed the survey.
- 6.4 Of the 329 people who completed the survey, 37 (11%) reported that they were not enrolled with Franklyn Scholar.
- 6.5 In light of the terms of cl 43 of Schedule 1A, and the definition of "enrolled" in cl 1(1) of Schedule 1, the Department considers that information about whether a student has undertaken, or intends to undertake, a unit for which they are enrolled is relevant to whether they are entitled to VET FEE-HELP assistance for that unit.
- 6.6 We note that the Deloitte report indicated that 87% of students enrolled in 2015 showed "no activity" which the Department considers raises the question of whether those students were actually enrolled. On the other hand, the ORIMA survey indicated that 89% of those students who completed the survey confirmed that they were enrolled. The remaining 11% of those students who completed the survey indicated that they were not enrolled with Franklyn Scholar.

## 7. Preliminary estimate

- 7.1 The Department proposes to make a reconciliation of Franklyn Scholar's 2015 payments taking into account the results of the ORIMA survey results. Therefore, based on ORIMA's survey findings, the Department proposes to make a reconciliation on the basis that it is not satisfied of the entitlement of Franklyn Scholar in respect of 11% (being the proportion of students who indicated that they had not enrolled) of its claimed entitlement.
- 7.2 On the basis of the information currently available to the Department, the Department considers that a reconciliation along these lines would be reasonable given that:
- (a) a large number of reported students could not be contacted by ORIMA (which might be a reason to doubt the veracity of the enrolment of those students); and
  - (b) the very low levels of engagement by students as found by Deloitte (which, again, might be a reason to doubt the veracity of the enrolments of students who had not engaged).

- 7.3 Therefore, on the basis of the material currently available, the Department considers that Franklyn Scholar's estimated entitlement to VET FEE-HELP for 2015 is as shown in the table below:

	Number of students enrolled	Preliminary estimate of entitlement to VET FEE-HELP assistance	Advance payments made <sup>4</sup>	Preliminary entitlement less advance payments
2015	882	\$56,347,928	\$66,535,650	\$-10,187,722

- 7.4 Please note that the department is very concerned by the findings in the Deloitte report that 87% of students had no on-line activity and will be undertaking further investigations. This may result in further reductions in Franklyn Scholar's entitlements to VET FEE-HELP for 2015.

**8. Invitation to make submissions and provide further material**

- 8.1 Franklyn Scholar is invited to make submissions or provide further material in support of its claim for further amounts of VET FEE-HELP assistance within 28 days of the date of this notice. Those submissions or material should be addressed to:

s 22(1)(a)(ii)

Branch Manager  
 VET FEE-HELP Compliance branch  
 Australian Government Department of Education and Training  
 PO Box 9880  
 CANBERRA ACT 2601

Or electronically, through [TSEenquiries@education.gov.au](mailto:TSEenquiries@education.gov.au) with "Franklyn Scholar Payment Decision" in the subject line

DATED 13 October 2016

s 22(1)(a)(ii)

Group Manager  
 Skills Programs Group  
**Delegate of the Minister for Education and Training**

<sup>4</sup> In 2015, Franklyn Scholar has been paid amounts pursuant to an advance payment determination under cl 61 of Schedule 1A.



# Assessment model 7.2 Franklyn Scholar (Australia) Pty Ltd (FS)

## Introduction

Pursuant to s 20ZM(1)(ca) of the *Ombudsman Act 1976*, the Office of the Commonwealth Ombudsman (the Office) can recommend that the Secretary of the Department of Education (the department) or the Secretary's delegate re-credit a complainant's FEE-HELP balance under clause 46A or 46AA of Schedule 1A to the *Higher Education Support Act 2003* (HESA).

To make a recommendation to re-credit due to unacceptable conduct under cl 46A of sch 1A to HESA, the Office must be satisfied on the balance of probabilities that:

- the complainant had been enrolled in the VET unit of study (unit) with the VET provider [cl 46A(1)(a) of sch 1A to HESA],
- the complainant did not complete the requirements for the unit [cl 46A(1)(b) of sch 1A to HESA], and
- the VET provider (or an agent of the VET provider) engaged in unacceptable conduct in relation to the complainant's request for Commonwealth assistance relating to the unit or the VET course of study of which the unit forms a part [cl 46A(1)(c) of sch 1A to HESA].

The requirements set out in cl 46A(1)(d)–(f) of sch 1A to HESA will be satisfied through an independent mechanism agreed between the Office and THE DEPARTMENT and do not require consideration during this assessment process. To make a recommendation to re-credit due to inappropriate conduct under cl 46AA of sch 1A to HESA, the Office must be satisfied that it is reasonably likely:

- the complainant has not, or is taken to have not, completed the requirements for the unit [cl 46AA(1)(a) of sch 1A to HESA and s 58A of the Higher Education Support (VET) Guideline 2015 (VET Guideline)], and
- the VET provider (or an agent of the VET provider) engaged in inappropriate conduct towards the complainant in relation to the unit or the VET course of study of which the unit forms a part [cl 46AA(1)(b) of sch 1A to HESA and s 58AB of the VET Guideline].

This assessment model establishes the processes, concepts, and standards the Office will employ to assess complaints and formulate recommendations to re-credit under cl 46A or 46AA of sch 1A to HESA in relation to Franklyn Scholar (Australia) Pty Ltd (FS). The primary purpose of the model is to help Dispute Resolution Officers (DROs) extract, through targeted assessment rather than exhaustive investigation, sufficient reliable information on which to form a recommendation. The model must be read in conjunction with each of the 'Related Documents' listed in the table at the end of this document, including the attached *VSLO/Department concept linkage table* and the Office *standard operating procedures* (SOPs). Together these documents are designed to ensure:

- relevant criteria and standards of proof are applied to the assessment
- analysis is appropriately focussed on known types of conduct
- common practices are employed to resolve ambiguity and uncertainty
- a one-touch system of assessment accurately categorises and efficiently processes complaints.

Each model goes through an iterative review and approval process whereby the Office and the department agree on the parameters of the assessments to be undertaken before they are to commence. Once approved, DROs will

conduct enquiries, consider evidence, and record their assessment in relation to each complainant in compliance with the model and associated standard operating procedures.

DROs will summarise their assessment in a statement of reasons to be submitted to an Assistant Director – Remedy Recommendations (AD-RR) for consideration, in their role as delegate of the VET Student Loans Ombudsman.

Where a recommendation to re-credit is made on the basis of unacceptable conduct, the Office will supply a copy of the statement of reasons to the department. At the department’s request, the Office will also supply a copy of the key documentary evidence relied upon to support an unacceptable conduct recommendation. Where a recommendation to re-credit is made on the basis of inappropriate conduct, the statement of reasons and supporting evidence will be retained by the Office and can be accessed when required.

## Established types of conduct

The Office holds sufficient evidence to form a general assessment of the conduct engaged in by FS. The *Provider profile – Franklyn Scholar (Australia) Pty Ltd (FS)* provides a summary of the evidence analysed by the Office to form this assessment. The table below sets out those types of conduct engaged in by FS that have been defined as unacceptable or inappropriate under the provisions of the VET Guideline.

Inappropriate Conduct   Standard of proof = Reasonable likelihood   Department re-credit stream 09		
Type of conduct <i>(Abbreviated – See VSLO/Department concepts linkage table for full titles)</i>		Applicable legislative provisions
2	Making a representation about a future matter with no basis for doing so	s 58AB(1)(b)(iv)  [Reasonable likelihood]
22	Misleading or deceptive conduct	s 58AB(1)(b)(iii)  [Reasonable likelihood]
24	Provider’s history of compliance	s 58AB(1)(i) – the provider’s (or the agent’s) history of compliance with:  (i) HESA and regulations made under HESA; and (ii) the VET Guideline; and (iii) any conditions imposed on the provider’s approval as a VET provider; and (iv) the <i>National Vocational Education and Training Regulator Act 2011</i> ; in relation to the provider’s (or the agent’s) conduct towards any student.  [Reasonable likelihood]

**Note:** s 58AB(1)(g) ‘whether the student was a vulnerable person’ is not included in the above table and is considered separately below.

### Engagement with vulnerable persons

The evidence indicates the following vulnerabilities were prevalent in FS’s student population:

- Aboriginal and Torres Strait Islander (ATSI)

- education level
- employment status
- low socio-economic status.

## Standards governing the conduct of assessments

This section is to be read in conjunction with guidance issued in the *VSLO/Department concept linkage table* and the *Office standard operating procedures (SOPs)*. These supporting documents make clear how to assess a complaint against the different criteria and standards of proof governing re-credits under cl 46A or 46AA of sch 1A to HESA. The rules articulated below are intended to clarify the circumstances in which a DRO can make an assessment and progress a complaint to recommendation.

### General

#### **Entitlement to receive VET FEE-HELP**

If the Office does not already hold information that would indicate a complainant was not entitled to receive VET FEE-HELP, the Office will make an assessment that the complainant was entitled to receive VET FEE-HELP.

#### **Unit and course completion status**

The Office will initially consult data in the department's Higher Education Information Management System (HEIMS) to assess whether a unit has been completed. In the absence of contradictory information, the Office will make an assessment that the requirements of a unit were not completed where any status other than 'completed' is shown in HEIMS.

Where HEIMS contains contradictory information at the course and unit level, the Office will conduct reasonable enquiries to obtain further evidence to resolve that ambiguity. That information will be included in the assessment process and a summary provided to the AD-RR in a statement of reasons.

Where a complainant disputes the completion status recorded in HEIMS, the Office will conduct reasonable enquiries to obtain further evidence in order to assess that claim. A provider's history of incorrectly marking units as complete may be considered as part of that assessment, as well as the internal consistency of the complainant's statements. Where a complainant presents evidence that they did not pass the unit, the Office will assess whether this meets the applicable standard of proof; reasonable likelihood for inappropriate conduct or on the balance of probabilities for unacceptable conduct. Where information is not reasonably available to confirm the validity of the completion status recorded in HEIMS and a claim is received from a complainant stating that a unit was not completed, the Office will assess completion status in the context of inappropriate conduct and make an assessment that it is reasonably likely the complainant did not complete the requirements for the unit. Information used to inform the assessment will be provided to the AD-RR in a statement of reasons.

#### **Sufficient information to form an assessment and progress a complaint to recommendation**

Where sufficient evidence is already held by the Office to form an assessment that the complainant was subjected to one type of misconduct, regardless of how many other types of misconduct may apply, the Office may make a recommendation to re-credit. The Office will note the types of misconduct that are raised in the complaint but is not required to conduct further enquiries in order to inform an assessment of each type of conduct.

#### **Reasonable further enquiries**

Where insufficient evidence is held by the Office to inform an assessment that a complainant was subjected to at least one type of misconduct, reasonable enquiries will be made to obtain further evidence. DROs will use the *VSLO/Department concepts linkage table* to guide their enquiries.

Limitations in resources and the current timeframe for concluding the VET FEE-HELP student redress measures by 31 December 2020 are factors in a DRO's consideration of what are reasonable enquiries. Where reasonable attempts have been made to obtain further information from an interested party without success, the Office will proceed with its assessment based on the information held at that time and the standards articulated in this assessment model.



### **Information to be recorded in the statement of reasons**

Where sufficient evidence is held by the Office to form an assessment that an individual complainant was subjected to any of the conduct listed in the table above, or any other relevant misconduct, a summary of the evidence considered in that assessment will be provided to the AD-RR in a statement of reasons.

Where conflicting information, or information that could warrant a recommendation not to re-credit, is held by the Office, a summary of the evidence and the DRO's analysis will be provided to the AD-RR in a statement of reasons.

## **Vulnerability**

Whether a complainant was a vulnerable person is a matter that may be considered when assessing inappropriate conduct [s 58AB(1)(g) of the VET Guideline]. The Office will incorporate the following standards in relation to vulnerability into its assessment and recommendation processes.

### **Obtaining and recording vulnerability data**

Vulnerability information held by the Office will be recorded in the summary information section of a statement of reasons.

Where information may indicate a complainant is a vulnerable person but insufficient information is held to assess whether vulnerability was a contributing factor in the complainant being subjected to inappropriate conduct, the Office will make reasonable enquiries to obtain additional information regarding vulnerability. The Office will use investigative interviewing techniques and the complainant's self-reported vulnerabilities but will not require written evidence of vulnerability.

### **Assessing vulnerability data**

The Office will make reasonable enquiries to identify evidence that may refute a complainant's self-reported vulnerability. Inconsistencies in the complainant's statements may form part of this assessment.

Where the Office makes an assessment that vulnerability is reasonably likely to have been a contributing factor in the complainant being subjected to inappropriate conduct, a summary of the evidence considered in that assessment will be provided to the AD-RR in a statement of reasons.

### **Vulnerability to be considered prior to recommending the department not re-credit**

Prior to any recommendation being made that a unit is not eligible for re-credit because no type of conduct listed in the provider profile or assessment model has been identified, the Office will assess whether it is reasonably likely that the complainant's vulnerability alone was a determining factor in the complainant incorrectly obtaining VET-FEE HELP assistance, and therefore incurring a VET FEE-HELP balance.

### **Reasonable adjustments for vulnerable persons**

The Office will make reasonable adjustments to the evidential requirements articulated in this assessment model to accommodate the needs of vulnerable persons. This may include accepting verbal claims in lieu of written evidence for persons with language, literacy and numeracy issues.

## **Department re-credit streams**

Recommendations for re-credit may be made through the following department re-credit streams:

- 08 – Not entitled to VET FEE-HELP assistance
- 11 – Unacceptable conduct (only where the Office assesses conduct occurred on or after 1 Jan 2016)
- 09 – Inappropriate Conduct (other than entitlement issues).

The Office will select the most appropriate conduct type and associated re-credit stream for each unit based on the information available and the nature of the complaint. The *VSLO/Department concepts linkage table* shows which re-credit stream is applicable to each type of conduct depending on the standard of proof that has been achieved.

### **Department re-credit stream 08 - Not entitled to VET FEE-HELP assistance**

Multiple legislative provisions relate to a complainant's entitlement to VET FEE-HELP. Based on advice from the

department, the Office will assess all issues related to entitlement under s 58AB(1)(a) read with cl 43 of sch 1A to HESA. Any resulting recommendation for re-credit will be processed through department re-credit stream 08.

As a result of this decision, the conduct types marked with an asterisk (\*) in the table below have been incorporated as subsets of conduct type 1. Accordingly, no recommendations for re-credit will be processed under their applicable legislative provisions.

Not entitled to VET FEE-HELP assistance   Standard of proof = Reasonable likelihood   Department re-credit stream 08		
Type of conduct <i>(Abbreviated – See VSLO/Department concepts linkage table for full titles)</i>		Applicable legislative provisions
1	Treating the student as entitled to VFH when they were not	s 58AB(1)(a) read with cl 43 of sch 1A to HESA [Reasonable likelihood]
13*	Enrolled student in another unit of study without their written permission after the student withdrew from the unit or course	s 54(2)(a) (on or after 1 January 2016) [Balance of probabilities]  s 58AB(1)(c) read with s 54(2)(a) [Reasonable likelihood]
15*	Accepting requests for VFH assistance when student was not entitled	s 55 (on or after 1 January 2016) [Balance of probabilities]  s 58AB(1)(c) read with s 55 [Reasonable likelihood]
16*	VFH application given to provider less than 2 business days after enrolment**	s 56(2) (on or after 1 January 2016) [Balance of probabilities]  s 58AB(1)(c) read with s 56(2) [Reasonable likelihood]

\*\*Conduct type 16 has since been repurposed. Please refer to the 'VSLO/Department concepts linkage table' for further details.

#### Department re-credit streams 08 and 11 - Recovery of funds and procedural fairness

Legislative provisions associated with re-credit streams 08 and 11 allow the Commonwealth a right to recover from a VET provider amounts equivalent to the VET FEE-HELP balance re-credited. At the request of the department, the Office will identify cases appropriate for recovery where it is confident DROs have been able to form a complete picture of the student's circumstances. In accepting this undertaking, the department recognises that, for a variety of reasons, in many cases complete student records are not reasonably available to the Office.

Prior to an assessment being made that a complainant was not entitled to VET FEE-HELP assistance (department re-credit stream 08) or was subjected to unacceptable conduct (department re-credit stream 11), the Office will conduct

a 28 day procedural fairness process on behalf of the Office and the delegate of the Secretary of the department, in order to allow the provider or its representative an opportunity to comment on the proposed course of action.

### ‘Unknown enrolment/debt’ or ‘ghost debt’

The Office will assess complaints concerning an ‘unknown enrolment/debt’ or ‘ghost debt’ as an issue relating to **conduct type 1: ‘Treating the student as entitled to VFH when they were not’** – Option 2, and process any resulting recommendation to re-credit through department re-credit stream 08.

Where a complainant claims that they have no recollection of engaging with the provider or that they did not give their consent to be enrolled in a course or unit of study with the provider, the Office will conduct reasonable enquiries to obtain further evidence in order to assess that claim.

The Office may make an assessment that it is reasonably likely the complainant was subject to **conduct type 1: ‘Treating the student as entitled to VFH when they were not’** where information is not reasonably available to confirm the validity of the enrolment and a statement is received from the complainant confirming that they:

- did not sign a VET FEE-HELP application form; or
- did not submit a VET FEE-HELP application form to the provider; or
- did not provide their Tax File Number when filling out the VET FEE-HELP application form.

## Standards specific to this assessment model

### Complainants enrolled with FS through Acquire

Complainants to the Office frequently claim to be enrolled with Acquire Learning & Careers Pty Ltd (Acquire) when they have actually been enrolled with FS. A lack of specific information regarding the origin and extent of the relationship between FS and Acquire has prevented the Office using this relationship as a basis for establishing types of conduct in the *Provider profile – Franklyn Scholar (Australia) Pty Ltd (FS)*. Despite this, the following findings indicate to DROs the types of complaints they may encounter where the complainant was enrolled with FS through Acquire:

- the Australian Skills Quality Authority audit of Asia Pacific Training Institute Pty Ltd (APTI), dated 21 June 2016
  - this found that FS had an operational relationship with Acquire and APTI. It found FS shared the same Office as Acquire and APTI, and used the same training resources, strategies, and operations staff. The audit also notes that FS was purchased by Acquire in September 2015.
- the Federal Court Judgement of 30 May 2017, in the matter of Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd
  - this found that during the relevant period of 3 July 2014 to 24 March 2015, Acquire engaged in misleading, deceptive and unconscionable conduct that was systemic in nature.

The Office is satisfied that the relationship between FS and Acquire was such that, where a DRO determines there is a reasonable likelihood that a complainant was enrolled with FS through Acquire, the DRO should initially focus their assessment on the following inappropriate conduct types relevant to cl 46AA of sch 1A to HESA:

- conduct type 2: ‘Making a claim about a future matter with no basis for doing so’
- conduct type 22: ‘Misleading or deceptive conduct’.

## Recommendation process

1. The Office makes reasonable enquiries with relevant stakeholders in the Vocational Education and Training Industry in order to form a general picture of the practices engaged in by a provider. This includes a standing request for advice from the department on the type of conduct each provider has been known to engage in and a summary of the information the department holds to support that view.
2. The Office analyses the evidence it holds to identify types of unacceptable or inappropriate conduct engaged in by a provider or its agent/s. Details of the analysis are shared with AD-RRs and the department. If all parties are

- satisfied with the quantity of the evidence and quality of analysis, a provider profile is released containing an assessment that the provider has engaged in the listed types of unacceptable or inappropriate conduct.
3. Based on the provider profile, the Office proposes an assessment model designed to ensure sufficient and reliable information is considered during the assessment and recommendation process. AD-RRs and the department confirm that the model will allow them to satisfy the responsibilities of their role and legal obligations. The assessment model is released for use in conjunction with Office SOPs during the remedy assessment process.
  4. The Office identifies complaints that potentially fall within the parameters of the assessment model and assigns them to individual DROs for assessment.
  5. DROs determine disputed units of study from the complainant's statements.
  6. DROs consult HEIMS and use the standards outlined in this assessment model to determine if the complainant has completed the requirements for each unit of study.
    - **NOTE:** where a unit has a HEIMS completion status recorded as 'failed, withdrew without penalty, incomplete or completion status not yet determined, or no information' the DRO may make an assessment that the complainant has not completed the requirements for the unit.
  7. DROs confirm that relevant student identification, course identification, and financial data in HEIMS match information held in Resolve.
  8. DROs populate Resolve with data in a format that matches the format in HEIMS so that the department can process any recommendation from the Office without risk of a data mismatch error occurring.
  9. DROs consider whether the substance of the complaint corresponds with one or more of the provider conduct types outlined in the provider profile.
  10. DROs identify any contradictory evidence held by or reasonably available to the Office which may reasonably influence their assessment.
  11. If insufficient information is available to inform an assessment, DROs conduct reasonable additional enquiries to fill information gaps and support or refute the complainant's claims.
  12. DROs make an assessment as to whether on the balance of probabilities the provider (or agent of the provider) engaged in unacceptable conduct, or whether it is reasonably likely that the provider (or agent of the provider) engaged in inappropriate conduct, in relation to the complainant.
  13. Prior to an assessment being made that a complainant was not entitled to VET FEE-HELP assistance (department re-credit stream 08) or was subjected to unacceptable conduct (department re-credit stream 11), DROs attempt to notify the provider or their representative of the preliminary assessment, suggested recommendation, and the potential decision of the delegate of the Secretary of the department. A response from the provider received within 28 days will be considered as part of the assessment process and may result in a revised assessment and recommendation.
  14. Prior to any assessment being made that a unit is not eligible for re-credit, DROs will assess the impact of a complainant's vulnerability status.
  15. DROs produce a statement of reasons containing a summary of the information used to inform their assessment including any information received in response to the 28 day procedural fairness step.
  16. DROs submit their statement of reasons to the AD-RR for review, noting in Resolve how their assessment is to be applied at the unit level.
  17. On the basis of the provider profile, assessment model, statement of reasons, and information held in Office systems, the AD-RR will make a recommendation to the department regarding re-credit of the complainant's FEE-HELP balance.
  18. The Office will communicate the AD-RR's recommendation to the department together with any data necessary for the department to consider and process that recommendation.

## Related documents

These documents are available on the VET Student Loans Team Internal Resources page of the VSLO intranet.

- SOP 4.4 Completing the statement of reasons
- SOP 4.5 Remedy pathway workflow
- VSLO/Department concepts linkage table

- Provider profile: Franklyn Scholar (Australia) Pty Ltd (FS)
- Guide to legal concepts for VSLO Dispute Resolution Officers

# Provider profile: Franklyn Scholar (Australia) Pty Ltd

## Introduction

The Office of the Commonwealth Ombudsman (the Office) makes reasonable enquiries to form a profile of the conduct engaged in by each provider. These enquiries include a standing request for advice from the Department of Education (the department) regarding the types of conduct each provider has been known to engage in and a summary of the information the department holds to support that view.

The Office analyses the available evidence and produces a provider profile. Where the Office is satisfied that a provider engaged in a particular type of conduct, that assessment will be clearly stated in the relevant provider profile.

The Office will also consider a provider's conduct in relation to the vulnerability status of complainants. Where the Office is satisfied that a provider engaged in conduct that targeted a person's vulnerabilities, the provider profile will contain a summary of the evidence relied upon to inform that assessment. Where evidence indicates that specific vulnerabilities were prevalent in a provider's student population, an assessment of that information will also be articulated in the provider profile.

Each provider profile will be shared with the department prior to release. The Office will also propose an assessment model developed on the basis of the information contained in the provider profile. The assessment model will be designed to assist the Office evaluate whether the specific conduct reported in an individual complaint about the provider satisfies the provisions for re-credit under cl 46A or 46AA of sch 1A to the *Higher Education Support Act 2003*.

### **Limited scope of assessments contained in provider profiles**

The Office will deliberately avoid using the terms 'system of conduct' or 'pattern of behaviour' in provider profiles. Assessments will be made on the basis that there is sufficient evidence to demonstrate that a provider has subjected a number of individuals to a particular type of conduct. Where the Office considers there are grounds for a cohort of complainants or students to be re-credited through a department Secretary initiated action, a separate recommendation report will be produced.

The primary purpose of a provider profile is to help Dispute Resolution Officers (DROs) contextualise an individual complaint. The assessments contained in the profile can be used to support individual recommendations but will not be relied upon as the principal basis for a recommendation.

## Established types of conduct

The Office is satisfied that Franklyn Scholar (Australia) Pty Ltd (FS) engaged in the following types of conduct:

Type of conduct <i>(Abbreviated – See VSLO/Department concepts linkage table for full titles)</i>		Applicable legislative provisions
2	Making a representation about a future matter with no basis for doing so	s 58AB(1)(b)(iv)
22	Misleading or deceptive conduct	s 58AB(1)(b)(iii)
24	Provider’s history of compliance	s 58AB(1)(i)

The evidence relied upon to inform this assessment is set out in the ‘Evidence summary’ table below.

## Engagement with vulnerable persons

The Office is satisfied that the following vulnerabilities were prevalent in FS’ student population:

- Aboriginal and Torres Strait Islander (ATSI)
- education level
- employment status
- low socio-economic status.

The evidence relied upon to inform this assessment is set out in the ‘Evidence of engagement with vulnerable persons’ table below.

## Evidence summary

The Office has relied on the following evidence to inform this profile:

- *Audit Report – VET Quality Framework*, ASQA audit of FS, dates of audit: 5 and 7 July 2016, audit finding: Non-compliant, (Audit Number Five)
  - This audit sampled aspects of the learner experience for 15 current and former learners across four training products.
  - FS’s became an approved VET provider from 1 April 2015.

- The report raises concerns about the rate of student participation in FS courses: ‘analysis shows that 86% (2,398 students) of the Registered Training Organisation’s (RTO)’s VET FEE-HELP enrolments in 2015 and 2016 had no online activity for the period of study. It is noted the RTO advised that it delivers courses by online and face-to-face modes; however, of the students that had no online activity, only 2% successfully completed the course of study.’ (pp 11-12, para 1)
- FS was purchased by Acquire Learning & Careers Pty Ltd in September 2015.
- *Rectification Response to ASQA Audit Report – VET Quality Framework*, Franklyn Scholar (Australia) Pty Ltd, dates of audit: 5 and 7 July 2016
  - This document is FS’s response to ASQA’s audit of 5 and 7 July 2016 where ASQA found FS needed to make rectifications in order to demonstrate compliance. It contains additional information supplied by FS for ASQA to consider as part of its compliance review.
- *Final Audit Report of Franklyn Scholar (Australia) Pty Ltd under Clause 26 of Schedule 1 to the Higher Education Support Act 2003*, Deloitte, dates of audit 12 July 2016 to 23 August 2016 (Deloitte Audit)
  - The Department of Education and Training engaged Deloitte Touche Tohmatsu (Deloitte) to perform a compliance audit. Deloitte recommended further detailed analysis be undertaken.
- *Evidence Analysis – VET Quality Framework*, ASQA review conducted: 30 January 2017 and 3-7 February 2017, audit finding: critical non-compliance (ASQA Evidence Analysis)
  - ASQA Evidence Analysis is a review of FS’s rectification response to Audit Number Five. ASQA found FS remained non-compliant.
- *Preliminary analysis of VET FEE-HELP complaints received by the VET Student Loans Ombudsman (VSLO)* as at 16 May 2019 (report reference: A1767185 20190516 112333) (VSLO complaint data).

The Office has also considered, but not relied on the following evidence to establish FS engaged in types of conduct:

- *Audit Report – VET Quality Framework*, Australian Skills Quality Authority (ASQA) audit of FS, dates of audit: 19 and 20 February 2013, audit finding: critical non-compliance (Audit Number One)
  - Audit Number One was considered, but was not used to inform this assessment as FS was not an approved VET provider at the time of the audit.
- *Franklyn Scholar – Rectification Response to ASQA Audit Report – VET Quality Framework*, dates of audit: 19 and 20 February 2013
  - This document is FS’s response to ASQA’s audit of 19 and 20 February 2013 where ASQA found FS needed to make rectifications in order to demonstrate compliance. It contains additional information supplied by FS for ASQA to consider as part of its compliance review.
  - The Rectification response was considered, but was not used to inform this assessment as FS was not an approved VET provider at the time of the audit.



- *Audit Report – VET Quality Framework Continuing registration as a national VET regulator (NVR) registered training organisation, ASQA audit of FS, date of audit: 1 October 2013, audit reason: application – change, audit finding: minor non-compliance (Audit Number Two)*
  - Audit Number Two was considered, but was not used to inform this assessment as FS was not an approved VET provider at the time of the audit.
  
- *VET Quality Framework Continuing registration as a national VET regulator (NVR) registered training organisation, ASQA audit of FS, date of audit: 20 November 2014, audit reason: application - renewal of VET registration, audit finding: compliant, (Audit Number Three)*
  - Audit Number Three was considered, but was not used to inform this assessment as FS was not an approved VET provider at the time of the audit. Additionally, FS was found to be compliant in all areas of the audit scope.
  
- *VET Quality Framework Continuing registration as a national VET regulator (NVR) registered training organisation, ASQA audit of FS, date of audit: 20 November 2014, audit reason: application - change of VET scope, audit finding: compliant (Audit Number Four)*  
 Audit Number Four was considered, but was not used to inform this assessment as FS was not an approved VET provider at the time of the audit. Additionally, FS was found to be compliant in all areas of the audit scope.
  
- *Audit report - VET Quality Framework, audit of APTI, site visit conducted by ASQA on 21 June 2016 (ASQA audit report)*
  - The audit identified that Asia Pacific Training Institute Pty Ltd (APTI) had an operational relationship with Acquire Learning & Careers Pty Ltd (Acquire) for marketing and recruitment purposes, and **RTO 7134 – Franklyn Scholar Pty Ltd (FS)** with which it shared the same CEO. It was found that APTI shared the same Office as Acquire and FS, used the same training resources, strategies, and operations staff.
  - Acquire purchased FS in September 2015.
  
- *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd [2017] FCA 602. Federal Court Judgement: 30 May 2017 (Acquire Judgement)*
  - FS was purchased by Acquire in September 2015. This purchase occurred after the relevant period of 3 July 2014 to 24 March 2015. Without further information on the nature of the operational relationship between FS and Acquire during the relevant period, the Office has chosen not to rely on the Acquire Judgement to establish whether FS was subjecting students to the conduct described in the proceedings.

The specific evidence relied upon to inform the ‘Established types of conduct’ is set out in the table below.

	Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
1	Treating the student as entitled to VFH when they were not	<p>The non-compliance outlined below suggests that FS may have treated students as entitled to VFH when they were not, however, there is insufficient information to establish that FS did not satisfy the post 1/1/16 academic suitability requirements through other means. This non-compliance is therefore more suitably captured through conduct type 24.</p> <p>p 8, paras 4-8 Clause 5.1 ‘There was no evidence provided that (since 1 April 2015) the RTO, prior to enrolment or commencement of training; whichever came first:</p> <ul style="list-style-type: none"> <li>• reviewed the existing skills and competencies of a learner</li> <li>• provided advice to the then prospective learner about a training product that was appropriate to meeting the learner’s needs, taking into account the individual’s existing skills and competencies.</li> </ul> <p>The role of the Career Consultants is to promote the online training and assessment option for the course, however the skills and</p>	Insufficient information to form an assessment	<p>The non-compliance outlined below suggests that FS may have treated students as entitled to VFH when they were not, however, there is insufficient information to establish that FS did not satisfy the post 1/1/16 academic suitability requirements through other means. This non-compliance is therefore more suitably captured through conduct type 24.</p> <p>p 25, paras 2-5 Clause 5.1 ‘The RTO <b>did not demonstrate</b> that for all learners enrolled in the sampled training products since 1 August 2016, prior to enrolment or the commencement of training and assessment (whichever comes first) the RTO provided advice to the prospective learner about the training product appropriate to meeting the learner’s needs, taking into account the individual’s existing skills and competencies. Further, the RTO <b>did not demonstrate</b> that these learners had the existing skills and competencies required to participate in a level 5 AQF accredited qualifications. The RTO also <b>did not demonstrate</b> that it has carried out remedial action to address the impact the non-</p>	<p>74 of 210 complaints received with an issue string of ‘Unknown loan/debt’</p> <p>6 of 210 complaints received with an issue string of ‘Academic suitability requirements’</p> <p><b>NB:</b> It has not been verified that these issues related to conduct on or after 1 January 2016</p>

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>knowledge of the individual were not assessed to confirm the student is able to participate in an online course.’  <b>Finding:</b> Clause 5.1 non-compliant</p> <p><b>p 11, paras 10-15</b>  <b>Clause 5.1</b>            ‘The results of the Department of Education and Training Student report of students interviewed identified:</p> <p>a) Of the 293 students who participated in the interviews, 21 (7%) reported they provided a copy of their school year 12 certificate to Franklyn Scholar when they enrolled.</p> <p>b) 279 (93%) reported they had not or could not recall providing a copy of their school certificate to Franklyn Scholar. Of these:</p> <ul style="list-style-type: none"> <li>o 16 (6%) reported their highest level of schooling was less than year 10</li> <li>o 67 (25%) reported their highest level of schooling was year 10</li> <li>o 34 (13%) reported their highest level of schooling was year 11’</li> </ul> <p><b>Finding:</b> Clause 5.1 non-compliant</p>		<p>compliance may have caused to learners.</p> <ul style="list-style-type: none"> <li>• No evidence of remedial action was provided for the identified learners who were not provided with advice about a training product appropriate to meeting their needs, taking into account their individual existing skills and competencies.</li> <li>• The RTO has not provided evidence that it has identified and addressed the impact the non-compliance may have caused to learners.’</li> </ul> <p><b>Finding:</b> Clause 5.1 non-compliance</p>	

Type of conduct		Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
		<p><b>p 11, para 1</b>  <b>Clause 1.2</b>                      'There was no evidence provided to confirm the RTO determined an amount of training to be provided to each learner based on the learner's existing skills, knowledge and experience. For the qualifications eligible to be studied through VET FEE-HELP, learners were enrolled without assessment of their ability to participate in the training product in the manner that the RTO delivers.'  <b>Finding:</b> Clause 1.2 non-compliant</p>			
2	Making a representation about a future matter with no basis for doing so	<p><b>p 7, para 1</b>  <b>Clause 4.1</b>                      'The information provided by Acquire Learning on behalf of the RTO was not accurate and factual as it misrepresented that enrolling in a training product would enable the learner to have employment found on their behalf.'  <b>Finding:</b> Clause 4.1 non-compliant</p> <p><b>p 8, para 3</b>  <b>Clause 4.1</b>                      'The information provided by the Career Consultants in 'Stage 1' was not accurate and factual because the conversation led the</p>	Insufficient information to form an assessment	Insufficient information to form an assessment	<p>33 of 210 complaints received with an issue string of 'Lack of/misleading/inaccurate enrolment information'</p> <p><b>NB:</b> It has not been identified whether the particular misleading or inaccurate information referenced in these 33 complaints is best captured under this conduct type or conduct type 22</p>

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)	
	<p>potential student to believe that the Job Hunter allocated to them would be searching for available jobs on their behalf if they enrol in a Diploma qualification. An interview with the Job Hunter confirmed that the Job Hunter position was to complete Stages 2 and 3 of the VET FEE-HELP enrolment process, and not to search for employment opportunities or to provide details of the student to employers with jobs relevant to the qualification. Stages 2 and 3 of the enrolment process included providing information about fees and to guide the student through the application process for VET FEE-HELP.'</p> <p><b>Finding:</b> Clause 4.1 non-compliant</p>			<p>'misleading or deceptive conduct'.</p> <p>17 of 210 complaints received with an issue string of 'Agent/associate conduct'</p> <p><b>NB:</b> It has not been identified whether these 17 complaints relate to making a representation about a future matter with no basis for doing so.</p>	
3	Advertising tuition fees where there were reasonable grounds for believing the course could not be provided for this cost	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
4	Use of physical force, harassment or coercion	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
5	Publishing info suggesting VFH	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment

Type of conduct		Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	(however described) is not a loan				
6	Marketing/advertising an item or thing that was necessary to complete the unit or course and it is reasonably likely that the suggestion induced the student to enrol	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
7	Making unsolicited contact and suggesting the possibility of VFH assistance (however described) if the person enrolled, which induced the person to enrol	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
8	Not providing specified information on VFH assistance and upfront payment options	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
9	Offered/provided benefit reasonably likely to have induced enrolment and VFH application	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	12 of 210 complaints received with an issue string of 'Inducements to sign up for study'
10	Failure to send invoice notices and/or	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment

Type of conduct		Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	Commonwealth Assistance notices on time, in the required manner, or the contents of the notices were deficient (on or after 1/1/16)				
11	Failure to action written pre-census date withdrawal request	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
12	Charged a fee or imposed a penalty to process pre-census withdrawal request	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
13	Enrolled the student in another unit of study without their written permission after the student withdrew from the unit or course	Any evidence relating to this conduct type has been entered against conduct type 1 in accordance with the VSLO/Department decision to process all matters relating to entitlement under s 58AB(1)(a) read with cl 43 of sch 1A to HESA .			
14	Failed to ask student whether the student wished to continue any enrolment in any other VET unit of study forming part of the course	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
15	Accepting requests for VFH assistance when student was not entitled	Any evidence relating to this conduct type has been entered against conduct type 1 in accordance with the VSLO/Department decision to process all matters relating to entitlement under s 58AB(1)(a) read with cl 43 of sch 1A to HESA .			

Type of conduct		Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
16	Fees were not charged in accordance with Part 7 of the VET Guidelines (failure to apportion tuition fees appropriately)	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
17	Fees were not charged in accordance with Part 7 of the VET Guidelines (misquoting / estimating tuition fees for VET course.)	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
18	Failure to publish fees on website on day prior to enrolment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
19	Failure to comply with ACL provisions relating to unsolicited consumer agreements	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	52 of 210 complaints received with an issue string of 'Unsolicited contact to sign up'
20	Provider barriers preventing realisation of expressed intention to withdraw pre-census	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
21	Unconscionable conduct	While the information below tends to support a claim that FS or their agent's conduct amounted to unconscionable conduct, there is insufficient information for the Office to be	Insufficient information to form an assessment	While the information below tends to support a claim that FS or their agent's conduct amounted to unconscionable conduct, there is insufficient information for the Office to be satisfied that the	33 of 210 complaints received with an issue string of 'Lack of/misleading/inaccurate enrolment information'



Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>satisfied that the conduct outlined below is reasonably likely to have resulted in a complainant’s ‘will being overborne’ or that a complainant was ‘unable to make a worthwhile judgement as to what was in their best interest’. The Office will therefore need to make an individual assessment of each complaint and consider each complainant’s circumstances as a whole.</p> <p>p 8, paras 4-8 Clause 5.1 ‘There was no evidence provided that (since 1 April 2015) the RTO, prior to enrolment or commencement of training; whichever came first:</p> <ul style="list-style-type: none"> <li>• reviewed the existing skills and competencies of a learner</li> <li>• provided advice to the then prospective learner about a training product that was appropriate to meeting the learner’s needs, taking into account the individual’s existing skills and competencies.</li> </ul> <p>The role of the Career Consultants is to promote the online training and assessment option for the</p>		<p>conduct outlined below is reasonably likely to have resulted in a complainant’s ‘will being overborne’ or that a complainant was ‘unable to make a worthwhile judgement as to what was in their best interest’. The Office will therefore need to make an individual assessment of each complaint and consider each complainant’s circumstances as a whole.</p> <p>pp 4-5 para 16 Clause 1.2 ‘The RTO did not demonstrate that, for all learners who have been enrolled in the sampled training products since 1 August 2016, the amount of training to be provided to each learner was determined with regard to the individual’s existing skills, knowledge and experience, and the mode of delivery. Further, the RTO did not demonstrate that, where the RTO identifies a learner whom it did not determine a suitable amount of training to be provided, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.’ <b>Finding:</b> Clause 1.2 non-compliant</p>	<p>6 of 210 complaints received with an issue string of ‘Academic suitability entry requirements’</p> <p><b>NB:</b> It has not been verified whether the specifics of these cases rise to the level of ‘Unconscionable conduct’</p>

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>course, however the skills and knowledge of the individual were not assessed to confirm the student is able to participate in an online course.’  <b>Finding:</b> Clause 5.1 non-compliant</p> <p><b>p 7, para 1</b>  <b>Clause 4.1</b>                      ‘The information provided by Acquire Learning on behalf of the RTO was not accurate and factual as it misrepresented that enrolling in a training product would enable the learner to have employment found on their behalf.’  <b>Finding:</b> Clause 4.1 non-compliant</p> <p><b>p 8, para 3</b>  <b>Clause 4.1</b>                      ‘The information provided by the Career Consultants in ‘Stage 1’ was not accurate and factual because the conversation led the potential student to believe that the Job Hunter allocated to them would be searching for available jobs on their behalf if they enrol in a Diploma qualification. An interview with the Job Hunter confirmed that the Job Hunter position was to complete Stages 2 and 3 of the VET FEE-HELP enrolment process, and not to search for employment</p>		<p><b>p 25, paras 2-5</b>  <b>Clause 5.1:</b>                      ‘The RTO <b>did not demonstrate</b> that for all learners enrolled in the sampled training products since 1 August 2016, prior to enrolment or the commencement of training and assessment (whichever comes first) the RTO provided advice to the prospective learner about the training product appropriate to meeting the learner’s needs, taking into account the individual’s existing skills and competencies. Further, the RTO <b>did not demonstrate</b> that these learners had the existing skills and competencies required to participate in a level 5 AQF accredited qualifications. The RTO also <b>did not demonstrate</b> that it has carried out remedial action to address the impact the non-compliance may have caused to learners.</p> <ul style="list-style-type: none"> <li>• No evidence of remedial action was provided for the identified learners who were not provided with advice about a training product appropriate to meeting their needs, taking into account their individual existing skills and competencies,.</li> <li>• The RTO has not provided evidence that it has identified and addressed the impact the</li> </ul>	

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	opportunities or to provide details of the student to employers with jobs relevant to the qualification. Stages 2 and 3 of the enrolment process included providing information about fees and to guide the student through the application process for VET FEE-HELP. <b>Finding:</b> Clause 4.1 non-compliant		non-compliance may have caused to learners.’ <b>Finding:</b> Clause 5.1 Outstanding non-compliance	
22 Misleading or deceptive conduct	<p>p 7, para 1 Clause 4.1 ‘The information provided by Acquire Learning on behalf of the RTO was not accurate and factual as it misrepresented that enrolling in a training product would enable the learner to have employment found on their behalf.’ <b>Finding:</b> Clause 4.1 non-compliant</p> <p>p 8, para 3 Clause 4.1 ‘The information provided by the Career Consultants in ‘Stage 1’ was not accurate and factual because the conversation led the potential student to believe that the Job Hunter allocated to them would be searching for available jobs on their behalf if they enrol in a Diploma qualification. An interview with the Job Hunter confirmed that the Job Hunter</p>	Insufficient information to form an assessment	<p>p 21, para 8 Clause 4.1 ‘The RTO <b>did not demonstrate</b> that, for all learners who have been enrolled in the sampled training products since 1 August 2016, information about RTO services (whether disseminated directly by the RTO or by a third party) is both accurate and factual to allow prospective learners to make informed decisions. Further, the RTO <b>did not demonstrate</b> that, where it has identified a learner who was not provided with information that was accurate and factual, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.’ <b>Finding:</b> Clause 4.1 non-compliance</p> <p>p 22, para 2 Clause 4.1 ‘Amended information about the RTO services, to be disseminated directly by the RTO or by a third</p>	<p>33 of 210 complaints received with an issue string of ‘Lack of/misleading/inaccurate enrolment information’</p> <p>17 of 210 complaints received with an issue string of ‘Agent/associate conduct’ <b>NB:</b> It has not been verified whether these 17 complaints relate to misleading or deceptive conduct</p>

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>position was to complete Stages 2 and 3 of the VET FEE-HELP enrolment process, and not to search for employment opportunities or to provide details of the student to employers with jobs relevant to the qualification. Stages 2 and 3 of the enrolment process included providing information about fees and to guide the student through the application process for VET FEE-HELP.'</p> <p><b>Finding:</b> Clause 4.1 non-compliant</p>		<p>party was not provided. The exception to this was the RTO's website and the 2017 Student handbook. Both of these contained insufficient information or inaccurate information. Therefore it could not be confirmed that the information provided to potential and current students about the RTO services is accurate and factual and allows prospective learners to make informed decisions.'</p> <p><b>Finding:</b> Clause 4.1 non-compliance</p> <p>p 26, paras 1-2  <b>Clause 5.2</b>                      'The RTO referred students' to their website to inform them of the third parties that would be providing a service of their behalf. The website did not list what these services are. There was no evidence to support that learners were informed the trainers and assessors were employed by a third party provider, Acquire Learning, and would be providing the training and assessment on the RTO's behalf.'</p> <p>'Further, the enrolment process provided a learner with sufficient information in relation to VET FEE-HELP however; it provided inadequate information on the learner's rights to be able to make</p>	

Type of conduct		Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
				an informed decision about undertaking training with the RTO.’ <b>Finding:</b> Clause 5.2 non-compliant	
23	Other Consideration(s)	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
24	Provider’s history of compliance	<p>p 8, paras 9-11 Clause 2.4 ‘the RTO demonstrated that it:</p> <ul style="list-style-type: none"> <li>did not have sufficient strategies and resources to systematically monitor the services provided by Acquire Learning, as the RTO was reliant on the feedback obtained at the audit; and</li> <li>had not ensured that it had effectively monitored the services delivered to comply with these Standards at all times.’</li> </ul> <p><b>Finding:</b> Clause 2.4 Non-compliant</p> <p>p 7, para 1 Clause 4.1 ‘The information provided by Acquire Learning on behalf of the RTO was not accurate and factual as it misrepresented that enrolling in a training product would enable the learner to have employment found on their behalf.’ <b>Finding:</b> Clause 4.1 non-compliant</p> <p>p 8, para 3 Clause 4.1</p>	<p>pp 5-6, paras 1-5 Compliance ‘Instances of non-compliance were noted with HESA and the VET Guideline. The areas of non-compliance included:</p> <ul style="list-style-type: none"> <li>The Student Entry Procedure did not specify “how to report to the Secretary about the results of such assessments”</li> <li>The name of the link to the Student Entry Procedure on the website as at 4 July 2016 did not include the words “student entry procedure”</li> <li>The policies and the Student Handbook do not outline the procedure for a student to re-enrol in a VET unit of competency with Franklyn Scholar, in the case where the student had earlier withdrawn from a VET unit of competency</li> <li>Franklyn Scholar did not include all the required information in three agent agreements.’</li> </ul>	<p>p 6, para 1 Clause 1.4 ‘Due to the non-compliances identified with Clause 1.8 (the RTO’s assessment system) of this report, the RTO did not demonstrate it was meeting all the requirements specified in the relevant training package.’ <b>Finding:</b> Clause 1.4 non compliance</p> <p>p 15-16, para 13 Clause 2.2 ‘The evidence <b>did not demonstrate</b> that the RTO provided evidence it had sufficiently and systematically monitored the serviced provided by third parties, and implemented corrective actions required to fix any non-compliances.’ <b>Finding:</b> Clause 2.2 non-compliance</p> <p>p 17, para 9 Clause 2.4 ‘The RTO <b>did not demonstrate</b> it has sufficient strategies and resources to systematically monitor any services delivered on its behalf, and that it has used these to ensure the services delivered comply with</p>	Not applicable

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>The information provided by the Career Consultants in ‘Stage 1’ was not accurate and factual because the conversation led the potential student to believe that the Job Hunter allocated to them would be searching for available jobs on their behalf if they enrol in a Diploma qualification. An interview with the Job Hunter confirmed that the Job Hunter position was to complete Stages 2 and 3 of the VET FEE-HELP enrolment process, and not to search for employment opportunities or to provide details of the student to employers with jobs relevant to the qualification. Stages 2 and 3 of the enrolment process included providing information about fees and to guide the student through the application process for VET FEE-HELP.’</p> <p><b>Finding:</b> Clause 4.1 non-compliant</p> <p><b>p 8, paras 4-8</b> <b>Clause 5.1</b> ‘There was no evidence provided that (since 1 April 2015) the RTO, prior to enrolment or commencement of training; whichever came first:</p> <ul style="list-style-type: none"> <li>reviewed the existing skills and competencies of a learner</li> </ul>	<p><b>p 23, paras 5-6</b> <b>Agreements with each agent or associate</b> ‘Franklyn Scholar has instances of non-compliance with section 29 of the VET Guideline.’</p> <p>Section 29 of the VET Guideline relates to written agreements with agents and associates. It specifies what is required in the written agreement. Failure to comply with this standard may have had flow-on effects to other forms of identified misconduct.</p>	<p>the Standards for Registered Training Organisations (RTO’s) 2015.’</p> <p><b>Finding:</b> Clause 2.4 non-compliance</p> <p><b>p 28, para 8</b> <b>Clause 8.3</b> ‘The RTO <b>did not demonstrate</b> that it has notified ASQA of all written agreements entered into under Clause 2.3, as per the requirements of Clause 8.3.’</p> <p><b>Finding:</b> Clause 8.3 non-compliant</p> <p><b>p 29, para 7</b> <b>Clause 8.5</b> ‘The RTO <b>did not demonstrate</b> that, for all learners who have been enrolled in the sampled training products since 1 August 2016, it had retained all information provided to each learner in accordance with the requirements of s31(3)(a) of the Higher Education Support (VET) Guidelines 2015.’</p> <p><b>Finding:</b> Clause 8.5 non-compliance</p> <p><b>p 25, paras 2-5</b> <b>Clause 5.1:</b> ‘The RTO <b>did not demonstrate</b> that for all learners enrolled in the sampled training products since 1 August 2016, prior to enrolment or the commencement of training and assessment (whichever comes first) the RTO provided advice to the</p>	

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<ul style="list-style-type: none"> <li>provided advice to the then prospective learner about a training product that was appropriate to meeting the learner’s needs, taking into account the individual’s existing skills and competencies.</li> </ul> <p>The role of the Career Consultants is to promote the online training and assessment option for the course, however the skills and knowledge of the individual were not assessed to confirm the student is able to participate in an online course.’  <b>Finding:</b> Clause 5.1 non-compliant</p> <p>p 11, paras 10-15  <b>Clause 5.1</b>            ‘The results of the Department of Education and Training Student report of students interviewed identified:            a) ‘Of the 293 students who participated in the interviews, 21 (7%) reported they provided a copy of their school year 12 certificate to Franklyn Scholar when they enrolled.            b) 279 (93%) reported they had not or could not recall providing a copy of their school certificate to Franklyn Scholar. Of these:</p>		<p>prospective learner about the training product appropriate to meeting the learner’s needs, taking into account the individual’s existing skills and competencies. Further, the RTO <b>did not demonstrate</b> that these learners had the existing skills and competencies required to participate in a level 5 AQF accredited qualifications. The RTO also <b>did not demonstrate</b> that it has carried out remedial action to address the impact the non-compliance may have caused to learners.</p> <ul style="list-style-type: none"> <li>No evidence of remedial action was provided for the identified learners who were not provided with advice about a training product appropriate to meeting their needs, taking into account their individual existing skills and competencies.</li> <li>The RTO has not provided evidence that it has identified and addressed the impact the non-compliance may have caused to learners.’</li> </ul> <p><b>Finding:</b> Clause 5.1 non-compliance</p> <p>p 21, para 8  <b>Clause 4.1</b>            ‘The RTO <b>did not demonstrate</b> that, for all learners who have been enrolled in the sampled training</p>	

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<ul style="list-style-type: none"> <li>• 16 (6%) reported their highest level of schooling was less than year 10</li> <li>• 67 (25%) reported their highest level of schooling was year 10</li> <li>• 34 (13%) reported their highest level of schooling was year 11'</li> </ul> <p><b>Finding:</b> Clause 5.1 non-compliant</p> <p><b>p 11, para 1</b>  <b>Clause 1.2</b>            'There was no evidence provided to confirm the RTO determined an amount of training to be provided to each learner based on the learner's existing skills, knowledge and experience. For the qualifications eligible to be studied through VET FEE-HELP, learners were enrolled without assessment of their ability to participate in the training product in the manner that the RTO delivers.'  <b>Finding:</b> Clause 1.2 non-compliant</p> <p><b>p 14, paras 6-7</b>  <b>Clause 5.2</b>            'The RTO referred students' to their website to inform them of the third parties that would be providing a service of their behalf. The website did not list what these services are. There was no</p>		<p>products since 1 August 2016, information about RTO services (whether disseminated directly by the RTO or by a third party) is both accurate and factual to allow prospective learners to make informed decisions. Further, the RTO <b>did not demonstrate</b> that, where it has identified a learner who was not provided with information that was accurate and factual, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.'</p> <p><b>p 22, para 2</b>  <b>Clause 4.1</b>            'Amended information about the RTO services, to be disseminated directly by the RTO or by a third party was not provided. The exception to this was the RTO's website and the 2017 Student handbook. Both of these contained insufficient information or inaccurate information. Therefore it could not be confirmed that the information provided to potential and current students about the RTO services is accurate and factual and allows prospective learners to make informed decisions.'  <b>Finding:</b> Clause 4.1 non-compliance</p>	



Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>evidence to support that learners were informed the trainers and assessors were employed by a third party provider, Acquire Learning, and would be providing the training and assessment on the RTO's behalf.</p> <p>Further, the enrolment process provided a learner with sufficient information in relation to VET FEE-HELP however; it provided inadequate information on the learner's rights to be able to make an informed decision about undertaking training with the RTO. For example, reference to the RTO's policies and procedures was included in the revised version (6 July 2016) of the Career Consultants script to guide potential learners to the RTO's policies and procedures. The previous version did not contain this information and no evidence was provided to verify the students were provided or referred to an electronic copy of this information prior to enrolment or on commencement of training and assessment. Therefore it could not be confirmed that the potential learners were informed of their rights, including details of the RTO's complaints and appeals</p>		<p>pp 4-5 para 16  <b>Clause 1.2</b>                      'The RTO <b>did not demonstrate</b> that, for all learners who have been enrolled in the sampled training products since 1 August 2016, the amount of training to be provided to each learner was determined with regard to the individual's existing skills, knowledge and experience, and the mode of delivery. Further, the RTO <b>did not demonstrate</b> that, where the RTO identifies a learner whom it did not determine a suitable amount of training to be provided, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.'  <b>Finding:</b> Clause 1.2 non-compliant</p> <p>p 3, paras 15-17  <b>Clause 1.1</b>                      'Of note is that the hours and/or weeks vary in some of the strategies from those listed in the "Duration" to those listed the "Estimated Delivery Structure". For example, for the BSB50215 Diploma of Business Cohort 3 Training and Assessment Strategy:</p> <ul style="list-style-type: none"> <li>the duration states: 23 hours per week across 18 months. 18 months = 78 weeks @ 23 hours = 1795 hours approximately.</li> </ul>	

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>process and their rights to be issued with a VET Statement of Attainment for any units completed and assessed as competent should the RTO or third party cease to operate.’  <b>Finding:</b> Clause 5.2 non-compliant</p> <p>p 14, para 8  <b>Clause 8.5</b>            ‘Evidence was not provided to demonstrate that the RTO retained a record of all information that was provided to each individual learner [sic]. The information provided at audit included a copy of what the RTO stated was provided to each learner. The student handbook, for example, does not have a version control on the document and therefore it cannot be confirmed if the information contained in the current document was the same as provided to previous students. The RTO has not complied with the Higher Education Support (VET) Guidelines 2015, Division 4 Providing information to prospective students etc.’  <b>Finding:</b> Clause 8.5 non-compliant</p> <p>p 20-21, paras 1-2  <b>Clause 1.1</b>            ‘The RTO’s training and</p>		<ul style="list-style-type: none"> <li>the Estimated Delivery Structure states for self-paced hours / online learning = 896 and Assessment hours* 813 = 1709 hours and the weeks are noted as 72 weeks.’  <b>Finding:</b> Clause 1.1 non-compliance</li> </ul> <p>p 7, para 14  <b>Clause 1.8</b>  <b>BSB51915 Diploma of Leadership and Management</b>            ‘The assessments were not fair as insufficient information was provided to both the students and the assessor on the assessment process and competency requirements. For example; the scenario, marking criteria and evidence to be collected to support competency.’</p> <p>p 26, paras 1-2  <b>Clause 5.2</b>            ‘The RTO referred students’ to their website to inform them of the third parties that would be providing a service of their behalf. The website did not list what these services are. There was no evidence to support that learners were informed the trainers and assessors were employed by a third party provider, Acquire Learning, and would be providing the training and assessment on the RTO’s behalf.’</p>	

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>assessment strategies and practices, including the amount of training they provide, was not consistent with the requirements of the relevant training package, and did not demonstrate how each learner could meet the requirements for each unit of competency or module in which they are enrolled because:</p> <p>* The training and assessment strategies detailed above did not identify how the RTO would deliver the course to different learner cohorts with varied experience. That is, the strategies for BSB50215 Diploma of Business Cohort 1 and BSB50215 Diploma of Business Cohort 2 contained the same delivery and assessment methodology of 27 hours over 10 months for both cohort target audiences, that have identified varied skills, experience and knowledge levels.'</p> <p><b>Finding:</b> Clause 1.1 non-compliant</p> <p><b>p 21, para 2</b> <b>Clause 1.4</b> 'Due to the non-compliances identified with Clause 1.8 (the RTO's assessment system) of this report, the RTO did not demonstrate it was meeting all the requirements specified in the relevant training package.'</p>		<p>'Further, the enrolment process provided a learner with sufficient information in relation to VET FEE-HELP however; it provided inadequate information on the learner's rights to be able to make an informed decision about undertaking training with the RTO.'</p> <p><b>Finding:</b> Clause 5.2 non-compliant</p> <p><b>p 19, para 2</b> <b>Clause 3.1:</b> 'The RTO <b>did not demonstrate</b> that it issues AQF certification documentation only to a learner whom it has assessed as meeting the requirements of the training product as specified in the relevant training package or VET accredited course. The RTO also did not demonstrate that it has carried out remedial action to identify and address the impact the non-compliance may have caused to learners <b>s 22(1)(a)(ii)</b></p> <p>who were each assessed in a manner that did not meet all assessment requirements of the unit of competency.'</p> <p><b>Finding:</b> Clause 3.1 non-compliance</p>	

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>p 21, paras 3-5  <b>Clause 2.2</b>                      'Due to the non-compliances identified relating to assessment, Franklyn Scholar did not demonstrate that it:</p> <ul style="list-style-type: none"> <li>• Systematically monitored the RTO's and/or third party assessment practices to ensure on-going compliance with Standard 1.</li> <li>• Systematically evaluated and used the outcomes of the evaluation to continually improve their or the third parties assessment strategies and practices.'</li> </ul> <p><b>Finding:</b> Clause 2.2 non-compliant</p> <p>p 22, para 1  <b>Clause 1.8:</b>                      'The assessment system did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence.'  <b>Finding:</b> Clause 1.8 non-compliant</p> <p>p 30, paras 1,2  <b>Clause 3.1</b>                      'The RTO issued AQF Certification documents to students whom did</p>			

Type of conduct	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data (as at 16 May 2019)
	<p>not meet the requirements of the training product. ...</p> <p>...the RTO also did not demonstrate that it is issuing VET qualifications only to learners whom it has assessed as meeting the requirements of the training products as specified in the relevant training package.'</p> <p><b>Finding:</b> Clause 3.1 non-compliant</p> <p>p 31, paras 1-2</p> <p><b>Clause 8.3:</b></p> <p>'The agreements notified to ASQA were not consistent with the RTO agreements currently (in) place.... The RTO stated it did not have access to view the agreements in place that have been reported. A list of this was provided at audit so that the RTO could amend the third party arrangements on ASQAnet.'</p> <p><b>Finding:</b> Clause 8.3 non-compliant</p>			

## Evidence of engagement with vulnerable persons

Vulnerability and complexity indicator	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data
Age	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Aboriginal and Torres Strait Islander (ATSI)	<p><b>p 3, para 1</b>                      'HEIMS data for 2015 showed that of the 3,560 students reported as VET FEE-HELP students: ...</p> <ul style="list-style-type: none"> <li>330 of these students were Indigenous Australians'</li> </ul>	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Bereavement	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Culturally and linguistically diverse (CALD) background	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Developmental disorder	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Digital literacy (level of)	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Domestic violence	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Drugs and alcohol dependence	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Education level	<p><b>p 11, para 10</b>  <b>Clause 5.1</b></p>	Insufficient information to form an assessment	<p><b>p 2, paras 1-2</b>  <b>With regard to Clause 1.1 and Clause 1.2</b>                      'The training and assessment strategies detailed above did not identify how the RTO</p>	Insufficient information to form an assessment

Vulnerability and complexity indicator	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data
	<p>'The results of the Department of Education and Training Student report of students interviewed identified:</p> <p>a) 'Of the 293 students who participated in the interviews, 21 (7%) reported they provided a copy of their school year 12 certificate to Franklyn Scholar when they enrolled.</p> <p>b) 279 (93%) reported they had not or could not recall providing a copy of their school certificate to Franklyn Scholar. Of these:</p> <ul style="list-style-type: none"> <li>• 16 (6%) reported their highest level of schooling was less than year 10</li> <li>• 67 (25%) reported their highest level of schooling was year 10</li> <li>• o 34 (13%) reported their highest level of schooling was year 11'</li> </ul>		<p>would deliver the course to different learner cohorts with varied experience. That is, the strategies for BSB50215 Diploma of Business Cohort 1 and BSB50215 Diploma of Business Cohort 2 contained the same delivery and assessment methodology of 27 hours over 10 months for both cohort target audiences, that have identified varied skills, experience and knowledge levels.'</p> <p><b>p 5, para 1</b>  <b>With regard to Clause 1.1 and Clause 1.2</b>            'Further, the RTO did not demonstrate that, where the RTO identifies a learner whom it did not determine a suitable amount of training to be provided, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.'</p>	
<p><b>Employment status</b></p>	<p><b>p 24, para 14</b>            'The training and assessment strategy for BSB51915 Diploma of Leadership and Management included the Target Student Profile as being individuals that are <b>currently not employed.</b>'</p>	<p>Insufficient information to form an assessment</p>	<p><b>p 3, para 14</b>  <b>In regards to training and assessment</b>            'The strategies do not include how the RTO will ensure that this is in place at assessment. Cohort 3 characteristics of the student cohort are noted as individuals who are not currently employed in a workplace. The strategy states that the learning is conducted completely online and therefore these students will not be able to demonstrate competency in accordance with the Assessment Conditions.'</p>	<p>Insufficient information to form an assessment</p>

Vulnerability and complexity indicator	Audit Number Five	Deloitte Audit	ASQA Evidence Analysis	VSLO complaint data
Family breakdown	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Financial hardship	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Homelessness	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Incarceration	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Language, Literacy & Numeracy (LLN)	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Learning difficulties	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Low socio-economic status	<p><b>p 3, para 1</b>                      'HEIMS data for 2015 showed that of the 3,560 students reported as VET FEE-HELP students:</p> <p>954 were in the Quintile 1 low Socio-economic status'</p>	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Mental health issues	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Physical health issues	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Technology accessibility	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment
Welfare dependency	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment	Insufficient information to form an assessment



## Related documents

These documents are available on the VET Student Loans Team Internal Resources page of the VSLO intranet.

- SOP 4.4 Completing the statement of reasons
- SOP 4.5 Remedy pathway workflow
- VSLO/Department concepts linkage table
- Assessment model 7.2 – Franklyn Scholar (Australia) Pty Ltd
- Guide to legal concepts for VSLO Dispute Resolution Officers



## Evidence analysis – VET Quality Framework

### ORGANISATION DETAILS

Organisation's legal name	Franklyn Scholar (Australia) Pty Ltd
Trading name/s	Franklyn Scholar
RTO number (if any)	7134

### REVIEW DETAILS

Type of review	Sanction
Audit number	EVRREC0001115
Date evidence received	13/01/2017
Date review conducted	30/01/2017 and 3-7/02/2017

### REVIEW TEAM

Review officer	s 22(1)(a)(ii)
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### SCOPE OF REVIEW

Code	Training Product	Mode/s of delivery/assessment*
BSB50207	Diploma of Business	Online & Mixed
BSB50215	Diploma of Business	Online & Mixed
BSB51107	Diploma of Management	Online & Mixed
BSB51915	Diploma of Leadership and Management	Online & Mixed

\*Apprenticeship, Traineeship, Face to face, Distance, Online, Workplace, Mixed, Other (specify)

### FINDING FOLLOWING EVIDENCE REVIEW

#### Finding as at 7/02/2017: Critical non-compliance

- The level of non-compliance considers the potential for an adverse impact on the quality of training and assessment outcomes for students.
- If non-compliance has been identified, this analysis describes evidence of the non-compliance.

<b>Clause 1.1</b>	The RTO's training and assessment strategies and practices, including the amount of training they provide, are consistent with the requirements of training packages and VET accredited courses and enable each learner to meet the requirements for each unit of competency or module in which they are enrolled.
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**Finding:Not compliant****Outstanding non-compliance****TRAINING AND ASSESSMENT – SECTION 9**With regard to Clause 1.1 and Clause 1.2:

The RTO's training and assessment strategies and practices, including the amount of training they provide, was not consistent with the requirements of the relevant training package, and did not demonstrate how each learner could meet the requirements for each unit of competency or module in which they are enrolled because:

- The training and assessment strategies detailed above did not identify how the RTO would deliver the course to different learner cohorts with varied experience. That is, the strategies for *BSB50215 Diploma of Business Cohort 1* and *BSB50215 Diploma of Business Cohort 2* contained the same delivery and assessment methodology of 27 hours over 10 months for both cohort target audiences, that have identified varied skills, experience and knowledge levels.

*The RTO is required to:*

Clause 1.1 and 1.2

- Provide evidence that the training and assessment strategies, including the amount of training, of **all qualifications** offered by the RTO, and for **all learner cohorts targeted**, are consistent with the requirements of training packages and enable each learner to meet the requirements for each unit of competency in which they are enrolled.

**Analysis of evidence****TRAINING AND ASSESSMENT – SECTION 9**

Evidence reviewed:

- BSB51915 Diploma of Leadership and Management Training and Assessment Strategy:
  - BSB51915 Diploma of Leadership and Management v3.0 Cohort 1
  - BSB51915 Diploma of Leadership and Management v3.0 Cohort 2
  - BSB51915 Diploma of Leadership and Management v3.0 Cohort 3
- BSB50215 Diploma of Business Training and Assessment Strategy:
  - BSB50215 Diploma of Business v3.0 Cohort 1
  - BSB50215 Diploma of Business v3.0 Cohort 2
  - BSB50215 Diploma of Business v3.0 Cohort 3
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*
- *Rectification Response to ASQA Audit Report – VET Quality Framework*

The RTO **did not demonstrate** that the training and assessment strategies, including the amount of training, of all qualifications offered by the RTO, and for all learner cohorts targeted, are consistent with the requirements of training packages and enable each learner to meet the requirements for each unit of competency in which they are enrolled.

The Response to ASQA advises the RTO has revised the training and assessment strategies including the amount of training that were focused on at the audit to ensure that they are consistent with the requirements of the training package and to enable the student cohorts to meet the requirements for each unit of competency.

- As part of the corrective actions taken, the RTO states:

- “Redesign training and assessment strategies that were audited only to meet requirements
- As discussed, Auditors focused on cohort 1 and cohort 2 (not cohort 3 TAS) Adjust – volume of learning to 12 months (cohort 1), 18 months (cohort 2) and 24 months (cohort 3)
- 12 months = 1200 hours; 18 months = 1800 hours; 24 months = 2400 hours
- Use data in the enrolment forms to identify the student cohorts that were enrolled into each of the audited courses as of 1<sup>st</sup> August 2016.”
- Although the corrective action for BSB50215 Diploma of Business states the volume of learning was to be 24 months, the training and assessment strategy for Cohort 3 remains at 18 months.
- Regardless, no evidence was provided to support how the RTO determined the amount of training for each student cohort.
- Furthermore the RTO was required to provide evidence of the training and assessment strategies for **all qualifications and all learner cohorts targeted** offered by the RTO, not just the qualifications audited. The RTO is approved to deliver 59 qualifications, yet provided training and assessment strategies for two qualifications only.

The training and assessment strategies for Cohort 3 of both qualifications include that the delivery will be conducted online with case studies.

- However, some of units clearly state under the Assessment Condition that the students must be provided access to:
  - workplace equipment and resources,
  - where possible real situations, and
  - interactions with others.
- It also states that assessment must be conducted in a safe environment where evidence gathered demonstrates consistent performance of typical activities experienced in the industry capability – workplace effectiveness field of work’.
- The strategies do not include how the RTO will ensure that this is in place at assessment. Cohort 3 characteristics of the student cohort are noted as individuals who are not currently employed in a workplace. The strategy states that the learning is conducted completely online and therefore these students will not be able to demonstrate competency in accordance with the Assessment Conditions.

Of note is that the hours and/or weeks vary in some of the strategies from those listed in the ‘Duration’ to those listed the ‘Estimated Delivery Structure’. For example, for the *BSB50215 Diploma of Business Cohort 3 Training and Assessment Strategy*:

- the duration states: 23 hours per week across 18 months. 18 months = 78 weeks @ 23 hours = 1795 hours approximately.
- the Estimated Delivery Structure states for self-paced hours / online learning = 896 and Assessment hours\* 813 = 1709 hours and the weeks are noted as 72 weeks.

\*Assessment hours’ included projects, assignments, case studies that includes learning through research.

#### Clause 1.2

For the purposes of Clause 1.1, the RTO determines the amount of training they provide to each learner with regard to:

- a) the existing skills, knowledge and the experience of the learner;
- b) the mode of delivery; and
- c) where a full qualification is not being delivered, the number of units and/or modules being delivered as a proportion of the full qualification.

#### Finding:Not compliant

#### Outstanding non-compliance

## ENROLMENT – SECTION 2

### With regard to Clause 1.2:

There was no evidence provided to confirm the RTO determined an amount of training to be provided to each learner based on the learner's existing skills, knowledge and experience. For the qualifications eligible to be studied through VET FEE-HELP, learners were enrolled without assessment of their ability to participate in the training product in the manner that the RTO delivers.

*The RTO is required to:*

### Clause 1.2

- Provide evidence that, for all learners who have been enrolled in the sampled training products since 1 August 2016, the amount of training to be provided to each learner was determined with regard to:
  - the individual's existing skills, knowledge and experience; and
  - the mode of delivery.
- Where the RTO identifies a learner whom it did not determine a suitable amount of training to be provided, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

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## TRAINING AND ASSESSMENT – SECTION 9

### With regard to Clause 1.1 and Clause 1.2:

The RTO's training and assessment strategies and practices, including the amount of training they provide, was not consistent with the requirements of the relevant training package, and did not demonstrate how each learner could meet the requirements for each unit of competency or module in which they are enrolled because:

- The training and assessment strategies detailed above did not identify how the RTO would deliver the course to different learner cohorts with varied experience. That is, the strategies for *BSB50215 Diploma of Business Cohort 1* and *BSB50215 Diploma of Business Cohort 2* contained the same delivery and assessment methodology of 27 hours over 10 months for both cohort target audiences, that have identified varied skills, experience and knowledge levels.

*The RTO is required to:*

### Clause 1.1 and 1.2

Provide evidence that the training and assessment strategies, including the amount of training, of **all qualifications** offered by the RTO, and for **all learner cohorts targeted**, are consistent with the requirements of training packages and enable each learner to meet the requirements for each unit of competency in which they are enrolled.

## Analysis of evidence

### ENROLMENT – SECTION 2

Evidence reviewed:

- Diploma Student Questionnaire
- Email 'Please Complete a Short Diploma Student Questionnaire'.htm
- Recipients\_Diploma Student Questionnaire – FS.xlsx
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*
- *Rectification Response to ASQA Audit Report – VET Quality Framework*

The RTO **did not demonstrate** that, for all learners who have been enrolled in the sampled training products since 1 August 2016, the amount of training to be provided to each learner was determined with

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regard to the individual's existing skills, knowledge and experience, and the mode of delivery. Further, the RTO **did not demonstrate** that, where the RTO identifies a learner whom it did not determine a suitable amount of training to be provided, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

As part of its response the RTO advised it enrolled the following students since 1 August 2016:

- BSB50215 Diploma of Business – 131 students
- BSB51915 Diploma of Leadership and Management – 168 students

The RTO states it has *“Identified all learners who have been enrolled in the sampled training products since 1 August 2016. It has reviewed the evidence which is on file (eg enrolment data regarding educational level, prior qualifications, current work experience, language details, copies of Year 12 certification, engagement in workplace Traineeships or remote online, and current course progress) to identify potential learners who may not demonstrate they have the skills, knowledge or experience to undertake the course”*.

- No evidence was provided to support this statement.
- No evidence was provided to demonstrate how many, of the 299 students enrolled, may not have had the skills, knowledge or experience to undertake the course.
- No evidence was provided to demonstrate that the amount of training to be provided to each of the 299 students enrolled was determined with regard to the individual's existing skills, knowledge and experience, and the mode of delivery offered.

The RTO also states it developed a Diploma Student Questionnaire which was disseminated to students identified as not having a certificate IV qualification or above. Evidence of this questionnaire and a list of students that had not completed a certificate IV level qualification or above were provided.

However, the RTO then states that *“where there is a gap in this evidence for existing active students these will be reviewed against the suitability of the course based on their skills and competencies and appropriate remedial action taken. The Diploma Student Questionnaire also addresses this issue, which will identify where remedial action is required.”*

- This statement confirms the RTO has not carried out remedial action to address the impact the non-compliance may have caused to these learners. While the RTO states that it “will” do this, no evidence was provided to demonstrate that remedial action has been undertaken.
- Further, this statement explicitly refers to existing active students. The RTO has not provided any information or evidence as to remedial action for learners who were enrolled at any times since 1 August 2016, regardless of whether they remain enrolled or not.

In the document, *Rectification Response to ASQA Audit Report* (pages 5-6), the document states *“[Insert actions that have been taken around this]”*. There was no explanation on the actions taken to determine the amount of training. The response only included the new versions of the varying student cohort training and assessment strategies.

## TRAINING AND ASSESSMENT – SECTION 9

Refer to Clause 1.1 (pages 2 and 3) of this report for analysis.

<b>Clause 1.4</b>	The RTO meets all requirements specified in the relevant training package or VET accredited course.
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**Finding:Not compliant**

**Outstanding non-compliance**

## TRAINING AND ASSESSMENT – SECTION 9

With regard to Clause 1.4:

Due to the non-compliances identified with Clause 1.8 (the RTO's assessment system) of this report, the RTO did not demonstrate it was meeting all the requirements specified in the relevant training package.

*The RTO is required to:*

Clause 1.4

Provide evidence that addresses the requirements of Clause 1.8 (the RTO's assessment system; Section 10 of this report). By providing this evidence the RTO will subsequently demonstrate compliance with this requirement.

**Analysis of evidence****TRAINING AND ASSESSMENT – SECTION 9**

Evidence reviewed:

- Refer to Clause 1.8
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*
- *Rectification Response to ASQA Audit Report – VET Quality Framework*

The RTO **did not demonstrate** that it meets all requirements specified in the relevant training package.

The Response to ASQA included the following statements:

- *'All individual students impacted have been contacted by the RTO and an Assessor will be in contact with them and arrange for them to complete either Assessment Option A or Option B.'*
- *Refer to rectification response and evidence provided in clause 1.8'.*

No evidence was provided to support this statement and demonstrate that the students impacted have been contacted and remedial action taken.

Compliance was not demonstrated with Clause 1.8. The RTO did not demonstrate it was meeting all the requirements specified in the relevant training package.

<b>Clause 1.8</b>	The RTO implements an assessment system that ensures that assessment (including recognition of prior learning): <ol style="list-style-type: none"> <li>a) complies with the assessment requirements of the relevant training package or VET accredited course; and</li> <li>b) is conducted in accordance with the Principles of Assessment contained in Table 1.8-1 and the Rules of Evidence contained in Table 1.8-2.</li> </ol>
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**Finding:Not compliant**

**Outstanding non-compliance****TRAINING AND ASSESSMENT – SECTION 10**

With regard to Clause 1.8:

**BSB51915 Diploma of Leadership and Management**

*BSBLDR501 Develop and use emotional intelligence:*

The assessment system did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessment were not valid as it did not address all of the unit of competency requirements for example, but not limited to:
  - Performance Criterion 3.1 – *‘Provide Opportunities for others to express their thoughts and feelings’.*
  - Performance Criterion 3.2 *‘Assist others to understand the effect of their behaviour and emotions on others in the workplace.’*
  - Foundation skills *‘Uses listening and questioning skills to elicit the views of others and to clarify or confirm understanding.’*
  - Foundation skills *‘Leads processes to develop, implement and monitor plans and processes to ensure team engagement and effectiveness.’*
  - Performance Evidence *‘Model behaviours that demonstrate management of emotions.’*
- Students conducting this course online were assessed on their knowledge of the practical requirements. The online ‘Moodle Rooms’ (accessed by the auditor on 28 July 2016) provided the student with two options to be assessed for the practical component; one in the workplace and the other in a simulated environment and based on a scenario.
  - The third party report to be used for workplace assessment, as noted below, did not capture sufficient evidence for the assessor to determine a consistent judgement of competency.
  - The simulated assessment did not include a scenario to support the simulated observation assessment.
- The Observation and Demonstration of Skills tool was not reliable as it included assessor guidance that did not provide sufficient information to ensure that the students were assessed consistently and against the unit of competency requirements.
- The Supervisor/Third Party Report was a direct copy of the performance evidence of the unit of competency. It broadly reflected what the student must demonstrate however it did not provide sufficient detail to ensure that the entire unit of competency requirements has been addressed.

On 7 July 2016 an email was received from Acquire Learning that included the ‘correct version’ of BSBLDR501 mapping and marking guide along with the observation checklist. Page 11 of 13 included questions based on the scenario. These tools assessed the students’ knowledge of the practical requirements. Pages 12 and 13 included Verbal Assessment Responses – marking guide. It was not clear how the responses of the students would be captured if the questions were asked verbally. The assessment instruments did not assess the student in applying their knowledge and skills in accordance with the requirements of this unit; therefore the assessments were not sufficient.

The theory assessment for this unit did not address all of the Knowledge evidence requirements for this unit of competency.

The assessments were not fair as insufficient information was provided to both the students and the assessor on the assessment process and competency requirements. For example; the scenario, marking criteria and evidence to be collected to support competency.

Relevant to this unit, evidence was not provided to confirm that s 22(1)(a)(ii) had been assessed as demonstrating practical skills as required by this unit of competency. The unit of competency has not been marked for both these students at the time of audit.

*BSBHRM506 Manage recruitment, selection, and induction processes:*

The assessment system did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessment was not valid or fair as it did not address all of the unit of competency requirements for example, but not limited to:
  - Performance Criterion 1.5 *‘Trial forms and documents that support policies and procedures and make necessary adjustments’.*
  - Performance Criterion 2.4 *‘Ensure that advertising of vacant positions compiles with*



- *organisational policies and procedures.*
  - Foundation skills, *'Draws on a repertoire of open questions and active listening when seeking feedback from others'*.
  - Foundation skills, *'Analysis numerical information to determine employees' remuneration packages.*
- The assessment task mapped to:
  - Assessment 1 Part 4, that consisted of a question to summarise the students' knowledge of legislation that related to recruitment, selection and induction processes.
  - Assessment 2 Part 1, that consisted of the student explaining their knowledge on how they would work with management to determine Human Resource needs and conduct recruitment, selection and induction processes.
  - Assessment 3 Part A, for this task the student could use a workplace example however the evidence required was listed as a may include and not a must include for example, *'may include consultation with relevant staff to determine HR requirements'*.
  - Assessment 3 Part B, research selection processes could use a workplace example or the case study however both did not require the review of advertising of vacant positions in accordance with organisational policies and procedures.
  - Assessment 4 Part 1, allowed the student to be assessed in the workplace or in a simulated workplace scenario. The workplace supervisor / third party report did include trialling the forms and documents. It is not clear how the online students that are not employed would demonstrate this requirement.
  - Assessment 4 Part 3, there was no Summative Assessment 4 part 3.
  - Verbal questions 2, 3 & 4, related to knowledge and not practical skills.
- The assessment tasks did not sufficiently inform the assessor and the student of all the practical skills to be demonstrated by the student.
- The assessment tasks did not sufficiently capture all of the practical and foundation skills to be demonstrated by the student.
- It is also not clear how Assessment 3 Part B case study addressed the unit of competency practical requirements if the learner was not in the workplace.

The training and assessment strategy for *BSB51915 Diploma of Leadership and Management* included the Target Student Profile as being individuals that are currently not employed. Further to this there was no requirement in the strategy for the potential students to have some skills or have had exposure to leadership styles and skills. The assessment tools reference strongly on having a current or previous workplace, which is inconsistent with the strategy.

### **BSB51107 Diploma Management (superseded by BSB51915)**

*BSBMGT502B Manage people performance:*

The assessments conducted did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessment tasks were in relation to questions and the development of documents and processes that incorporated research and risk assessments. The research exercises were in depth and assessed knowledge requirements. However, none of the three students assessments sampled included any practical assessment evidence for example, but not limited to:
  - Performance criterion 2.3 *'Conduct performance management in accordance with organisational protocols and time lines'*.
  - Performance criterion 2.4 *'Monitor and evaluate performance on a continuous basis'*.
  - *Required skills – '...to provide effective feedback and to coach staff who need development'*.
  - Evidence Guide – *'Techniques in providing feedback and coaching for improvement in performance'*.

- The assessments were not valid, sufficient, or reliable as there was no evidence provided to confirm the students had demonstrated these skill requirements and there was no assessment tool provided to conduct a practical demonstration.

*BSBHRM506A Manage recruitment, selection and induction processes:*

- The assessments conducted for the superseded unit *BSBHRM506A Manage recruitment, selection and induction processes* included Trainer/Assessor Assessments V1.0 April 2013 and Participants Assessment V1.0 April 2013.
- These resources did not address the unit of competency requirements for similar reasons to the ones provided for BSBHRM506 Manage recruitment, selection, and induction processes (refer to BSB51915 Diploma of Leadership and Management) unit of competency.

## **BSB50207 Diploma of Business (superseded by BSB50215)**

### **BSB50215 Diploma of Business**

*BSBWOR501 Manage personal work priorities and professional development:*

The assessment system did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessments were not valid as they did not address all of the unit of competency requirements including all Knowledge Evidence requirements.
- The tools did not provide adequate guidance for assessors to ensure that sufficient, valid and reliable evidence was gathered and used to confirm a candidate's competence against all of the knowledge, skills and performance requirements.
- The training and assessment strategies 'assessment evidence collection matrix' identified assessment evidence collection tools for the unit that were inconsistent with the evidence presented at audit.
- The assessment tool did not collect sufficient evidence from the candidate to be able to demonstrate and satisfy the training products requirements and the Rules of Evidence for validity.

The completed assessments for s 22(1)(a)(ii) demonstrate that insufficient evidence was gathered by the assessors to confirm assessment decisions were made consistently against all requirements of the unit of competency.

*The RTO is required to:*

### **BSB51915 Diploma of Leadership and Management**

- *BSBLDR501 Develop and use emotional intelligence*
- *BSBHRM506 Manage, recruitment, selection and induction processes*

### **BSB51107 Diploma of Management**

- *BSBMGT502B Manage people performance*
- *BSBHRM506A Manage recruitment, selection and induction processes*

### **BSB50207 Diploma of Business / BSB50215 Diploma of Business**

- *BSBWOR501 Manage personal work priorities and professional development*

### Clause 1.8

For each of the above units of competency:

- Provide evidence that the RTO has an assessment system that ensures assessment:
  - complies with the assessment requirements of the relevant unit of competency; and
  - is conducted in accordance with the principles of assessment and the rules of evidence

- For all learners who have been assessed in any of the above units of competency at any times since 1 August 2016:
  - Provide evidence the RTO has implemented an assessment system that ensured assessments:
    - complied with the assessment requirements of the relevant unit of competency; and
    - were conducted in accordance with the principles of assessment and the rules of evidence.
  - where the RTO identifies a learner who was not assessed in a manner that addressed all unit of competency requirements and was conducted in accordance with the principles of assessment and the rules of evidence, provide evidence that the RTO has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

## Analysis of evidence

### TRAINING AND ASSESSMENT – SECTION 10

Evidence reviewed:

- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*
- *Rectification Response to ASQA Audit Report – VET Quality Framework*
- *We've updated some assessments* email 'test' template
- List of students who received *We've updated some assessments* email
- *Keeping your completed units up to date* email 'test' template
- List of students who received *Keeping your completed units up to date* email
- **BSB51915 Diploma of Leadership and Management**
  - BSBLDR501 Develop and use emotional intelligence*
    - Gap assessment v1
    - *Mapping and Marking Guide v4.4*
    - *Assessor Marking Guide v1.3*
    - *Case Study - Casey Emergency Services*
    - *Student Style Guide for Project Reports*
  - BSBHRM506 Manage recruitment, selection, and induction processes*
    - Gap assessment v1.1
    - *Mapping and Marking Guide v2.5*
    - *Assessor Marking Guide v1.3*
    - *Case Study - Wellcare*
    - *Corporate and Human Resources Policy & Procedure Manual*
    - *Position Description Template*
    - *Student Style Guide for Project Reports*
- **BSB51107 Diploma Management (superseded by BSB51915)**
  - BSBMGT502B Manage people performance*
    - No evidence was provided for this unit
  - BSBHRM506A Manage recruitment, selection and induction processes*
    - Same evidence as listed under *BSB51915 Diploma of Leadership and Management*
- **BSB50207 Diploma of Business (superseded by BSB50215)**
  - BSB50215 Diploma of Business**
    - BSBWOR501 Manage personal work priorities and professional development*
      - Gap assessment v1
      - *Mapping and Marking Guide v5.3*
      - *Assessor Marking Guide v1.3*
      - *Planning Template for Assessment 2 v1*
      - *Job Description*

- Case Study - Wellcare
- Student Style Guide for Project Reports

## BSB51915 Diploma of Leadership and Management

*BSBLDR501 Develop and use emotional intelligence* – reviewed by s 22(1)(a)(ii)

The revised assessment tools address the areas of non-compliance. The RTO has demonstrated that it now has an assessment system that ensures assessment:

- complies with the assessment requirements of the relevant unit of competency; and
- are conducted in accordance with the principles of assessment and the rules of evidence.

However the RTO **did not demonstrate** that all learners who were assessed since 1 August 2016 were assessed against all training package requirements and that assessment was conducted in accordance with the principles of assessment and the rules of evidence. The RTO also did not demonstrate that, where the RTO identifies a learner who was not assessed as meeting these requirements, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

The RTO advised the following:

- in the *Response to ASQA Notice of non-compliance and Audit Report* – there are 4 students who have been assessed using the non-compliant assessment tools and 38 students who are in the process of completing their assessments;
- in the *Rectification Response to ASQA Audit Report* it identifies 2 students who have been assessed using the non-compliant assessment tools and 19 students who are in the process of completing their assessments;
- affected students will either need to complete a gap assessment (option A) or the updated assessments (option B); and
- ‘All individual students impacted have been contacted by the RTO and an Assessor will be in contact with them to support them and arrange for them to complete the Assessment Option A or Option B.’

The RTO only provided a template of an email that was allegedly sent to the affected students and a list of recipients. No evidence was provided confirming if any students were contacted and if any students had completed the revised assessment tools or the gap assessment.

For the two student reviewed at audits 22(1)(a)(ii) the advised actions taken state that the RTO had been in contact with both students.

While the RTO states that it “will” address the impact, no evidence was provided to demonstrate that remedial action has been undertaken.

*BSBHRM506 Manage recruitment, selection, and induction processes* – reviewed by s 22(1)(a)(ii)

The revised assessment tools **do not address all training package requirements** and do not confirm assessment will be conducted in accordance with the principles of assessment and the rules of evidence. The following issues were identified:

- Not all unit of competency requirements are assessed. For example, but not limited to:
  - Foundation skills: ‘Analyses numerical information to determine employees’ remuneration packages’ (provided as an example previously)
  - Performance criteria 3.3: ‘Oversee management of probationary employees and provide them with feedback until their employment is confirmed or terminated’

None of the assessment tasks requires the student to demonstrate, or the assessor to assess, their ability to analyse numerical information to determine employees’ remuneration packages or

oversee management of probationary employees and provide them with feedback until their employment is confirmed or terminated. According to the RTO's mapping document, numeracy skills are assessed in the written questions (Q 3&5), project 1 (part 2) and third party report (part 3), and managing staff induction skills are assessed in projects 1 (part 2), 2 (part C) and the third party report (part 4). The mapped questions and projects include answering questions about employment contracts, the importance of industrial relations, explain how to determine HR needs how to involve managers and supervisors in recruitment, selection and induction, and develop an induction process/plan. The third party report is simply the performance criteria slightly reworded from the unit of competency. The tool does not provide sufficient instructions to the third party to ensure sufficient evidence will be collected for the assessor to use to make a judgement of competency i.e. work samples, communication records etc. Furthermore, the instructions to the supervisor state 'This will be used as additional evidence to support a judgement about the student's competence.' The third party report is the only part of the assessment process that requires the learner to demonstrate the practical application of the above-mentioned skills; therefore it is not supplementary evidence as indicated.

- The assessor checklists in the *Mapping and Marking Guide* do not contain sufficient criteria that define competent performance to confirm each student will be assessed against all unit of competency requirements and that consistent judgements will be made across a range of students and assessors. For example, but not limited to:
  - Project 2 allows students to choose to use a workplace example instead of the case study. However, the instructions do not require students using a workplace example to submit relevant evidence, such as their workplace's strategic and operational objectives, policies, procedures etc, to enable the assessor to validate and accurately mark the responses provided.
  - The checklist for project 2 contains general benchmarks slightly reworded from the unit of competency. It does not provide the benchmark responses based on the defined case study.

Furthermore, no student assessment tools were provided to confirm sufficient information will be provided to students to inform them of the assessment context and conditions.

- The gap assessment marking guide provided does not ensure all unit of competency requirements will be assessed. The assessment includes written activities, verbal questions and a role play requiring the student to conduct a job interview, make a recommendation and evaluate the tools (same as the assessor observation in the *Mapping and Marking Guide*). These tasks do not require students to demonstrate, or the assessor to assess, the skills provided as examples above.
- Due to the above-mentioned issues identified with the assessment tools, insufficient evidence was provided to confirm the sole student currently completing this unit will be assessed against all training package requirements and that assessment will be conducted in accordance with the principles of assessment and the rules of evidence.

Further, the RTO **did not demonstrate** that all learners who were assessed since 1 August 2016 were assessed against all training package requirements and that assessment was conducted in accordance with the principles of assessment and the rules of evidence. The RTO also did not demonstrate that, where the RTO identifies a learner who was not assessed as meeting these requirements, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

The RTO advised the following:

- in the *Rectification Response to ASQA Audit Report* it identifies 0 students who have been assessed using the non-compliant assessment tools and 1 students who is in the process of completing their assessments;
- affected students will either need to complete a gap assessment (option A) or the updated assessments (option B); and
- 'All individual students impacted have been contacted by the RTO and an Assessor will be in

*contact with them to support them and arrange for them to complete the Assessment Option A or Option B.'*

No evidence was provided confirming if any students were contacted and if any students had completed the revised assessment tools or the gap assessment. While the RTO states that it "will" address the impact, no evidence was provided to demonstrate that remedial action has been undertaken.

### **BSB51107 Diploma Management (superseded by BSB51915)**

*BSBMGT502B Manage people performance – reviewed by s 22(1)(a)(ii)*

The RTO **did not provide evidence** to confirm it has an assessment system that ensures assessment complies with the training package requirements and that assessment is conducted in accordance with the principles of assessment and the rules of evidence.

The RTO's reason for not providing evidence is '*...this unit was delivered as part of the BSB51107 Diploma of Management and as such this is a superseded qualifications and is no longer on Franklyn Scholar (Australia) Pty Ltd Scope of Registration a no students enrolled in this unit [sic].'* The equivalent replacement unit, BSBMGT502, is an implicit unit within two qualifications on the RTO's scope of registration being *BSB50615 Diploma of Human Resources Management* and *BSB51915 Diploma of Leadership and Management*.

Irrespective of the fact the RTO has chosen not to deliver this unit any more, it is still required to rectify the non-compliances identified and conduct remedial action for the three students (s 22(1)(a)(ii) and any other affected students that did not demonstrate the required skills.

The RTO **did not demonstrate** that all learners who were assessed since 1 August 2016 were assessed against all training package requirements and that assessment was conducted in accordance with the principles of assessment and the rules of evidence. The RTO also did not demonstrate that, where the RTO identifies a learner who was not assessed as meeting these requirements, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

*BSBHRM506A Manage recruitment, selection and induction processes – reviewed by s 22(1)(a)(ii)*

The revised assessment tools **do not address all training package requirements** and do not confirm assessment will be conducted in accordance with the principles of assessment and the rules of evidence. The RTO only provided one suite of tools for this unit; therefore refer to findings under **BSB51915 Diploma of Leadership and Management** for further information.

### **BSB50207 Diploma of Business (superseded by BSB50215)**

#### **BSB50215 Diploma of Business**

*BSBWOR501 Manage personal work priorities and professional development – reviewed by s 22(1)(a)(ii)*

The revised assessment tools **do not address all training package requirements** and do not confirm assessment will be conducted in accordance with the principles of assessment and the rules of evidence. For example, **but not limited to**:

- The revised tools map the assessment tasks for performance criteria 1.1 '*Serve as a positive role model in the workplace through personal work planning*'. This is linked to the foundation skills 'Interact with others' and 'Get the work done'. Mapping guide does not include a practical observation of this task and therefore with the exception of a third party report (supporting evidence). The evidence gathered for the student cohort 3, individuals that are currently not employed in a workplace, is not sufficient, and does not ensure the validity of the assessments

addressing all of the unit of competency requirements.

- 'While setting and meeting own work priorities, performance criteria 1.3 requires the students' to *'Measure and maintain personal performance in varying work conditions, work context and when contingencies occur'*. This is linked to the foundation skills 'Get the work done'. Assessment activities map to Written Questions 1.6, Project Part A.2, Assessor observation 5, Third party reports 2, 3 and verbal questions 2. The assessment tasks do not allow demonstration in varying work conditions, work context and contingencies. Furthermore the instructions to the student and assessor do not inform them the assessment must include demonstration in varying work conditions, work context and contingencies.
- The assessment tasks seem to predominantly rely on assessing the knowledge requirements
- Furthermore the assessment mapping guide maps some assessment to the Project A2 part C1, 2 and 3. The revised assessment tolls do not include a Part C in A2.

Further, the RTO **did not demonstrate** that all learners who were assessed since 1 August 2016 were assessed against all training package requirements and that assessment was conducted in accordance with the principles of assessment and the rules of evidence. The RTO also did not demonstrate that, where the RTO identifies a learner who was not assessed as meeting these requirements, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

The RTO advised the following:

- there are 10 students who have been assessed using the non-compliant assessment tools and 79 students who are in the process of completing their assessments;
- affected students will either need to complete a gap assessment (option A) or the updated assessments (option B); and
- *'All individual students impacted have been contacted by the RTO and an Assessor will be in contact with them to support them and arrange for them to complete the Assessment Option A or Option B.'*

The RTO only provided a template of an email that was allegedly sent to the affected students and a list of recipients. No evidence was provided confirming any students were contacted and informed and/or completed the revised assessment tools or the gap assessment. While the RTO states that it "will" address the impact, no evidence was provided to demonstrate that remedial action has been undertaken.

*The examples listed above provide guidance on the areas of non-compliance identified and are not a full list of each unit of competency requirements that have not been met. The organisation is responsible for providing evidence that demonstrates all unit of competency requirements are met.*

## Clause 2.2

The RTO:

- a) systematically monitors the RTO's training and assessment strategies and practices to ensure ongoing compliance with Standard 1; and
- b) systematically evaluates and uses the outcomes of the evaluations to continually improve the RTO's training and assessment strategies and practices. Evaluation information includes but is not limited to quality/performance indicator data collected under Clause 7.5, validation outcomes, client, trainer and assessor feedback and complaints and appeals.

## Finding:Not compliant

### Outstanding non-compliance

## TRAINING AND ASSESSMENT – SECTION 9

### With regard to Clause 2.2:

Due to the non-compliances identified relating to assessment, Franklyn Scholar did not demonstrate that it:

- systematically monitored the RTO's and/or third party assessment practices to ensure on-going compliance with Standard 1.
- systematically evaluated and used the outcomes of the evaluation to continually improve their or the third parties assessment strategies and practices.

*The RTO is required to:*

### Clause 2.2

- Demonstrate that the RTO has:
  - systematically monitored its, and/or its third party, assessment practices to ensure on-going compliance with Standard 1; and
  - systematically evaluated and used the outcomes of the evaluation to continually improve their and/or the third party's assessment strategies and practices.

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## TRAINING AND ASSESSMENT – SECTION 10

### With regard to Clause 2.2

The non-compliances described above in respect to Clause 1.8 did not support the RTO had systematically monitored its assessment strategies and practices in respect of the units of competency sampled to ensure ongoing compliance with *Standard 1 of the Standards for Registered Training Organisations (RTO's) 2015*.

*The RTO is required to:*

### Clause 2.2

Demonstrate the RTO has:

- systematically monitored the RTO's assessment practices to ensure on-going compliance with Standard 1; and
- systematically evaluated and used the outcomes of the evaluation to continually improve their training and assessment strategies and practices.

### Analysis of evidence

## TRAINING AND ASSESSMENT – SECTION 9

## TRAINING AND ASSESSMENT – SECTION 10

Evidence reviewed:

- CIR Content review
- Third party agreements spreadsheet
- 5 ASQAnet screen captures
- Student Handbook eve Jan 2017
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*
- website: <http://study.franklynscholar.edu.au/>
- website: [www.comparecourses.com.au](http://www.comparecourses.com.au)

The evidence **did not demonstrate** that the RTO provided evidence it had sufficiently and systematically monitored the serviced provided by third parties, and implemented corrective actions required to fix any non-compliances.



The Response to ASQA included the following statements:

- *'Franklyn Scholar (Australia) Pty Ltd no longer uses third party providers for delivery or assessment.*
- *New policies and procedures for the review and evaluation of Franklyn Scholar (Australia) Pty Ltd assessment strategies and practices are being designed and implemented under the new ownership. Franklyn Scholar systematically evaluates and monitors its Training Assessment Strategies and practices.*
- *Refer to rectification response and evidence provided in clause 2.4'.*

The RTO stated that it is in the process of cancelling all third party provider agreements however, no evidence to confirm that this has occurred was provided. Further to this, the advertising brochures (on their website) for the qualifications state the courses as being offered by third party providers.

A continuous improvement register list was provided which includes actions that have been conducted and those yet to be implemented. Significantly the actions are in relation to amending the assessment material for several units of competency. The register shows several areas of concern that have been identified and allegedly amended.

The continuous improvement register verifies that the RTO has systematically monitored its assessment strategies and practices in respect of the units of competency sampled. However the evidence provided for Clause 1.8 did not address all of the non-compliances.

<b>Clause 2.4</b>	The RTO has sufficient strategies and resources to systematically monitor any services delivered on its behalf, and uses these to ensure that the services delivered comply with these Standards at all times.
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#### **Finding:Not compliant**

#### **Outstanding non-compliance**

#### **MARKETING / RECRUITMENT – SECTION 1**

##### With regard to Clause 2.4:

The RTO provided further evidence throughout the audit to amend its current and past marketing practices as feedback in areas of concern was being provided by the auditors. In so doing this the RTO demonstrated that it:

- did not have sufficient strategies and resources to systematically monitor the services provided by Acquire Learning, as the RTO was reliant on the feedback obtained at the audit; and
- had not ensured that it had effectively monitored the services delivered to comply with these Standards at all times.

*The RTO is required to:*

##### Clause 2.4

- Provide evidence that it has sufficient strategies and resources to systematically monitor any services delivered on its behalf, including by Acquire Learning.
- Provide evidence that it has used these strategies and resources to ensure the services delivered by all third party providers, including by Acquire Learning, comply with these Standards at all times.

#### **ENROLMENT – SECTION 3**

With regard to Clause 2.4:

Because of the above [*relating to Clauses 5.2 and 8.5*] the RTO did not demonstrate that it had sufficient strategies in place to systematically monitor the services provided by third parties, and specifically Acquire Learning Pty Ltd.

*The RTO is required to:*

Clause 2.4

- Provide evidence that it has sufficient strategies and resources to systematically monitor any services delivered on its behalf, including by Acquire Learning.
- Provide evidence that it has used these strategies and resources to ensure the services delivered by all third party providers, including by Acquire Learning, comply with these Standards at all times.

**TRAINING AND ASSESSMENT – SECTION 10**With regard to Clause 2.4

The non-compliances described above in respect to Clause 1.8 did not support the RTO had sufficient strategies to systematically monitor any services delivered by Acquire Pty Ltd and has used these to ensure the services delivered comply with the *Standards for Registered Training Organisations (RTO's) 2015*.

*The RTO is required to:*

Clause 2.4

- Provide evidence that the RTO has sufficient strategies and resources to systematically monitor any services delivered on its behalf, including by Acquire Learning.
- Provide evidence that the RTO has used these strategies and resources to ensure the services delivered by all third party providers, including by Acquire Learning, comply with these Standards at all times.

**Analysis of evidence****MARKETING / RECRUITMENT – SECTION 1****ENROLMENT – SECTION 3****TRAINING AND ASSESSMENT – SECTION 10**

Evidence reviewed:

- Third party agreements spreadsheet
- 5 ASQAnet screen captures
- *Student Handbook* v6 Jan 2017
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*
- website: <http://study.franklynscholar.edu.au/>
- website: [www.comparecourses.com.au](http://www.comparecourses.com.au)

The RTO **did not demonstrate** it has sufficient strategies and resources to systematically monitor any services delivered on its behalf, and that it has used these to ensure the services delivered comply with the *Standards for Registered Training Organisations (RTO's) 2015*.

The RTO advised the following:

- *'Franklyn Scholar has been in a process of cancelling all agreements with Third Parties who were involved in delivering services on its behalf before the receipt of the audit report and had stopped accepting enrolments and has no intention to enter into Third Party delivery service arrangements in the future.'*

- 'Third Party agreement with Acquire Learning Pty Ltd and Careers Pty Ltd was terminated on the 23<sup>rd</sup> of December 2016 and has been lodged [to ASQA]'
- 'ASQAnet screenshots demonstrates Franklyn Scholar Pty Ltd has intent to terminate their third party arrangements with Compare Course Pty Ltd'
- 'A process is being implemented to ensure all documentation, websites, and operational procedures owned by or which relate to Third Parties are being deleted.'

The RTO notified ASQA of the termination of third party agreements with Acquire Learning and Acquire Learning Umbrella Agreement and Service Order via ASQAnet on 13 January 2017; however no notifications have been submitted regarding the termination of the agreements with United Recruitment and Compare Courses Pty Ltd. The RTO submitted screen captures of the ASQAnet *Significant event* notification for the termination of agreement between the RTO and Compare Courses Pty Ltd; however the form has not been submitted to date.

The RTO's website still refers to third parties in content such as the *Course Brochure*, *Student Handbook* and *Terms and Conditions of an Enrolment in a Course Delivered by Acquire Learning*, and Compare Courses Pty Ltd.'s website also refers to the RTO under the *Providers* section. The RTO provided a *Student Handbook* that does not include the details of third parties; however this version of the handbook is not the one available online.

Evidence was not provided to confirm the monitoring strategies and resources were used to ensure the services delivered by all third party providers complied with these standards.

<b>Clause 3.1</b>	The RTO issues AQF certification documentation only to a learner whom it has assessed as meeting the requirements of the training product as specified in the relevant training package or VET accredited course.
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**Finding:Not compliant**

**Outstanding non-compliance**

### **COMPLETION – SECTION 13**

#### With regard to Clause 3.1

- The RTO issued AQF Certification documents to students whom did not meet the requirements of the training product.
- Due to the non-compliances identified in Section 10 of this report, the RTO also did not demonstrate that it is issuing VET qualifications only to learners whom it has assessed as meeting the requirements of the training products as specified in the relevant training package.
  - For the unit of competency *BSBWOR501 Manage personal work priorities and professional development* (BSB50207 Diploma of Business / BSB50215 Diploma of Business), the completed assessments for s 22(1)(a)(ii) demonstrated that insufficient evidence was gathered by the assessors to confirm assessment decisions were made consistently against all requirements of the unit of competency.

*The RTO is required to:*

#### Clause 3.1

- Provide evidence that the RTO has implemented a procedure to ensure that only learners who have been assessed as meeting the requirements of the training product are issued with AQF certification documentation.
- Provide evidence that:

- The RTO has carried out remedial action to identify and address the impact the non-compliance may have caused to learners s 22(1)(a)(ii) who were each assessed in a manner that did not meet all assessment requirements of the unit of competency.

### Analysis of evidence

#### COMPLETION – SECTION 13

Evidence reviewed:

- Email “Please Complete a Short Diploma Student Questionnaire’ .htm
- Recipients\_Diploma Student Questionnaire – FS.xlsx
- Refer to evidence provided for clauses 1.4 and 1.8.
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*

The RTO **did not demonstrate** that it issues AQF certification documentation only to a learner whom it has assessed as meeting the requirements of the training product as specified in the relevant training package or VET accredited course. The RTO also did not demonstrate that it has carried out remedial action to identify and address the impact the non-compliance may have caused to learners s 22(1)(a)(ii) who were each assessed in a manner that did not meet all assessment requirements of the unit of competency.

The Response to ASQA included:

- Refer to the rectification response and evidence provided in both Clause 1.4 and Clause 1.8. The RTO has not demonstrated that:
  - the RTO will only issue AQF Certification documents to students whom did meet the requirements of the training product, and
  - it has implemented a procedure to ensure that only learners who have been assessed as meeting the requirements of the training product are issued with AQF certification documentation.
- No evidence of remedial action to identify and address the impact the non-compliance may have caused to learners s 22(1)(a)(ii) was provided.

#### Clause 4.1

Information, whether disseminated directly by the RTO or on its behalf, is both accurate and factual, and:

- a) accurately represents the services it provides and the training products on its scope of registration;
- b) includes its RTO Code;
- c) refers to another person or organisation in its marketing material only if the consent of that person or organisation has been obtained;
- d) uses the NRT Logo only in accordance with the conditions of use specified in Schedule 4;
- e) makes clear where a third party is recruiting prospective learners for the RTO on its behalf;
- f) distinguishes where it is delivering training and assessment on behalf of another RTO or where training and assessment is being delivered on its behalf by a third party;
- g) distinguishes between nationally recognised training and assessment leading to the issuance of AQF certification documentation from any other training or assessment delivered by the RTO;
- h) includes the code and title of any training product, as published on the

- National Register, referred to in that information;
- i) only advertises or markets a non-current training product while it remains on the RTO's scope of registration;
  - j) only advertises or markets that a training product it delivers will enable learners to obtain a licensed or regulated outcome where this has been confirmed by the industry regulator in the jurisdiction in which it is being advertised;
  - k) includes details about any VET FEE-HELP, government funded subsidy or other financial support arrangements associated with the RTO's provision of training and assessment; and
  - l) does not guarantee that:
    - i. a learner will successfully complete a training product on its scope of registration; or
    - ii. a training product can be completed in a manner which does not meet the requirements of Clause 1.1 and 1.2; or
    - iii. a learner will obtain a particular employment outcome where this is outside the control of the RTO.

### Finding: Not compliant

### Outstanding non-compliance

### MARKETING / RECRUITMENT – SECTION 1

#### With regard to Clause 4.1:

The information provided by Acquire Learning on behalf of the RTO was not accurate and factual as it misrepresented that enrolling in a training product would enable the learner to have employment found on their behalf.

- Acquire Learning was the largest recruitment source for Franklyn Scholar, located at the same premises at the RTO.
- Acquire Learning employed approximately 100 Career Consultants to contact consumers who provided contact details through the CareerOne website. Persons applying for a job on CareerOne follow the below process:
  - Select the 'Apply now' option for a particular employment opportunity.
  - The person is immediately taken to a new screen where they are encouraged to be registered with CareerOne. While this screen does not state that registration is mandatory, there is no indication of any other options the user could follow to be able to apply for the position.
  - The person is required to agree to the terms and conditions which state: *By signing up to CareerOne I agree to being contacted by or on behalf of CareerOne Education to discuss potentially enrolling in education and training courses with third party education organisations. You may opt out of being contacted at any time by following the steps in our privacy policy.*
  - Information on the privacy policy includes the following statements: *If you have consented for us to do so, we may also share your information with third parties who may contact you about their products or services. This includes sharing your information with Acquire Learning Pty Ltd for the purposes of the provision of services by our joint venture, CareerOne Education. Acquire Learning Pty Ltd's privacy policy is available at <http://www.acquirelearning.com.au/privacy-policy>.*
- The Career Consultants were provided a script to follow as 'Stage 1' of the enrolment process. The information provided to the potential students at the time of the audit (5 July 2016) included, *"Because we believe that practical experience is important to support your vocational training you will also be allocated your very own personal Job Hunter who will put you forward to employers with jobs relevant to your qualification. This approach is used for both employers with current job openings or that could have openings in the future".* At the end of the conversation the Career Consultants congratulate the potential student and explain that they will be referred to the Job

Hunter Liaison who will collate their job “Recruitment Profile”, the kind of work they want, the industry they are interested in, and capture their general employment history.

- Although the script informs them of VET FEE-HELP as an option for paying for the course no information was provided at this Stage relating to fees associated with a Diploma level course.

The information provided by the Career Consultants in ‘Stage 1’ was not accurate and factual because the conversation led the potential student to believe that the Job Hunter allocated to them would be searching for available jobs on their behalf if they enrol in a Diploma qualification. An interview with the Job Hunter confirmed that the Job Hunter position was to complete Stages 2 and 3 of the VET FEE-HELP enrolment process, and not to search for employment opportunities or to provide details of the student to employers with jobs relevant to the qualification. Stages 2 and 3 of the enrolment process included providing information about fees and to guide the student through the application process for VET FEE-HELP.

The RTO provided a revised script for the Career Consultant (that is ‘Stage 1’ of the enrolment) on day two of the audit (6 July 2016) however the script included the same information. A third script was provided later that day however this was not reviewed by the auditor. The RTO was informed both prior to and during the audit that demonstrated practices by the RTO and its third parties, past and current, were the focus of the audit process.

*The RTO is required to:*

#### Clause 4.1

- Provide evidence that for **all learners** who have been enrolled in the sampled training products since **1 August 2016**, information about RTO services, whether disseminated directly by the RTO or by a third party, is both accurate and factual to allow prospective learners to make informed decisions.
- Where the RTO identifies a learner who was not provided with information that was accurate and factual, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

### Analysis of evidence

#### MARKETING / RECRUITMENT – SECTION 1

Evidence reviewed:

- Email “Please Complete a Short Diploma Student Questionnaire’.htm
- Recipients\_Diploma Student Questionnaire – FS.xlsx
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*
- *Refer also to clause 2.4.*

The RTO **did not demonstrate** that, for all learners who have been enrolled in the sampled training products since 1 August 2016, information about RTO services (whether disseminated directly by the RTO or by a third party) is both accurate and factual to allow prospective learners to make informed decisions. Further, the RTO **did not demonstrate** that, where it has identified a learner who was not provided with information that was accurate and factual, it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

The Response to ASQA included:

- *‘Franklyn Scholar (Australia) Pty Ltd no longer has agreements with or utilises Acquire Learning or Career one Consultants for any services’.*
- *‘Franklyn Scholar (Australia) Pty Ltd has disseminated the Diploma student Questionnaire to all learners enrolled in the sampled training products since 1 August 2016 to identify where a learner may have been provided with inaccurate or insufficient information prior to enrolment. Subsequent to the Diploma Student Questionnaire responses, ‘Franklyn Scholar (Australia) will analyse any negative impact and take remedial action in [sic] accordingly.’*

Evidence of this questionnaire and a list of students that had not completed a certificate IV level qualification or above were provided. However, no evidence was provided to demonstrate the questionnaire had been implemented.

Amended information about the RTO services, to be disseminated directly by the RTO or by a third party was not provided. The exception to this was the RTO's website and the 2017 Student handbook. Both of these contained insufficient information or inaccurate information. Therefore it could not be confirmed that the information provided to potential and current students about the RTO services is accurate and factual and allows prospective learners to make informed decisions.

Evidence of remedial action was not provided to confirm current learners were provided accurate and factual information.

Refer also to the findings in Clause 2.4 and 5.2.

<b>Clause 5.1</b>	Prior to enrolment or the commencement of training and assessment, whichever comes first, the RTO provides advice to the prospective learner about the training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies.
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#### **Finding:Not compliant**

#### **Outstanding non-compliance**

#### **MARKETING / RECRUITMENT – SECTION 1**

##### With regard to Clause 5.1:

There was no evidence provided that (since 1 April 2015) the RTO, prior to enrolment or commencement of training; whichever came first:

- reviewed the existing skills and competencies of a learner
- provided advice to the then prospective learner about a training product that was appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies.

The role of the Career Consultants is to promote the online training and assessment option for the course, however the skills and knowledge of the individual were not assessed to confirm the student is able to participate in an online course.

*The RTO is required to:*

##### Clause 5.1

- Provide evidence that for **all learners** who have been enrolled in the sampled training products since **1 August 2016**, prior to enrolment or commencement of training, whichever came first, the RTO:
  - reviewed the existing skills and competency of each learner enrolled with the RTO; and
  - provided advice on the learner's individual needs in relation to the training product they are enrolled.
- Where the RTO identifies a learner who was not provided with advice about a training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

#### **ENROLMENT – SECTION 2**

##### With regard to Clause 5.1:

There was no evidence provided that (since 1 April 2015) prior to enrolment or commencement of training; whichever came first, the RTO:

- reviewed the existing skills and competencies of a learner
- provided advice to the then prospective learner about a training product that was appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies.  
*Refer to Section 1 Marketing for further information.*

The RTO did not demonstrate that it enrolled students based on an assessment conducted to confirm each individual student had the:

- existing skills, competencies and experience to participate in an AQF level five accredited qualification that the student was being enrolled in to; or
- ability to participate in an online learning mode of delivery.

The RTO's evidence did not identify that it determined if the prospective student was able to meet the requirements to enrol in a level 5 AQF accredited qualification. The RTO's evidence was focused on the entry and skills and knowledge requirements detailed by the *Higher Education Support (VET) Guideline 2015*, to satisfy enrolling as a VET FEE-HELP student. This process does not confirm the individual student's existing skills, competencies and experience in relation to the training product requirements, mode of delivery offered by the RTO, the RTO's delivery strategies, RPL and/or Credit Transfer.

The results of the Department of Education and Training Student report of students interviewed identified:

- a) *'Of the 293 students who participated in the interviews, 21 (7%) reported they provided a copy of their school year 12 certificate to Franklyn Scholar when they enrolled.*
- b) *279 (93%) reported they had not or could not recall providing a copy of their school certificate to Franklyn Scholar. Of these:*
  - *16 (6%) reported their highest level of schooling was less than year 10*
  - *67 (25%) reported their highest level of schooling was year 10*
  - *34 (13%) reported their highest level of schooling was year 11*
  - *110 (40%) reported their highest level of schooling was year 12*
  - *45 (17%) reported other responses such as completing other VET and university qualifications.*
  - *107 (37) reported that Franklyn Scholar had made them sit a written test.*
  - *clearly did not meet entry requirements in that they had not completed Year 12 and had not sat a written entry test' as per the Higher Education Support (VET) Guideline 2015.*

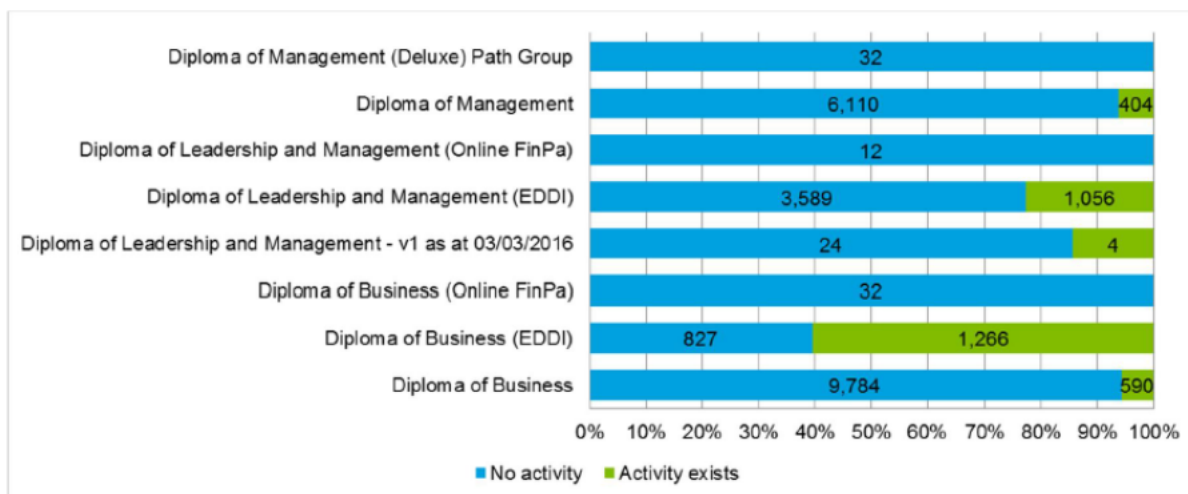
#### Final audit report – Department of Education and Training

The findings made by the Department of Education and Training in its audit report about the RTO support that the RTO did not take into account the individual's existing skills and competencies prior to providing advice about a training product that was appropriate to meeting the learner's needs. The analysis shows that 86% (2,398 students) of the RTO's VET FEE-HELP enrolments in 2015 and 2016 had no online activity for the period of study. It is noted the RTO advised that it delivers courses by online and face-to-face modes; however, of the students that had no online activity, only 2% successfully completed the course of study.

- Of the qualifications offered by the RTO in 2015 and 2016 the below graph displays the online activity in units of competency of students:



Figure 13 Activity of units of competency by course – all years



- The table supports that students enrolled into courses offered by the RTO; particularly the Diploma of Management, Diploma of Leadership and Management and Diploma of Business (excluding EDDI students) qualifications; were not enrolled into a training product that was appropriate to meeting the learner's needs. As the majority of students had no activity, it is evident these students were not suitable for learning environment offered by the RTO. Had the RTO, or its third parties, reviewed the existing skills and competencies of a learner prior to identifying a training product that would adequately meet the learner's needs and to provide an amount of training suitable to the learner, the activity rate, and completion rate, would be significantly higher.

*The RTO is required to:*

#### Clause 5.1

- Provide evidence that, for all learners who have been enrolled in the sample training products since 1 August 2016, prior to enrolment or commencement of training; whichever came first, the RTO:
  - reviewed the existing skills and competencies of each learner; and
  - provided advice on the learner's individual needs in relation to the training product in which they are enrolled.
- Provide evidence that, for all learners who have been enrolled in the sample training products since 1 August 2016, the student had the existing skills and competencies required to participate in a level 5 AQF accredited qualification that the student was enrolled in to.
- Where the RTO identifies a learner who:
  - was not provided with advice about a training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies; or
  - did not have the existing skills and competencies required to participate in a level 5 AQF accredited qualification that the student was enrolled in to
 provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

#### Analysis of evidence

#### MARKETING / RECRUITMENT – SECTION 1

#### ENROLMENT – SECTION 2

Evidence reviewed:

- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*, which advised ASQA to refer to the rectification response and evidence provided in both Clause 1.4 and 1.8.

The RTO **did not demonstrate** that for all learners enrolled in the sampled training products since 1 August 2016, prior to enrolment or the commencement of training and assessment (whichever comes first) the RTO provided advice to the prospective learner about the training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies. Further, the RTO **did not demonstrate** that these learners had the existing skills and competencies required to participate in a level 5 AQF accredited qualifications. The RTO also **did not demonstrate** that it has carried out remedial action to address the impact the non-compliance may have caused to learners.

- No evidence of remedial action was provided for the identified learners who were not provided with advice about a training product appropriate to meeting their needs, taking into account their individual existing skills and competencies.
- The RTO has not provided evidence that it has identified and addressed the impact the non-compliance may have caused to learners.
- Refer to the Analysis of Evidence for Clauses 1.4 and 1.8.

#### Clause 5.2

Prior to enrolment or the commencement of training and assessment, whichever comes first, the RTO provides, in print or through referral to an electronic copy, current and accurate information that enables the learner to make informed decisions about undertaking training with the RTO and at a minimum includes the following content:

- a) the code, title and currency of the training product to which the learner is to be enrolled, as published on the National Register;
- b) the training and assessment, and related educational and support services the RTO will provide to the learner including the:
  - i. estimated duration;
  - ii. expected locations at which it will be provided;
  - iii. expected modes of delivery;
  - iv. name and contact details of any third party that will provide training and/or assessment, and related educational and support services to the learner on the RTO's behalf; and
  - v. any work placement arrangements.
- c) the RTO's obligations to the learner, including that the RTO is responsible for the quality of the training and assessment in compliance with these Standards, and for the issuance of the AQF certification documentation.
- d) the learner's rights, including:
  - i. details of the RTO's complaints and appeals process required by Standard 6; and
  - ii. if the RTO, or a third party delivering training and assessment on its behalf, closes or ceases to deliver any part of the training product that the learner is enrolled in;
- e) the learner's obligations:
  - i. in relation to the repayment of any debt to be incurred under the VET FEE-HELP scheme arising from the provision of services;
  - ii. any requirements the RTO requires the learner to meet to enter and successfully complete their chosen training product;

- and  
 iii. any materials and equipment that the learner must provide;  
 and  
 f) information on the implications for the learner of government training entitlements and subsidy arrangements in relation to the delivery of the services.

### Finding:Not compliant

#### Outstanding non-compliance

#### ENROLMENT – SECTION 3

##### With regard to Clause 5.2:

The RTO referred students' to their website to inform them of the third parties that would be providing a service of their behalf. The website did not list what these services are. There was no evidence to support that learners were informed the trainers and assessors were employed by a third party provider, Acquire Learning, and would be providing the training and assessment on the RTO's behalf.

Further, the enrolment process provided a learner with sufficient information in relation to VET FEE-HELP however; it provided inadequate information on the learner's rights to be able to make an informed decision about undertaking training with the RTO. For example, reference to the RTO's policies and procedures was included in the revised version (6 July 2016) of the Career Consultants script to guide potential learners to the RTO's policies and procedures. The previous version did not contain this information and no evidence was provided to verify the students were provided or referred to an electronic copy of this information prior to enrolment or on commencement of training and assessment. Therefore it could not be confirmed that the potential learners were informed of their rights, including details of the RTO's complaints and appeals process and their rights to be issued with a VET Statement of Attainment for any units completed and assessed as competent should the RTO or third party cease to operate.

*The RTO is required to:*

##### Clause 5.2

- Provide evidence that, for **all learners** who have been enrolled in the sample training products since 1 August 2016, prior to enrolling or the commencement of study, whichever came first, the RTO has provided current and accurate information that enabled the learners to make informed decisions about undertaking training and assessment with the RTO.
- Where the RTO identifies a learner who was not provided with current and accurate information that enables the learner to make informed decisions about undertaking training with the RTO, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

#### Analysis of evidence

#### ENROLMENT – SECTION 3

Evidence reviewed:

- Email "Please Complete a Short Diploma Student Questionnaire'.htm
- Recipients\_Diploma Student Questionnaire – FS.xlsx
- Student Handbook v7 130117
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*

The RTO **did not demonstrate** that all learners who enrolled in the sampled training products since 1 August 2016 had been provided with current and accurate information, prior to enrolment or commencement of study (whichever came first), to make informed decisions about undertaking training

and assessment with the RTO.

The Response to ASQA included the following statements:

- *'The Diploma Students Questionnaire to existing learners includes questions about the relevance of information provided to them prior to them commencing the course and the accuracy of this in relation to their course. Upon the collection and the analysis of the review and the responses from learners, the level of impact where identified will be addressed'.*
  - The development of the template Diploma Questionnaire captures the participants' satisfaction about the information that was provided to them. However the questionnaire does not include questions in relation to the information that an RTO must provide to the learners' in accordance with this clause. Therefore the students would not be aware of the information that must be provided to them prior to enrolment or commencement. For example, but not limited to, details of the complaint policy and procedure. The questionnaire did not include if the student was provided this or referred to an electronic copy prior to enrolment or commencement of the course.
  - Further, this statement relates only to students who have remained enrolled with the RTO. The RTO has not provided any evidence as to how it has ensured learners who have been withdrawn or cancelled were provided with current and accurate information.
  - Regardless, the RTO has not demonstrated that it has addressed the impact the non-compliance may have caused to all learners, whether they remain enrolled or not.
- *'Franklyn Scholar (Australia) Pty Ltd website is being updated to include adequate information about Franklyn Scholar (Australia) Pty Ltd, appropriate course information, revised policies and procedures. The student handbook and other information for prospective and current students has been updated and does not include any reference to third parties. A revised enrolment process for Franklyn Scholar (Australia) Pty Ltd will contain checks that the prospective learners has been provided with sufficient information to make an informed decision about the training'.*
  - The RTO has stated that they have ceased all partnership arrangements and therefore information on partnerships is not included in the new student handbook. However, evidence was not provided that confirmed the current learners enrolled were informed of the partnership arrangements the RTO had at the time they commenced training and assessment or that they were informed of the cessation of the partnership arrangements.

Further, the RTO's website and student handbook does not provide sufficient information. For example, but not limited to the RTO's website and/or Student Handbooks:

- Does not include information on the currency of all the qualifications advertised on their website.
- Includes marketing brochures that still include that Franklyn Scholar (Australia) Pty Ltd is in partnership with Acquire Learning Pty Ltd for example, the marketing brochure for *BSB51415 Diploma of Project Management*.
- Course location in course brochures states online delivery for three Diploma level qualifications. There are no locations listed of where services including support services may be provided.
- There is no information on the simulated environment for assessment purposes for the learner cohort 3 – learners not currently employed. For example: The 'Assessment Conditions' from *BSBWOR501 - Manage personal work priorities and professional development* state that *'Assessment must be conducted in a safe environment where evidence gathered demonstrates consistent performance of typical activities experienced in the industry capability - workplace effectiveness field of work and include access to:*
  - workplace equipment and resources
  - case studies and, where possible, real situations
  - interaction with others'
- It is not clear how:
  - this will occur for students that do not have access to a workplace or simulated environment, or
  - the assessor ensures the students have access to workplace equipment and resources

including human resources so that they can interact with others.

- Wording to a similar nature is included in other units of competency.

<b>Clause 8.3</b>	The RTO notifies the Regulator: <ul style="list-style-type: none"> <li>a) of any written agreement entered into under Clause 2.3 for the delivery of services on its behalf within 30 calendar days of that agreement being entered into or prior to the obligations under the agreement taking effect, whichever occurs first; and</li> <li>b) within 30 calendar days of the agreement coming to an end.</li> </ul>
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**Finding:Not compliant**

**Outstanding non-compliance**

### **THIRD PARTY PROVIDERS – SECTION 14**

With regard to clause 8.3

- The agreements notified to ASQA were not consistent with the RTO agreements currently place.
- The RTO stated it did not have access to view the agreements in place that have been reported. A list of this was provided at audit so that the RTO could amend the third party arrangements on ASQAnet.

*The RTO is required to:*

Clause 8.3

- provide evidence that all third party agreements the RTO has in place are consistent with the names of the third parties as advised to ASQA and listed on ASQAnet.

**Analysis of evidence**

### **THIRD PARTY PROVIDERS – SECTION 14**

Evidence reviewed:

- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework states “Refer to rectification response and evidence provided in both Clause 2.4 and Clause 4.1”.*

The RTO **did not demonstrate** that it has notified ASQA of all written agreements entered into under Clause 2.3, as per the requirements of Clause 8.3.

For the findings of non-compliance, please refer to Clauses 2.4 and 4.1.

<b>Clause 8.5</b>	The RTO complies with Commonwealth, State and Territory legislation and regulatory requirements relevant to its operations.
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**Finding:Not compliant**

**Outstanding non-compliance**

### **ENROLMENT – SECTION 3**

With regard to Clause 8.5:

Evidence was not provided to demonstrate that the RTO retained a record of all information that was provided to each individual learner. The information provided at audit included a copy of what the RTO stated was provided to each learner. The student handbook, for example, does not have a version control on the document and therefore it cannot be confirmed if the information contained in the current document was the same as provided to previous students. The RTO has not complied with the *Higher Education Support (VET) Guidelines 2015, Division 4 Providing information to prospective students etc.*

*Section 31 (3)* which requires that:

- A VET provider must:
  - (a) retain, for at least 5 years, a record of all information given to each prospective student under subsection (2);

The RTO is required to:

Clause 8.5

- Provide evidenced that, for **all learners** who have been enrolled in the sample training products since **1 August 2016**, Franklyn Scholar retained all information that is provided to each individual learner in accordance with the requirements of *section 31 (3) (a)* of the *Higher Education Support (VET) Guidelines 2015*.

**Analysis of evidence****ENROLMENT – SECTION 3**

Evidence reviewed:

- FS OQ7 Document Management Policy and Procedure V2.0
- *Response to ASQA Notice of non-compliance and Audit Report – VET Quality Framework*

The RTO **did not demonstrate** that, for all learners who have been enrolled in the sampled training products since 1 August 2016, it had retained all information provided to each learner in accordance with the requirements of s31(3)(a) of the *Higher Education Support (VET) Guidelines 2015*.

The RTO's response states:

- '*... is retaining in a document archive the information that it can obtain from all Third Parties and its own information. Franklyn Scholar (Australia\_) Pty Ltd is designing and implementing an updated document retention, archiving and version control policy and procedure to meet all requirement guidelines*'.
- The Document Management Policy and Procedure includes process for ensuring that version control is applied appropriately to each document created. However, the process does not include retaining, for at least 5 years, a record of all information given to each prospective student under division 4, subsection (2) of the *Higher Education Support (VET) Guidelines 2015*.
- The policy and procedure states that '*no files are ever to be deleted from the file server by anyone other than a person appointed to do so by the CEO*'. This statement confirms that documents can be deleted and require the inclusion of the terms that certain documents must be retained.



## Audit report – VET Quality Framework

### ORGANISATION DETAILS

Organisation's legal name:	Franklyn Scholar (Australia) Pty Ltd
Trading name/s:	Franklyn Scholar
RTO number:	7134

### AUDIT TEAM

Lead auditor:	s 22(1)(a)(ii)
Assistant/s:	

### AUDIT DETAILS

Audit number:	1009847
Address of site/s visited:	600 Glenferrie Road, Hawthorn, Victoria 3122
Date/s of audit:	5 -7 July 2016
Organisation's contact at time of site visit:	s 47F(1) [redacted] Chief Executive Officer [redacted] 0428 428 009
Organisation's contact at conclusion of compliance audit:	Mrs Jodi Sanders Chief Executive Officer s 22(1)(a)(ii) s 22(1)(a)(ii)

### BACKGROUND

Franklyn Scholar (Australia) Pty Ltd (Franklyn Scholar) was initially registered on 13 September 1999. The RTO transferred registration to ASQA on 1 November 2011. After the conduct of a renewal audit on the 20 November 2014, the RTO had its renewal of registration granted until 12 September 2019.

The RTO was purchased by Acquire Learning & Careers Pty Ltd in September 2015.

Acquire Learning & Careers Pty Ltd own a number of companies, including:

- Franklyn Scholar (Australia) Pty Ltd (the RTO that is the subject of this audit)  
s 22(1)(a)(ii)



At the time of site visit, the organisation structure for Franklyn Scholar was as follows:

- General Manager – s 47F(1)
  - Project Coordinator – s 47F(1)
  - QLD State Manager – s 47F(1)
    - Administration Manager – s 47F(1)
    - Training Consultants X 8
    - Administration Assistance X 3
  - NSW/ACT State Manager s 47F(1)
    - Training Team Leader – s 47F(1)
    - Admin Coordinator – s 47F(1)
    - Training Consultants X 2 + 2 PT
    - Administration Assistance X 2.5
  - WA State Manager – s 47F(1)
    - Training Coordinator – s 47F(1)
    - Administration Coordinator – s 47F(1)
    - Training Consultants X 4
    - Administration Assistance X 2
  - VIC/TAS/SA State Manager – s 47F(1)
    - Administration Coordinator – s 47F(1)
    - Administration Assistance X 5
    - Training Consultants X 5
  - Operational Manager T& T, Hospitality and Events – s 47F(1)
  - Support RTO Operations, Compliance and Administration – s 47F(1)

s 47F(1), then-CEO of Franklyn Scholar and RTO 21378, stated in the opening meeting that trainers and assessors are all employed by Acquire Learning. These consisted of:

- 20 online trainers and assessors;
- 40-50 face to face workplace trainers and assessors; and
- 30 student support officers whom are Acquire Coaches.

Franklyn Scholar is an approved VET FEE-HELP provider. The audit that is the subject of this report sampled aspects of the learner experience for 15 current and formers learners across four training products identified as being among the RTO's VET FEE-HELP qualification offerings since 1 April 2015. In addition to assessing the organisation's ongoing compliance with the VET Quality Framework, the audit also reviewed the organisation's demonstrated practices as an approved VET provider for VET FEE-HELP. The audit included the organisation's compliance with the requirements of the VET FEE-HELP scheme where these overlap with or are otherwise relevant to the VET Quality Framework.

The RTO advised it had significant associations with the following organisations:

- AHA Australian Hotels Association
- Flight Centre
- Career-One
- Australian Federation of Travel Agents
- International Air Transport Association
- Queensland Institute of Technology

Several third party arrangements were also in place for the recruitment of students and for the provision of training and assessment.

The learner client group is a combination of experienced workers and job seekers that apply for jobs through CareerOne, which form the significant amount of students recruited for Diploma level qualifications and funded by VET FEE-HELP. Other client groups (non-VET FEE-HELP) consist of apprentices and traineeships in travel, business, leadership and management, fast food and hospitality.





The HEIMS data for 2015 showed that of the 3560 students reported as VET FEE-HELP students:

- 954 were in the Quintile 1 low Socioeconomic status
- 755 were in the Quintile 2 Socioeconomic status
- 330 of these students were Indigenous Australians.

Acquire Learning has a learning support hub located in Melbourne where local students are able to attend to receive support or use the facilities for study purposes. This hub is located 17-19 Hardware Lane and is shared between three RTOs owned by Acquire Learning, including RTO 21378.

Face-to-face delivery is conducted by facilities hired from Clifton's all over Australia. This type of delivery is usually only provided to students that are apprentices and traineeships. VET FEE-HELP assisted students are predominantly online students.

At the time of site visit, three staff members were employed to manage complaints and the RTO had appointed an independent complaint ombudsman. The RTO advised it had not had to refer any complaint cases to the ombudsman.

The RTO had made significant changes to its operations in accordance to the required legislative changes to VET FEE-HELP. The RTO introduced three census dates, implemented new systems to update the changes and, in so doing, positioned the business around the VET FEE-HELP changes. The RTO advised that, going forward, students who did not engage with the RTO by the first census date would now automatically be cancelled and these students would not incur a VET FEE-HELP debt.

Acquire Learning, as a third party of the RTO, provides a coach to monitor the progress of students, and to provide support and motivation to students through their studies. Acquire Learning also provides a Rising Star Program to send out motivational magazines on varying issues the student may experience with their study. The trainers are in touch with students on a regular basis. Other areas of support provided to students are through webinars and training hubs located around the country and usually based in capital cities. These support services were verified in the detailed notes of contact records of several students files sighted and through observing a webinar.

Fees are gathered through 60% funding and 40% fee for services.

The website of Franklyn Scholar (Australia) Pty Ltd trading as Franklyn Scholar includes a list of permanent premises at the following sites:

- Level 1, 600 Glenferrie Rd, Hawthorn Vic 3122
- Level 10, 15 Green Square Close, Fortitude valley, QLD 4006
- Level 11, 418a Elizabeth Street, Surry Hills, NSW 2010
- Level 1, 76 Hasler Rd, Osborne Park, WA 6017
- Level 5, City Central, Tower 2, 121 King William Street, Adelaide, SA 5000

In preparing the audit report, consideration has been given and reference made, where relevant, to:

- Information provided directly by Franklyn Scholar to ASQA
- Existing information and records held by ASQA concerning Franklyn Scholar
- Higher Education Information Management System (HEIMS) data
- Information and documents provided to ASQA's auditors reviewed prior to, during and following the site audit of Franklyn Scholar
- Department of Education and Training 'Findings of enrolment data verification interviews for students enrolled at Franklyn Scholar (Franklyn)'
- "Final audit report of Franklyn Scholar (Australia) Pty Ltd under Clause 26 of Schedule 1 to the *Higher Education Support Act 2003*", issued to the RTO by the Department of Education and Training on 13 October 2016.
- Other publicly available information – including, but not limited to, information published on the RTO's and third party websites.

Total number of current enrolments in RTO as at site audit date:

- 6528

Total number of VET FEE-HELP current enrolments in RTO as at site audit date:

- 1753

#### AUDIT SAMPLE

Code	Training products	Mode/s of delivery / assessment*	Current enrolments
BSB50207	Diploma of Business	Online & Mixed	0
BSB50215	Diploma of Business	Online & Mixed	702
BSB51107	Diploma of Management	Online & Mixed	0
BSB51915	Diploma of Leadership and Management	Online & Mixed	1037

\*Apprenticeship, Traineeship, Face to face, Distance, Online, Workplace, Mixed, Other (specify)

#### INTERVIEWEES

Name	Position	Training products
s 47F(1)	CEO	ALL
	Head of Programs Quality Assurance	ALL
	Group Head of Student Programs Products and Learning	ALL
	Group Head RTO Management and student support coordinator	ALL
	Head of Operations and Partnerships	ALL
	General Manager – FS	ALL
	Compliance	ALL
	Career Consultant	ALL Diplomas listed for VFH
	Job Hunter Liaison	ALL Diplomas listed for VFH
		ALL
	Manager student support and Customer Service	ALL
	Coach	ALL
	Induction and Registration	ALL



## FINDING AT TIME OF AUDIT

*Standards for Registered Training Organisations 2015*

**Audit finding: Not Compliant**

**Report completed by:** s 22(1)(a)(ii)

**Date:** 28/07/2016

If non-compliance has been identified, this audit report describes evidence of the non-compliance.

## ABOUT THIS REPORT

This report details findings of demonstrated RTO practice against the requirements of the VET Quality Framework, which includes the *Standards for Registered Training Organisations 2015*.

The evidence guidance included against each RTO practice is designed to guide the auditor and RTO on the requirements. The evidence guidance is not designed to limit the audit findings and there may be other factors an auditor takes into consideration when determining whether compliance has been demonstrated.

Where evidence of non-compliance is identified, the '*Findings*' section of the report will document the issues that were considered in the formulation of a finding of non-compliance.

## MARKETING / RECRUITMENT

1

For each marketing / recruitment source used by the RTO or its third party provider, information used any time since 1 April 2015 is accurate and factual to allow prospective learners to make informed decisions. Information accurately describes the loan requirements for VET FEE-HELP.

Evidence guidance	Y	N	N/A
Information about the services to be provided (training, assessment, and related educational and support services) is accurate and aligns to actual practice by the RTO / its third party	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Information about the services to be provided factually describes a service that would enable a learner to meet the requirements of the training product, considering: <ul style="list-style-type: none"> <li>amount of training to be provided</li> <li>the requirements of the training package / VET accredited course</li> <li>the existing skills, knowledge and experience required of a learner</li> <li>the mode of delivery</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Information accurately represents the RTO scope of registration	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
All marketing / recruitment sources include the RTO code	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Marketing / recruitment sources that advertise a training product eligible for VET FEE-HELP includes: <ul style="list-style-type: none"> <li>RTO legal name</li> <li>the code and title of the training product, as published on the National Register</li> <li>the maximum VET tuition fees payable for the training product</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing / recruitment sources that advertise VET FEE-HELP: <ul style="list-style-type: none"> <li>describes VET FEE-HELP assistance in the nature of a loan</li> <li>advises the loan needs to be repaid</li> <li>does not suggest the training product is free of fees or charges</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Where marketing or recruitment is undertaken by a third party, information makes clear the third party is recruiting the prospective learner on behalf of the RTO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Findings:

- Evidence reviewed at audit included:
  - Observation and listening to a Career Consultant with a potential student
  - Interview of a Career Consultant
  - Interview with a Job Hunter Liaison
  - Script provided for Career Consultant (Step 1 of Vet Fee Help enrolment process) X 2 versions
  - Script provided for Job Hunter Liaison (Step 2 and 3 of Vet Fee Help enrolment process)
  - Acquire Learning and RTO websites
  - Training and assessment strategies for:
    - BSB50215 Diploma of Business Cohort 1 Version 2.0 date 22 June 2016
    - BSB50215 Diploma of Business Cohort 2 Version 2.0 date 22 June 2016

- BSB50215 Diploma of Business Cohort 3 Version 2.0 date 22 June 2016
- BSB51915 Diploma of Leadership and Management v2.0 Cohort 1
- BSB51915 Diploma of Leadership and Management v2.0 Cohort 2
- BSB51915 Diploma of Leadership and Management v2.0 Cohort 3
- BSB51107 Diploma of Management /Third party agreement 5.01.2015
- APP Asia student profile questionnaire
- 2016 Student journey Days 1 – 3
- First email
- Online enrolment form
- Customer Commitment checklist
- First coach student induction (webinar)
- Day 2 approved assessment process
- Acquire Learning CSPA preparation tool

With regard to Clause 4.1:

The information provided by Acquire Learning on behalf of the RTO was not accurate and factual as it misrepresented that enrolling in a training product would enable the learner to have employment found on their behalf.

- Acquire Learning was the largest recruitment source for Franklyn Scholar, located at the same premises at the RTO.
- Acquire Learning employed approximately 100 Career Consultants to contact consumers who provided contact details through the CareerOne website. Persons applying for a job on CareerOne follow the below process:
  - Select the 'Apply now' option for a particular employment opportunity.
  - The person is immediately taken to a new screen where they are encouraged to be registered with CareerOne. While this screen does not state that registration is mandatory, there is no indication of any other options the user could follow to be able to apply for the position.
  - The person is required to agree to the terms and conditions which state:
 

*By signing up to CareerOne I agree to being contacted by or on behalf of CareerOne Education to discuss potentially enrolling in education and training courses with third party education organisations. You may opt out of being contacted at any time by following the steps in our privacy policy.*
  - Information on the privacy policy includes the following statements:
 

*If you have consented for us to do so, we may also share your information with third parties who may contact you about their products or services. This includes sharing your information with Acquire Learning Pty Ltd for the purposes of the provision of services by our joint venture, CareerOne Education. Acquire Learning Pty Ltd's privacy policy is available at <http://www.acquirelearning.com.au/privacy-policy>.*
- The Career Consultants were provided a script to follow as 'Stage 1' of the enrolment process. The information provided to the potential students at the time of the audit (5 July 2016) included, "Because we believe that practical experience is important to support your vocational training you will also be allocated your very own personal Job Hunter who will put you forward to employers with jobs relevant to your qualification. This approach is used for both employers with current job openings or that could have openings in the future". At the end of the conversation the Career Consultants congratulate the potential student and explain that they will be referred to the Job

Hunter Liaison who will collate their job "Recruitment Profile", the kind of work they want, the industry they are interested in, and capture their general employment history.

- Although the script informs them of VET FEE-HELP as an option for paying for the course no information was provided at this Stage relating to fees associated with a Diploma level course.

The information provided by the Career Consultants in 'Stage 1' was not accurate and factual because the conversation led the potential student to believe that the Job Hunter allocated to them would be searching for available jobs on their behalf if they enrol in a Diploma qualification. An interview with the Job Hunter confirmed that the Job Hunter position was to complete Stages 2 and 3 of the VET FEE-HELP enrolment process, and not to search for employment opportunities or to provide details of the student to employers with jobs relevant to the qualification. Stages 2 and 3 of the enrolment process included providing information about fees and to guide the student through the application process for VET FEE-HELP.

The RTO provided a revised script for the Career Consultant (that is 'Stage 1' of the enrolment) on day two of the audit (6 July 2016) however the script included the same information. A third script was provided later that day however this was not reviewed by the auditor. The RTO was informed both prior to and during the audit that demonstrated practices by the RTO and its third parties, past and current, were the focus of the audit process.

With regard to Clause 5.1:

There was no evidence provided that (since 1 April 2015) the RTO, prior to enrolment or commencement of training; whichever came first:

- reviewed the existing skills and competencies of a learner
- provided advice to the then prospective learner about a training product that was appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies.

The role of the Career Consultants is to promote the online training and assessment option for the course, however the skills and knowledge of the individual were not assessed to confirm the student is able to participate in an online course.

With regard to Clause 2.4:

The RTO provided further evidence throughout the audit to amend its current and past marketing practices as feedback in areas of concern was being provided by the auditors. In so doing this the RTO demonstrated that it:

- did not have sufficient strategies and resources to systematically monitor the services provided by Acquire Learning, as the RTO was reliant on the feedback obtained at the audit; and
- had not ensured that it had effectively monitored the services delivered to comply with these Standards at all times.

*The RTO is not compliant with: Clause 2.4, 4.1, and 5.1.*

*The RTO is required to:*

Clause 2.4

- Provide evidence that it has sufficient strategies and resources to systematically monitor any services delivered on its behalf, including by Acquire Learning.

- Provide evidence that it has used these strategies and resources to ensure the services delivered by all third party providers, including by Acquire Learning, comply with these Standards at all times.

#### Clause 4.1

- Provide evidence that for **all learners** who have been enrolled in the sampled training products since **1 August 2016**, information about RTO services, whether disseminated directly by the RTO or by a third party, is both accurate and factual to allow prospective learners to make informed decisions.
- Where the RTO identifies a learner who was not provided with information that was accurate and factual, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

#### Clause 5.1

- Provide evidence that for **all learners** who have been enrolled in the sampled training products since **1 August 2016**, prior to enrolment or commencement of training, whichever came first, the RTO:
  - reviewed the existing skills and competency of each learner enrolled with the RTO; and
  - provided advice on the learner's individual needs in relation to the training product they are enrolled.
- Where the RTO identifies a learner who was not provided with advice about a training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

## ENROLMENT

2

At all times since 1 April 2015, prior to enrolling or commencing a course (whichever occurs first), the RTO ensures learners have the existing skills, competencies and experience required in order to be trained and assessed; to meet the requirements of the training product with regard to the RTO's training and assessment strategies and actual practice.

Evidence guidance	Y	N	N/A
The RTO / third party ensures learners have the existing skills, knowledge and experience required in order to be trained and assessed to meet the requirements of the training product in which they would be enrolled, with regard to:			
• training and assessment strategy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
• mode of delivery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
• amount of training to be provided	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
• related educational and support services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
• the actual practice demonstrated by the RTO at that point in time	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Student surveys / interviews indicate each learner was appropriately assessed as having the existing skills, competencies and experience required in or to be trained and assessed in the manner in which the RTO / third party delivers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### Findings:

- Evidence reviewed at audit included:
  - Observation and listening to a Career Consultant with a potential student
  - Interview of a Career Consultant
  - Interview with a Job Hunter Liaison
  - Script provided for Career Consultant (Step 1 of Vet Fee Help enrolment process)
  - Script provided for Job Hunter Liaison (Step 2 and 3 of Vet Fee Help enrolment process)
  - Acquire and RTO's websites
  - Training and assessment strategies for:
    - BSB50215 Diploma of Business Cohort 1 Version 2.0 date 22 June 2016
    - BSB50215 Diploma of Business Cohort 2 Version 2.0 date 22 June 2016
    - BSB50215 Diploma of Business Cohort 3 Version 2.0 date 22 June 2016
    - BSB51915 Diploma of Leadership and Management v2.0 Cohort 1
    - BSB51915 Diploma of Leadership and Management v2.0 Cohort 2
    - BSB51915 Diploma of Leadership and Management v2.0 Cohort 3
    - BSB51107 Diploma of Management /Third party agreement 5.01.2015
  - 2016 Student Journey Days 1 – 3
  - First email
  - Online enrolment form
  - Customer Commitment checklist
  - First coach student induction (webinar)
  - Day 2 approved assessment process
  - Acquire learning CSPA preparation tool



With regard to Clause 1.2:

There was no evidence provided to confirm the RTO determined an amount of training to be provided to each learner based on the learner's existing skills, knowledge and experience. For the qualifications eligible to be studied through VET FEE-HELP, learners were enrolled without assessment of their ability to participate in the training product in the manner that the RTO delivers.

With regard to Clause 5.1:

There was no evidence provided that (since 1 April 2015) prior to enrolment or commencement of training; whichever came first, the RTO:

- reviewed the existing skills and competencies of a learner
- provided advice to the then prospective learner about a training product that was appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies.

*Refer to Section 1 Marketing for further information.*

The RTO did not demonstrate that it enrolled students based on an assessment conducted to confirm each individual student had the:

- existing skills, competencies and experience to participate in an AQF level five accredited qualification that the student was being enrolled in to; or
- ability to participate in an online learning mode of delivery.

The RTO's evidence did not identify that it determined if the prospective student was able to meet the requirements to enrol in a level 5 AQF accredited qualification. The RTO's evidence was focused on the entry and skills and knowledge requirements detailed by the *Higher Education Support (VET) Guideline 2015*, to satisfy enrolling as a VET FEE-HELP student. This process does not confirm the individual student's existing skills, competencies and experience in relation to the training product requirements, mode of delivery offered by the RTO, the RTO's delivery strategies, RPL and/or Credit Transfer.

The results of the Department of Education and Training Student report of students interviewed identified:

- a) *'Of the 293 students who participated in the interviews, 21 (7%) reported they provided a copy of their school year 12 certificate to Franklyn Scholar when they enrolled.*
- b) *279 (93%) reported they had not or could not recall providing a copy of their school certificate to Franklyn Scholar. Of these:*
  - *16 (6%) reported their highest level of schooling was less than year 10*
  - *67 (25%) reported their highest level of schooling was year 10*
  - *34 (13%) reported their highest level of schooling was year 11*
  - *110 (40%) reported their highest level of schooling was year 12*
  - *45 (17%) reported other responses such as completing other VET and university qualifications.*
  - *107 (37) reported that Franklyn Scholar had made them sit a written test.*
  - *clearly did not meet entry requirements in that they had not completed Year 12 and had not sat a written entry test' as per the Higher Education Support (VET) Guideline 2015.*

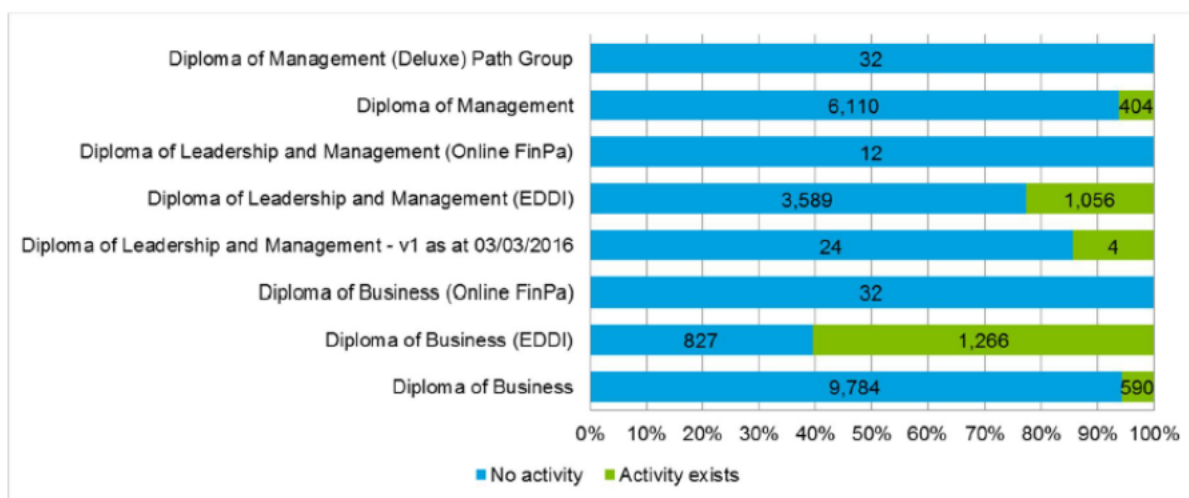
Final audit report – Department of Education and Training

The findings made by the Department of Education and Training in its audit report about the RTO support that the RTO did not take into account the individual's existing skills and competencies prior to providing advice about a training product that was appropriate to meeting the learner's needs. The analysis shows

that 86% (2,398 students) of the RTO's VET FEE-HELP enrolments in 2015 and 2016 had no online activity for the period of study. It is noted the RTO advised that it delivers courses by online and face-to-face modes; however, of the students that had no online activity, only 2% successfully completed the course of study.

- Of the qualifications offered by the RTO in 2015 and 2016 the below graph displays the online activity in units of competency of students:

Figure 13 Activity of units of competency by course – all years



- The table supports that students enrolled into courses offered by the RTO; particularly the Diploma of Management, Diploma of Leadership and Management and Diploma of Business (excluding EDDI students) qualifications; were not enrolled into a training product that was appropriate to meeting the learner's needs. As the majority of students had no activity, it is evident these students were not suitable for learning environment offered by the RTO. Had the RTO, or its third parties, reviewed the existing skills and competencies of a learner prior to identifying a training product that would adequately meet the learner's needs and to provide an amount of training suitable to the learner, the activity rate, and completion rate, would be significantly higher.

*The RTO is not compliant with: Clause 1.2 and 5.1*

*The RTO is required to:*

#### Clause 1.2

- Provide evidence that, for **all learners** who have been enrolled in the sampled training products since **1 August 2016**, the amount of training to be provided to each learner was determined with regard to:
  - the individual's existing skills, knowledge and experience; and
  - the mode of delivery.
- Where the RTO identifies a learner whom it did not determine a suitable amount of training to be provided, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

Clause 5.1

- Provide evidence that, for **all learners** who have been enrolled in the sample training products since **1 August 2016**, prior to enrolment or commencement of training; whichever came first, the RTO:
  - reviewed the existing skills and competencies of each learner; and
  - provided advice on the learner's individual needs in relation to the training product in which they are enrolled.
- Provide evidence that, for **all learners** who have been enrolled in the sample training products since **1 August 2016**, the student had the existing skills and competencies required to participate in a level 5 AQF accredited qualification that the student was enrolled in to.
- Where the RTO identifies a learner who:
  - was not provided with advice about a training product appropriate to meeting the learner's needs, taking into account the individual's existing skills and competencies; or
  - did not have the existing skills and competencies required to participate in a level 5 AQF accredited qualification that the student was enrolled in to

provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

**3**

**At all times since 1 April 2015, prior to enrolling or commencing a course (whichever occurs first), learners are accurately informed about the training product.**

Evidence guidance	Y	N	N/A
The RTO / third party has retained a record of all information provided to each learner and has made this information available at audit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Learners are given information that accurately describes the course actually delivered by the RTO / third party, including:			
• accurate name of the training product	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
• currency of the training product	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
• the training, assessment, and related educational and support services provided	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
• estimated duration to complete the course	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
• mode of delivery and expected location for delivery (if mode requires a location)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
• work placement arrangements (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Student surveys / interviews indicate learners are provided current and accurate information about the training product	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*Findings:*

- Evidence reviewed at audit included:
  - Observation and listening to a Career Consultant with a potential student

- Interview of a Career Consultant
- Interview with a Job Hunter Liaison officer
- Script provided for Career Consultant (Step 1 of Vet Fee Help enrolment process)
- Script provided for Job Hunter Liaison (Step 2 and 3 of Vet Fee Help enrolment process)
- Acquire and RTO's websites

With regard to Clause 5.2:

The RTO referred students' to their website to inform them of the third parties that would be providing a service of their behalf. The website did not list what these services are. There was no evidence to support that learners were informed the trainers and assessors were employed by a third party provider, Acquire Learning, and would be providing the training and assessment on the RTO's behalf.

Further, the enrolment process provided a learner with sufficient information in relation to VET FEE-HELP however; it provided inadequate information on the learner's rights to be able to make an informed decision about undertaking training with the RTO. For example, reference to the RTO's policies and procedures was included in the revised version (6 July 2016) of the Career Consultants script to guide potential learners to the RTO's policies and procedures. The previous version did not contain this information and no evidence was provided to verify the students were provided or referred to an electronic copy of this information prior to enrolment or on commencement of training and assessment. Therefore it could not be confirmed that the potential learners were informed of their rights, including details of the RTO's complaints and appeals process and their rights to be issued with a VET Statement of Attainment for any units completed and assessed as competent should the RTO or third party cease to operate.

With regard to Clause 8.5:

Evidence was not provided to demonstrate that the RTO retained a record of all information that was provided to each individual learner. The information provided at audit included a copy of what the RTO stated was provided to each learner. The student handbook, for example, does not have a version control on the document and therefore it cannot be confirmed if the information contained in the current document was the same as provided to previous students. The RTO has not complied with the *Higher Education Support (VET) Guidelines 2015, Division 4 Providing information to prospective students etc.*

*Section 31 (3)* which requires that:

- *A VET provider must:*
  - *(a) retain, for at least 5 years, a record of all information given to each prospective student under subsection (2);*

With regard to Clause 2.4:

Because of the above the RTO did not demonstrate that it had sufficient strategies in place to systematically monitor the services provided by third parties, and specifically Acquire Learning Pty Ltd.

*The RTO is not compliant with: Clause 2.4, 5.2 and 8.5*

*The RTO is required to:*

Clause 2.4

- Provide evidence that it has sufficient strategies and resources to systematically monitor any services delivered on its behalf, including by Acquire Learning.

- Provide evidence that it has used these strategies and resources to ensure the services delivered by all third party providers, including by Acquire Learning, comply with these Standards at all times.

#### Clause 5.2

- Provide evidence that, for **all learners** who have been enrolled in the sample training products since 1 August 2016, prior to enrolling or the commencement of study, whichever came first, the RTO has provided current and accurate information that enabled the learners to make informed decisions about undertaking training and assessment with the RTO.
- Where the RTO identifies a learner who was not provided with current and accurate information that enables the learner to make informed decisions about undertaking training with the RTO, provide evidence that it has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

#### Clause 8.5

- Provide evidenced that, for **all learners** who have been enrolled in the sample training products since **1 August 2016**, Franklyn Scholar retained all information that is provided to each individual learner in accordance with the requirements of *section 31 (3) (a) of the Higher Education Support (VET) Guidelines 2015*.

**4**

**At all times since 1 April 2015, prior to enrolling or commencing in the course (whichever occurs first) learners are accurately informed about fees, charges, payment terms and repayment requirements.**

Evidence guidance	Y	N	N/A
Learners are given, or are directed to, information that accurately informs them of all fee information	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Learners are informed:			
<ul style="list-style-type: none"> <li>• the student has options to pay for the course upfront (while they are studying and with consideration to the requirements of Clause 7.3), or as a Government loan through the provision of VET FEE-HELP assistance</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> <li>• of the total cost of tuition fees, including any VET FEE-HELP loan fees and fees not covered by VET FEE-HELP</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> <li>• of information on the VET FEE-HELP scheme including that: <ul style="list-style-type: none"> <li>○ VET FEE-HELP assistance is a loan from the Commonwealth</li> <li>○ the loan will remain as a personal debt obligation until it is repaid to the Commonwealth</li> <li>○ the loan may reduce the person's take-home (after-tax) wage or salary until the debt is repaid, and may affect the borrowing capacity of the person until the debt is repaid to the Commonwealth</li> <li>○ giving a request for Commonwealth Assistance will apply to a loan for the entire VET course of study, charged on a unit by unit basis, unless the student pays some of the tuition fees</li> </ul> </li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Evidence guidance	Y	N	N/A
<ul style="list-style-type: none"> <li>○ census date(s) will apply to each of the VET units of study in which the person enrolls, with the student taking out a loan for any tuition fees that remain unpaid at the end of each census date</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> <li>○ a student may cancel their enrolment by withdrawing from each VET unit of study on or before the census date; and in accordance with the provider's withdrawal policy</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> <li>○ withdrawal will result in the student not incurring a VET FEE-HELP debt and/or receiving a refund for any up-front tuition fee payments made on or before the census date t</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> <li>○ a student may wish to seek independent financial advice prior to applying for a VET FEE-HELP loan</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Student surveys / interviews indicate learners are informed of all relevant fee information including the total cost of the course, all payment terms and conditions, any deposits required, and of any refunds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

*Findings:*

- The RTO has met all requirements.

The RTO's evidence demonstrated that, of the sampled learners, learners are given, or are directed to, information that accurately informs them of all fee information.

## SUPPORT AND PROGRESSION

5

At all times since 1 April 2015, the RTO determines the education and support services needed to enable individual learners to meet the requirements of the training product.

Evidence guidance	Y	N	N/A
Learners are assessed to identify any educational and support services necessary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
During delivery of the training product, where it is indicated a learner is not meeting the requirements of the training product, the RTO assessed the learner to identify any educational and support services necessary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Student surveys / interviews indicate learners are assessed to identify any educational and support services necessary	<input type="checkbox"/>	<input type="checkbox"/>	

Findings:

- The RTO has met all requirements.

The RTO's evidence demonstrated that the support coaches, trainers and assessors maintain regular contact with the sampled learners, and provide support for both personal welfare and academic needs of the learner.

6

At all times since 1 April 2015, the RTO provides access to education and support services needed to enable learners to meet the requirements of the training product. The evidence demonstrates that learners are progressing in a suitable manner to enable him/her to complete the training product in a duration that is consistent with the training and assessment strategy.

Evidence guidance	Y	N	N/A
Learners are progressing in a manner that would enable each person to complete the training product, with consideration to the expected (enrolled) duration listed in the training and assessment strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Learners have sufficient contact with the RTO to enable the learner to meet the requirements of the training product: <ul style="list-style-type: none"> <li>Sufficient educational support has been provided by a trainer (as defined in Clauses 1.13 – 1.20 of the Standards)</li> <li>Sufficient administrative support has been provided by the RTO</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Learners are provided access to any educational and support services necessary	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Student surveys / interviews indicate learners have received regular contact with the RTO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
When applicable, student surveys / interviews indicate learners have been given access to any educational and support services necessary	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



*Findings:*

- The RTO has met all requirements.

The RTO's evidence demonstrated that:

- the sampled learners are progressing in a manner that would enable each person to complete the training product, with consideration to the expected (enrolled) duration listed in the training and assessment strategy; and
  - these sampled learners have sufficient contact with the RTO to enable the learner to meet the requirements of the training product.
-





## TRAINING AND ASSESSMENT

7

The RTO has, and has had at all times since 1 April 2015, sufficient resources to deliver to the number of students enrolled at any time.

Evidence guidance	Y	N	N/A
Proportionate to the number of students enrolled at any time, the mode of delivery, location of delivery, and the strategies for training and assessment, the RTO has sufficient: <ul style="list-style-type: none"> <li>trainers and assessors, as defined in the Standards, to deliver training and conduct assessment</li> <li>educational and support services to meet the needs of the learner cohort/s undertaking the training and assessment</li> <li>learning resources, which are accessible to the learner regardless of the location or mode of delivery</li> <li>facilities – physical or virtual – and equipment to accommodate and support the number of learners undertaking the training and assessment</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Student surveys / interviews indicate the learner has had access to sufficient resources at all times during enrolment.	<input type="checkbox"/>	<input type="checkbox"/>	

Findings:

- The RTO has met all requirements.

Proportionate to the number of students enrolled at any time, the mode of delivery, location of delivery, and the strategies for training and assessment, the RTO has sufficient:

- Trainers and assessors
- Educational support services
- Learning resources
- Facilities.

8

At all times since 1 April 2015, trainers and assessors used by the RTO or its third party provider to deliver the training and provide assessment meet all requirements of the *Standards for Registered Training Organisations (RTOs) 2015*. This includes any individual working under the supervision of a trainer.

Evidence guidance	Y	N	N/A
All training, provided during enrolment, has been provided only by persons who hold the competencies as required in the Standards.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Where training was provided by an individual who was not a trainer and assessor, the	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Evidence guidance	Y	N	N/A
individual worked under the supervision of a trainer did not determine assessment outcomes, and met the requirements of the Standards			
All assessment has been provided by persons who hold the competencies as required in the Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

**Findings:**

- The RTO has met all requirements.

The RTO's evidence demonstrated that all training, provided during enrolment, has been provided only by persons who hold the competencies as required in the Standards.

**9**

At all times since 1 April 2015, training practices used by the RTO or its third party provider, including the amount of training provided to a learner, meet training package requirements and enable the learner to meet those requirements. The amount of training provided is appropriate to the existing skills, knowledge and experience of the learner, and the mode of delivery.

Evidence guidance	Y	N	N/A
The amount of training actually provided to a learner is appropriate to:			
<ul style="list-style-type: none"> <li>enable the learner to meet all requirements of the training package and each unit of competency in which they are enrolled</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>the existing skills, knowledge and experience of the learner</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>the mode of delivery</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Findings:**

- Evidence reviewed at audit included:
  - Training and assessment strategies for:
    - BSB50207 Diploma of Business
    - BSB50215 Diploma of Business (Ver. 3.0 December 2015 IBSA Tools)
    - BSB50215 Diploma of Business (Cohorts: 1,2, & 3 Ver. 2.0 22 June 2016 Catapult/Cengage)
  - Assessment tools for:
    - BSBPMG522A Undertake project work
    - BSBWOR501 Manage personal work priorities and professional development

**With regard to Clause 1.1 and Clause 1.2:**

The RTO's training and assessment strategies and practices, including the amount of training they provide, was not consistent with the requirements of the relevant training package, and did not demonstrate how each learner could meet the requirements for each unit of competency or module in which they are enrolled because:

- The training and assessment strategies detailed above did not identify how the RTO would deliver the course to different learner cohorts with varied experience. That is, the strategies for *BSB50215 Diploma of Business Cohort 1* and *BSB50215 Diploma of Business Cohort 2* contained the same delivery and assessment methodology of 27 hours over 10 months for both

cohort target audiences, that have identified varied skills, experience and knowledge levels.

With regards to Clause 1.4:

Due to the non-compliances identified with Clause 1.8 (the RTO's assessment system) of this report, the RTO did not demonstrate it was meeting all the requirements specified in the relevant training package.

With regard to Clause 2.2:

Due to the non-compliances identified relating to assessment, Franklyn Scholar did not demonstrate that it:

- systematically monitored the RTO's and/or third party assessment practices to ensure on-going compliance with Standard 1.
- systematically evaluated and used the outcomes of the evaluation to continually improve their or the third parties assessment strategies and practices.

*The RTO is not compliant with: Standard 1: Clause 1.1, 1.2, 1.4, Standard 2: Clause 2.2*

*The RTO is required to:*

Clause 1.1 and 1.2

- Provide evidence that the training and assessment strategies, including the amount of training, of **all qualifications** offered by the RTO, and for **all learner cohorts targeted**, are consistent with the requirements of training packages and enable each learner to meet the requirements for each unit of competency in which they are enrolled.

Clause 1.4

- Provide evidence that addresses the requirements of Clause 1.8 (the RTO's assessment system; Section 10 of this report). By providing this evidence the RTO will subsequently demonstrate compliance with this requirement.

Clause 2.2

- Demonstrate that the RTO has:
  - systematically monitored its, and/or its third party, assessment practices to ensure on-going compliance with Standard 1; and
  - systematically evaluated and used the outcomes of the evaluation to continually improve their and/or the third party's assessment strategies and practices.

**10**

**The RTO, or its third party provider, implements an assessment system that ensures that assessment (including recognition of prior learning):**

- a) complies with the assessment requirements of the relevant training package or VET accredited course; and**
- b) is conducted in accordance with the Principles of Assessment contained in Table 1.8-1 and the Rules of Evidence contained in Table 1.8-2.**

**BSB51915 Diploma of Leadership and Management**Unit 1 *BSBLDR501 Develop and use emotional intelligence*Unit 2 *BSBHRM506 Manage recruitment, selection and induction processes.*

Evidence guidance	Y	N	N/A
Assessment complies with the assessment requirements of the relevant training package or VET accredited course.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Assessment is conducted in accordance with the Principles of Assessment contained in Table 1.8-1 and the Rules of evidence contained in Table 1.8-2	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Evidence provided and reviewed at audit and after audit included:*

Unit 1 *BSBLDR501 Develop and use emotional intelligence*

- Assessor Guide Aspire Version 1.3
- Observation and Demonstration of skills V1.0 24.06.2016
- Supervisor/Third Party Report Version 1.1 24/06/2016
- Assessment Mapping – Aspire
- Completed assessments items for s 22(1)(a)(ii) – note, these assessments had not yet been marked by the RTO. There were no completed and marked assessments available to view at audit.

Unit 2 *BSBHRM506 Manage recruitment, selection and induction processes*

- Assessment tools down loaded from Moodle Rooms (28 July 2016) including
- Summative assessments X 4
- Observation and Demonstration of skills Version 2.0 24/06/2016
- Supervisor/ Third Party report version 1.1 26/06/2016
- Corporate and Human Resource Policy & Procedure Manual
- Position Descriptions Template 1/06/2016
- Performance Review Template 1/06/2016
- Mapping and Marking Guide Version 2.0 1/05/2016

*Findings:*

With regard to Clause 1.8:

*BSBLDR501 Develop and use emotional intelligence:*

The assessment system did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessment were not valid as it did not address all of the unit of competency requirements for example, but not limited to:
  - Performance Criterion 3.1 – ‘Provide Opportunities for others to express their thoughts and feelings’.
  - Performance Criterion 3.2 ‘Assist others to understand the effect of their behaviour and emotions on others in the workplace.’
  - Foundation skills ‘Uses listening and questioning skills to elicit the views of others and to clarify or confirm understanding.’
  - Foundation skills ‘Leads processes to develop, implement and monitor plans and processes to ensure team engagement and effectiveness.’

- Performance Evidence *'Model behaviours that demonstrate management of emotions.'*
- Students conducting this course online were assessed on their knowledge of the practical requirements. The online 'Moodle Rooms' (accessed by the auditor on 28 July 2016) provided the student with two options to be assessed for the practical component; one in the workplace and the other in a simulated environment and based on a scenario.
  - The third party report to be used for workplace assessment, as noted below, did not capture sufficient evidence for the assessor to determine a consistent judgement of competency.
  - The simulated assessment did not include a scenario to support the simulated observation assessment.
- The Observation and Demonstration of Skills tool was not reliable as it included assessor guidance that did not provide sufficient information to ensure that the students were assessed consistently and against the unit of competency requirements.
- The Supervisor/Third Party Report was a direct copy of the performance evidence of the unit of competency. It broadly reflected what the student must demonstrate however it did not provide sufficient detail to ensure that the entire unit of competency requirements has been addressed.

On 7 July 2016 an email was received from Acquire Learning that included the 'correct version' of BSBLDR501 mapping and marking guide along with the observation checklist. Page 11 of 13 included questions based on the scenario. These tools assessed the students' knowledge of the practical requirements. Pages 12 and 13 included Verbal Assessment Responses – marking guide. It was not clear how the responses of the students would be captured if the questions were asked verbally. The assessment instruments did not assess the student in applying their knowledge and skills in accordance with the requirements of this unit; therefore the assessments were not sufficient.

The theory assessment for this unit did not address all of the Knowledge evidence requirements for this unit of competency.

The assessments were not fair as insufficient information was provided to both the students and the assessor on the assessment process and competency requirements. For example; the scenario, marking criteria and evidence to be collected to support competency.

Relevant to this unit, evidence was not provided to confirm that s 22(1)(a)(ii) had been assessed as demonstrating practical skills as required by this unit of competency. The unit of competency has not been marked for both these students at the time of audit.

#### *BSBHRM506 Manage recruitment, selection, and induction processes:*

The assessment system did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessment was not valid or fair as it did not address all of the unit of competency requirements for example, but not limited to:
  - Performance Criterion 1.5 *'Trial forms and documents that support policies and procedures and make necessary adjustments'*.
  - Performance Criterion 2.4 *'Ensure that advertising of vacant positions compiles with organisational policies and procedures.'*

- Foundation skills, 'Draws on a repertoire of open questions and active listening when seeking feedback from others'.
- Foundation skills, 'Analysis numerical information to determine employees' remuneration packages'.
- The assessment task mapped to:
  - Assessment 1 Part 4, that consisted of a question to summarise the students' knowledge of legislation that related to recruitment, selection and induction processes.
  - Assessment 2 Part 1, that consisted of the student explaining their knowledge on how they would work with management to determine Human Resource needs and conduct recruitment, selection and induction processes.
  - Assessment 3 Part A, for this task the student could use a workplace example however the evidence required was listed as a may include and not a must include for example, 'may include consultation with relevant staff to determine HR requirements'.
  - Assessment 3 Part B, research selection processes could use a workplace example or the case study however both did not require the review of advertising of vacant positions in accordance with organisational policies and procedures.
  - Assessment 4 Part 1, allowed the student to be assessed in the workplace or in a simulated workplace scenario. The workplace supervisor / third party report did include trialling the forms and documents. It is not clear how the online students that are not employed would demonstrate this requirement.
  - Assessment 4 Part 3, there was no Summative Assessment 4 part 3.
  - Verbal questions 2, 3 & 4, related to knowledge and not practical skills.
- The assessment tasks did not sufficiently inform the assessor and the student of all the practical skills to be demonstrated by the student.
- The assessment tasks did not sufficiently capture all of the practical and foundation skills to be demonstrated by the student.
- It is also not clear how Assessment 3 Part B case study addressed the unit of competency practical requirements if the learner was not in the workplace.

The training and assessment strategy for *BSB51915 Diploma of Leadership and Management* included the Target Student Profile as being individuals that are **currently not employed**. Further to this there was no requirement in the strategy for the potential students to have some skills or have had exposure to leadership styles and skills. The assessment tools reference strongly on having a current or previous workplace, which is inconsistent with the strategy.

### **BSB51107 Diploma Management** (superseded by BSB51915)

Unit 1 BSBMGT502B Manage people performance

Unit 2 BSBHRM506A Manage recruitment, selection and induction processes.

Evidence guidance	Y	N	N/A
Assessment complies with the assessment requirements of the relevant training package or VET accredited course.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Assessment is conducted in accordance with the Principles of Assessment contained in Table 1.8-1 and the Rules of evidence contained in Table 1.8-2

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*Evidence provided and reviewed at audit and after audit included:*

Unit 1 BSBMGT502B Manage people performance

- Assessor guide version 1.3
- Assessment mapping
- Completed assessments for s 22(1)(a)(ii)

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*Findings:*

With regard to Clause 1.8:

*BSBMGT502B Manage people performance:*

The assessments conducted did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessment tasks were in relation to questions and the development of documents and processes that incorporated research and risk assessments. The research exercises were in depth and assessed knowledge requirements. However, none of the three students assessments sampled included any practical assessment evidence for example, but not limited to:
  - Performance criterion 2.3 'Conduct performance management in accordance with organisational protocols and time lines'.
  - Performance criterion 2.4 'Monitor and evaluate performance on a continuous basis'.
  - Required skills – '...to provide effective feedback and to coach staff who need development'.
  - Evidence Guide – 'Techniques in providing feedback and coaching for improvement in performance'.
- The assessments were not valid, sufficient, or reliable as there was no evidence provided to confirm the students had demonstrated these skill requirements and there was no assessment tool provided to conduct a practical demonstration.

*BSBHRM506A Manage recruitment, selection and induction processes:*

- The assessments conducted for the superseded unit *BSBHRM506A Manage recruitment, selection and induction processes* included Trainer/Assessor Assessments V1.0 April 2013 and Participants Assessment V1.0 April 2013.
- These resources did not address the unit of competency requirements for similar reasons to the ones provided for BSBHRM506 Manage recruitment, selection, and induction processes (refer to BSB51915 Diploma of Leadership and Management) unit of competency.

**BSB50207 Diploma of Business** (superseded by BSB50215)

**BSB50215 Diploma of Business**

Unit 1 BSBPMG522A Undertake project work / BSBPMG522 Undertake project work

Unit 2 BSBWOR501 Manage personal work priorities and professional development

Evidence guidance	Y	N	N/A
Assessment complies with the assessment requirements of the relevant training package or VET accredited course.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Assessment is conducted in accordance with the Principles of Assessment contained in Table 1.8-1 and the Rules of evidence contained in Table 1.8-2	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Evidence provided and reviewed at audit and after audit included:*

Unit 1 *BSBPMG522A Undertake project work / BSBPMG522 Undertake project work*

- Written questions
- Assignment/Project
- Observation/Third party evidence
- Completed assessment items for s 22(1)(a)(ii)

Unit 2 *BSBWOR501 Manage personal work priorities and professional development*

- Ver. 3.0 December 2015 IBSA Tools
  - Questions and answers
  - Assignment/Project
- Cohorts: 1,2, & 3 Ver. 2.0 22 June 2016 Catapult/Cengage
  - T&AS Assessment evidence collection matrix identifies that following assessment tools:
  - Written questions
  - Project
  - Observation checklist
  - Supervisor validation
  - Verbal Assessment
  - Case studies
- Completed assessment items for s 22(1)(a)(ii)

*Findings*

With regard to Clause 1.8:

*BSBPMG522A Undertake project work / BSBPMG522 Undertake project work*

The RTO's evidence for the unit demonstrated that the candidates met the knowledge and performance requirements of the training product.

*BSBWOR501 Manage personal work priorities and professional development:*

The assessment system did not address all training package requirements or confirm the assessments were conducted in accordance with the principles of assessment and the rules of evidence. This is because:

- The assessments were not valid as they did not address all of the unit of competency requirements including all Knowledge Evidence requirements.



- The tools did not provide adequate guidance for assessors to ensure that sufficient, valid and reliable evidence was gathered and used to confirm a candidate's competence against all of the knowledge, skills and performance requirements.
- The training and assessment strategies 'assessment evidence collection matrix' identified assessment evidence collection tools for the unit that were inconsistent with the evidence presented at audit.
- The assessment tool did not collect sufficient evidence from the candidate to be able to demonstrate and satisfy the training products requirements and the Rules of Evidence for validity.

The completed assessments for s 22(1)(a)(ii)

demonstrate that insufficient evidence was gathered by the assessors to confirm assessment decisions were made consistently against all requirements of the unit of competency.

### **BSB51915 Diploma of Leadership and Management**

#### **BSB51107 Diploma Management**

#### **BSB50207 Diploma of Business**

#### **BSB50215 Diploma of Business**

#### With regard to Clause 2.2

The non-compliances described above in respect to Clause 1.8 did not support the RTO had systematically monitored its assessment strategies and practices in respect of the units of competency sampled to ensure ongoing compliance with *Standard 1 of the Standards for Registered Training Organisations (RTO's) 2015*.

#### With regard to Clause 2.4

The non-compliances described above in respect to Clause 1.8 did not support the RTO had sufficient strategies to systematically monitor any services delivered by Acquire Pty Ltd and has used these to ensure the services delivered comply with the *Standards for Registered Training Organisations (RTO's) 2015*.

*The RTO is not compliant with: Clause 1.8, 2.2 & 2.4*

*The RTO is required to:*

### **BSB51915 Diploma of Leadership and Management**

- *BSBLDR501 Develop and use emotional intelligence*
- *BSBHRM506 Manage, recruitment, selection and induction processes*

### **BSB51107 Diploma of Management**

- *BSBMGT502B Manage people performance*
- *BSBHRM506A Manage recruitment, selection and induction processes*

### **BSB50207 Diploma of Business / BSB50215 Diploma of Business**

- *BSBWOR501 Manage personal work priorities and professional development*

#### Clause 1.8

For each of the above units of competency:

Australian Skills Quality Authority

Audit report – Franklyn Scholar (Australia) Pty Ltd

Department of Employment and Workplace Relations - Documents released under FOI - LEX 1102

- Provide evidence that the RTO has an assessment system that ensures assessment:
  - complies with the assessment requirements of the relevant unit of competency; and
  - is conducted in accordance with the principles of assessment and the rules of evidence
- For all learners who have been assessed in any of the above units of competency at any times since **1 August 2016**:
  - Provide evidence the RTO has implemented an assessment system that ensured assessments:
    - complied with the assessment requirements of the relevant unit of competency; and
    - were conducted in accordance with the principles of assessment and the rules of evidence.
  - where the RTO identifies a learner who was not assessed in a manner that addressed all unit of competency requirements and was conducted in accordance with the principles of assessment and the rules of evidence, provide evidence that the RTO has carried out remedial action to identify and address the impact the non-compliance may have caused to these learners.

#### Clause 2.2

Demonstrate the RTO has:

- systematically monitored the RTO's assessment practices to ensure on-going compliance with Standard 1; and
- systematically evaluated and used the outcomes of the evaluation to continually improve their training and assessment strategies and practices.

#### Clause 2.4

- Provide evidence that the RTO has sufficient strategies and resources to systematically monitor any services delivered on its behalf, including by Acquire Learning.
- Provide evidence that the RTO has used these strategies and resources to ensure the services delivered by all third party providers, including by Acquire Learning, comply with these Standards at all times.

**11**

**At all times since 1 April 2015, the RTO or its third party provider accepts and provides credit to learners for units of competency.**

Evidence guidance	Y	N	N/A
Credit is provided to learners for units or modules where evidenced by AQF certification documentation or an authenticated VET transcript	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Findings:*

- The RTO has met all requirements.



The RTO's evidence demonstrated that credit is provided to learners for units or modules where evidenced by AQF certification documentation or an authenticated VET transcript

**12**

**At all times since 1 April 2015, the RTO has properly managed any learner transition arrangements into replacement training products, where applicable.**

Evidence guidance	Y	N	N/A
Learners enrolled in superseded training products have been: <ul style="list-style-type: none"> <li>Completed, with qualification issued, within 12 months from the date the replacement training product was released; or</li> <li>Transferred into the replacement training product, within 12 months from the date the replacement training product was released</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No learner has commenced training and assessment in a training product that has been removed or deleted from the National Register.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Findings:*

- The RTO has met all requirements.

The RTO's evidence sampled at audit demonstrated that learners enrolled in superseded training products have:

- Completed, with qualification issued, within 12 months from the date the replacement training product was released; or
- Transferred into the replacement training product, within 12 months from the date the replacement training product was released.

There was no evidence sighted at audit of a learner having commenced training and assessment in a training product that has been removed or deleted from the National Register.

## COMPLETION

13

At all times since 1 April 2015, the RTO or its third party provider issues AQF certification documentation to a learner within 30 calendar days of the learner being assessed as meeting the requirements of the training product, on completion of the training program. The AQF certification documentation is issued only to a learner that has been assessed as meeting all requirements of the training product.

Evidence guidance	Y	N	N/A
Only learners who have been assessed as meeting the requirements of the training product are issued with AQF certification documentation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
AQF certification documentation is issued within 30 days of all requirements being met	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

*Findings:*

- Evidence sighted included:
  - VET Certificate issued for BSB51107 Diploma of Management to
    - s 22(1)(a)(ii)
    - 
    -

With regard to Clause 3.1

- The RTO issued AQF Certification documents to students whom did not meet the requirements of the training product.
- Due to the non-compliances identified in Section 10 of this report, the RTO also did not demonstrate that it is issuing VET qualifications only to learners whom it has assessed as meeting the requirements of the training products as specified in the relevant training package.
  - For the unit of competency *BSBWOR501 Manage personal work priorities and professional development* (BSB50207 Diploma of Business / BSB50215 Diploma of Business), the completed assessments for s 22(1)(a)(ii) demonstrated that insufficient evidence was gathered by the assessors to confirm assessment decisions were made consistently against all requirements of the unit of competency.

*The RTO is not compliant with: Clause 3.1*

*The RTO is required to:*

Clause 3.1

- Provide evidence that the RTO has implemented a procedure to ensure that only learners who have been assessed as meeting the requirements of the training product are issued with AQF certification documentation.
- Provide evidence that:
  - The RTO has carried out remedial action to identify and address the impact the non-compliance may have caused to learners s 22(1)(a)(ii) who were each assessed in a manner that did not meet all assessment requirements of the unit of competency.

## THIRD PARTY PROVIDERS

14

At all times since 1 April 2015, the RTO has a written agreement with all third parties that provide services on its behalf, and accurately communicates the agreement.

Evidence guidance	Y	N	N/A
The RTO has a written agreement with all third parties that provide services on its behalf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ASQA has been informed of all written agreements entered into within 30 calendar days of that agreement being entered into or prior to the obligations under the agreement taking effect, whichever occurs first	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ASQA has been informed of all written agreements that have come to an end within 30 calendar days of that agreement ending	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Findings:

- Evidence provided from RTO included a list of third party agreements currently in place.
- Evidence reviewed included agreements listed on ASQAnet.

With regard to clause 8.3

- The agreements notified to ASQA were not consistent with the RTO agreements currently place.
- The RTO stated it did not have access to view the agreements in place that have been reported. A list of this was provided at audit so that the RTO could amend the third party arrangements on ASQAnet.

*The RTO is not compliant with: Clause 8.3*

*The RTO is required to:*

Clause 8.3

- provide evidence that all third party agreements the RTO has in place are consistent with the names of the third parties as advised to ASQA and listed on ASQAnet.

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The written agreement held with a third party ensures cooperation with the VET Regulator, and with all legislative and regulatory requirements relevant to the RTO's operations.

Evidence guidance	Y	N	N/A
Written agreements include a clause requiring that third parties cooperate with ASQA in:			
<ul style="list-style-type: none"> <li>• providing accurate and factual responses to information requests from ASQA relevant to the delivery of services</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• the conduct of audits and the monitoring of its operations</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Where applicable, the third party cooperated with the auditor during the audit process	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



*Findings:*

- The RTO has met all requirements.
-



## FEES AND INVOICING

### 16

At all times since 1 April 2015, where the RTO or its third party, requires a prospective or current learner to prepay fees in excess of a total of \$1500, the RTO meets the requirements set out in the Requirements for Fee Protection.

Evidence guidance	Y	N	N/A
Where fees are prepaid in excess of a total of \$1500 from individual learners, including where fees are collected through VET FEE-HELP, the RTO meets the requirements for fee protection as listed in Schedule 6 of the Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Where the fee protection measures include membership of a Tuition Assurance Scheme, the scheme:			
<ul style="list-style-type: none"> <li>includes all applicable Training Products</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>is, and has been, sufficient to protect the number of students enrolled by the RTO</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>provides protection for all individual learners where fees are prepaid in excess of a total of \$1500</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### Findings:

- The RTO has met all requirements.

<b>AUDIT FINDING BY CLAUSE</b>	
<b>Standard 1</b>	<b>Finding</b>
Clause 1.1	Not compliant
Clause 1.2	Not compliant
Clause 1.3	Compliant
Clause 1.4	Not compliant
<b>Industry relevance</b>	
Clause 1.5	Not audited
Clause 1.6	Not audited
<b>Learner support</b>	
Clause 1.7	Compliant
<b>Assessment</b>	
Clause 1.8	Not compliant
Clause 1.9	Not audited
Clause 1.10	Not audited
Clause 1.11	Not audited
Clause 1.12	Compliant
<b>Trainers and assessors</b>	
Clause 1.13	Compliant
Clause 1.14	Compliant
Clause 1.15	Not audited
Clause 1.16	Not compliant
<b>Individuals working under the supervision of a trainer</b>	
Clause 1.17	Not audited
Clause 1.18	Not audited
Clause 1.19	Not audited
Clause 1.20	Not audited
<b>Delivery of the training and assessment qualifications for trainers and assessors</b>	
Clause 1.21	Not audited
Clause 1.22	Not audited
Clause 1.23	Not audited
Clause 1.24	Not audited
<b>Independent validation of training and assessment qualifications</b>	
Clause 1.25	Not audited
<b>Transition of training products</b>	
Clause 1.26	Compliant
Clause 1.27	Not audited



<b>Standard 2</b>	<b>Finding</b>
Clause 2.1	Not compliant
Clause 2.2	Not compliant
Clause 2.3	Compliant
Clause 2.4	Not compliant
<b>Standard 3</b>	<b>Finding</b>
Clause 3.1	Not compliant
Clause 3.2	Compliant
Clause 3.3	Compliant
Clause 3.4	Compliant
Clause 3.5	Compliant
Clause 3.6	Not audited
<b>Standard 4</b>	<b>Finding</b>
Clause 4.1	Not compliant
<b>Standard 5</b>	<b>Finding</b>
Clause 5.1	Not compliant
Clause 5.2	Not compliant
Clause 5.3	Compliant
Clause 5.4	Not audited
<b>Standard 6</b>	<b>Finding</b>
Clause 6.1	Not audited
Clause 6.2	Not audited
Clause 6.3	Not audited
Clause 6.4	Not audited
Clause 6.5	Not audited
Clause 6.6	Not audited
<b>Standard 7</b>	<b>Finding</b>
Clause 7.1	Not audited
Clause 7.2	Not audited
Clause 7.3	Compliant
Clause 7.4	Not audited
Clause 7.5	Not audited
<b>Standard 8</b>	<b>Finding</b>
Clause 8.1	Not audited
Clause 8.2	Compliant



Clause 8.3	Not audited
Clause 8.4	Not audited
Clause 8.5	Not compliant
Clause 8.6	Not audited

Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd - [2017] FCA 602

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**Attribution**

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Content received from court:	May 30, 2017
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FEDERAL COURT OF AUSTRALIA

**Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd [2017] FCA 602**

File number: VID 930 of 2015

Judge: MURPHY J

Date of judgment: 30 May 2017

Catchwords: CONSUMER LAW - contraventions of [Australian Consumer Law](#) - false or misleading representations - misleading or deceptive conduct - unconscionable conduct - unsolicited consumer agreements - principles applicable to imposition of a pecuniary penalty, declarations and injunctive relief - appropriateness of agreed orders and declarations

Legislation:

[Competition and Consumer Act 2010 \(Cth\)](#),

Sch. 2, [Australian Consumer Law](#), ss 18, 21, 29, 24 and 76,

[Evidence Act 1995 \(Cth\)](#), s 191,

[Federal Court of Australia Act 1976 \(Cth\)](#), ss 37AF and 37AG,

[Trade Practices Act 1974 \(Cth\)](#), ss 52 and 76,

## Cases cited:

- ACCC v Australia and New Zealand Banking Group Ltd* [2016] FCA 1516,
- ACCC v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405,
- ACCC v Econovite Pty Ltd* [2003] FCA 964,
- ACCC v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2)* [2016] FCA 698,
- ACCC v Leahy Petroleum (No 2)* [2005] FCA 254,
- ACCC v Lux Distributors Pty Ltd* [2013] FCAFC 90,
- ACCC v MSY Technology Pty Ltd* (2012) 201 FCR 378; [2012] FCAFC 56,
- ACCC v MSY Technology Pty Ltd (No 2)* (2011) 279 ALR 609; [2011] FCA 382,
- ACCC v Pepe's Ducks Ltd* [2013] FCA 570,
- ACCC v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181,
- ACCC v Telstra Corporation Ltd* (2010) 188 FCR 238,
- ACCC v TPG Internet Pty Ltd* (2013) 250 CLR 640; [2013] HCA 54,
- ACCC v TPG Internet Pty Ltd (No 2)* [2012] FCA 629,
- ACCC v Z-Tek Computers Pty Ltd* (1997) 78 FCR 197,
- Cameron v Qantas Airways Ltd* (1994) 55 FCR 147; [1995] FCA 1304,
- Commonwealth v Director, Fair Work Building Industry Inspectorate; CFMEU v Director, Fair Work Building Industry Inspectorate* (2015) 326 ALR 476; [2015] HCA 46,
- Construction, Forestry, Mining and Energy Union v Cahill* (2010) 269 ALR 1; [2010] FCAFC 39,
- Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421; [1972] HCA 61,
- Hurley v McDonalds Australia Ltd* [1999] FCA 1728,

*J McPhee and Son (Aust) Pty Ltd v ACCC* [2000] FCA 365,

*Markarian v The Queen* (2005) 228 CLR 357,

*NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* (1996) 71 FCR 285,

*Singtel Optus v ACCC* (2012) 287 ALR 249; [2012] FCAFC 20,

*Trade Practices Commission v Allied Mills Industries Pty Ltd (No 5)* (1981) 60 FLR 38,

*Trade Practices Commission v CSR Ltd* (1991) ATPR 41-076,

*Trade Practices Commission v Stihl Chainsaws (Aust) Pty Ltd* (1978) ATPR 40-091,

*Trade Practices Commission v TNT Australia Pty Limited* (1995) ATPR 41-375,

Date of hearing: 26 July 2016

Registry: Victoria

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Regulator and Consumer Protection

Category: Catchwords

Number of paragraphs: 102

Counsel for the Applicant: Mr M I Borsky and Ms C Van Proctor

Solicitor for the Applicant: Corrs Chambers Westgarth

Counsel for the Respondent: Mr P H Wallis

Solicitor for the Respondent: Clayton Utz

**ORDERS**

**VID 930 of 2015**

**BETWEEN:** AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
Applicant

**AND:** ACQUIRE LEARNING & CAREERS PTY LTD  
Respondent

**JUDGE:** MURPHY J

**DATE OF ORDER:** 30 MAY 2017

**THE COURT DECLARES THAT:**

**Job Applicant A**

1. On or about 3 July 2014, the Respondent (Acquire), by the conduct of a telemarketer employed by Acquire (Career Adviser), in trade or commerce, engaged in conduct in contravention of s 76 of the Australian Consumer Law (ACL), comprising Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*, by failing to provide Job Applicant A with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.
2. On or about 3 July 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce:
  - (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;

- (b) made false or misleading representations about uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and
- (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant A as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,

by the Career Adviser, during a telephone call to Job Applicant A:

- (d) making the following representations with respect to future matters to Job Applicant A without having reasonable grounds for making them:
    - (i) by becoming a participating student, Job Applicant A would find employment;
    - (ii) by becoming a participating student, Job Applicant A would find employment in a role that would pay significantly more than if Job Applicant A did not enrol in the VET FEE-HELP assisted course; and
  - (e) falsely representing to Job Applicant A that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant A, when the primary purpose of the telephone call was to procure the enrolment of Job Applicant A in a VET FEE-HELP assisted course.
3. On or about 3 July 2014, Acquire, in trade or commerce, during the course of a telephone call made by a Career Adviser to Job Applicant A for the purpose of procuring Job Applicant A's enrolment in a VET FEE-HELP assisted course, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below:
- (a) Acquire obtained Job Applicant A's personal information from a job application she had submitted in response to an online job advertisement;
  - (b) Job Applicant A had difficulty understanding and speaking English during the telephone call;
  - (c) the Career Adviser:
    - (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant A;



- (ii) stated that the Career Adviser had an opportunity for Job Applicant A relating to potential employment;
  - (iii) stated that Job Applicant A would receive the Windows version of an Apple iPad for enrolling immediately;
  - (iv) directed Job Applicant A to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant A to consider the appropriateness of and relevant information about the course and about such assistance;
  - (v) suggested that Acquire was affiliated with the Government;
  - (vi) did not adequately disclose the circumstances in which Job Applicant A would incur a debt to the Commonwealth if Job Applicant A enrolled in a VET FEE-HELP assisted course provided by a VET provider that was a client of Acquire (**Client**); and
  - (vii) did not ascertain whether Job Applicant A understood the nature of her obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 1 and 2 of this declaration.

### **Job Applicant B**

4. On or about 17 July 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce, engaged in conduct in contravention of s 76 of the ACL by failing to provide Job Applicant B with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.
5. On or about 17 July 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce:
- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;
  - (b) made false or misleading representations about uses or benefits of enrolling in a VETFEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and

- (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant B as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,

by the Career Adviser, during telephone calls to Job Applicant B:

- (d) making the following representations with respect to future matters to Job Applicant B without having reasonable grounds for making them:
  - (i) by becoming a participating student, Job Applicant B would find employment;
  - (ii) by becoming a participating student, Job Applicant B would find employment in a role of their choice, or a role that would pay more than if Job Applicant B did not enrol in the VET FEE-HELP assisted course; and
- (e) falsely representing to Job Applicant B that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant B, when the primary purpose of the telephone call was to procure the enrolment of Job Applicant B in a VET FEE-HELP assisted course.

6. On or about 17 July 2014, Acquire, in trade or commerce, during the course of a telephone call made by a Career Adviser to Job Applicant B for the purpose of procuring Job Applicant B's enrolment in a VET FEE-HELP assisted course, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below:

- (a) Acquire obtained Job Applicant B's personal information from a job application she had submitted in response to an online job advertisement;
- (b) Job Applicant B:
  - (i) disclosed to the Career Adviser circumstances indicating that she had a disability which meant that she had difficulty reading; and
  - (ii) appeared to demonstrate poor cognitive skills during the call and required assistance from her mother to complete the online form;
- (c) the Career Adviser:

- (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant B;
  - (ii) told Job Applicant B that her placement in the course had been organised for her;
  - (iii) told Job Applicant B that it was necessary to complete the enrolment process during the telephone call;
  - (iv) directed Job Applicant B to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant B to consider the appropriateness of and relevant information about the course and about such assistance;
  - (v) suggested that Acquire was affiliated with the Government;
  - (vi) did not adequately disclose the circumstances in which Job Applicant B would incur a debt to the Commonwealth if Job Applicant B enrolled in a Client's VET FEE-HELP assisted course; and
  - (vii) did not ascertain whether Job Applicant B understood the nature of her obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 4 and 5 of this order.

### **Job Applicant C**

7. On or about 4 August 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce, engaged in conduct in contravention of s 76 of the ACL by failing to provide Job Applicant C with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.
8. On or about 4 August 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce:
- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;

- (b) made false or misleading representations about uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and
- (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant C as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,

by the Career Adviser, during a telephone call to Job Applicant C:

- (d) making the following representations with respect to future matters to Job Applicant C without having reasonable grounds for making them:
  - (i) by becoming a participating student, Job Applicant C would find employment in a role of their choice; and
  - (ii) successful completion of the proposed VET FEE-HELP assisted course was guaranteed.

9. On or about 4 August 2014, Acquire, in trade or commerce, during the course of a telephone call made by a Career Adviser to Job Applicant C for the purpose of procuring Job Applicant C's enrolment in a VET FEE-HELP assisted course, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below:

- (a) Acquire obtained Job Applicant C's personal information from a job application she had submitted in response to an online job advertisement;
- (b) Job Applicant C had been unemployed for a period of five years at the time of the telephone call;
- (c) the Career Adviser:
  - (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant C;
  - (ii) falsely represented to Job Applicant C that the education course would enable her to find employment in "any industry";
  - (iii) suggested that Job Applicant C had been personally "chosen" by the government to participate in the course;
  - (iv) directed Job Applicant C to complete the online application process and submit a request for VET FEE-

HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant C to consider the appropriateness of and relevant information about the course and about such assistance;

- (v) suggested that Acquire was affiliated with the Government;
  - (vi) did not adequately disclose the circumstances in which Job Applicant C would incur a debt to the Commonwealth if Job Applicant C enrolled in a Client's VET FEE-HELP assisted course; and
  - (vii) did not ascertain whether Job Applicant C understood the nature of her obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 7 and 8 of this order.

### Job Applicant D

10. On or about 8 September 2014 and on or about 9 October 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce, engaged in conduct in contravention of s 76 of the ACL by failing to provide Job Applicant D with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.
11. On or about 8 September 2014 and on or about 9 October 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce:
- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;
  - (b) made false or misleading representations about uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and
  - (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant D as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,
- by the Career Adviser, during telephone calls to Job Applicant D:
- (d) making the following representations with respect to future matters to Job Applicant D without having reasonable grounds for making them:

- (i) by becoming a participating student, they would find employment in a role that would pay significantly more than if Job Applicant D did not enrol in the VET FEE-HELP assisted course; and
  - (ii) the VET FEE-HELP assisted course proposed by Acquire in this instance would be of more assistance to the Job Applicant than the VET FEE-HELP assisted course offered by a VET provider that was not a Client of Acquire; and
- (e) falsely representing to Job Applicant D that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant D, when the primary purpose of the telephone call was to procure the enrolment of Job Applicant D in a VET FEE-HELP assisted course.
12. On or about 8 September 2014 and on or about 9 October 2014, Acquire, in trade or commerce, during the course of telephone calls made by a Career Adviser to Job Applicant D for the purpose of procuring Job Applicant D's enrolment in a VET FEE-HELP assisted course, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below:
- (a) Acquire obtained Job Applicant D's personal information from a job application he had submitted in response to an online job advertisement;
  - (b) Job Applicant D disclosed to the Career Adviser:
    - (i) circumstances indicating that he had a learning disability which meant that he had difficulty studying; and
    - (ii) that he had received calls about education courses and was not interested in participating in such a course;
  - (c) the Career Adviser:
    - (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant D;
    - (ii) directed Job Applicant D to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant D to consider the appropriateness of and relevant information about the course and about such assistance;

- (iii) encouraged and assisted Job Applicant D to withdraw from a course in which he had enrolled with a competitor of Acquire for the purpose of enrolling Job Applicant D in the course offered by the Career Adviser, without having a reasonable basis to do so;
  - (iv) did not adequately disclose the circumstances in which Job Applicant D would incur a debt to the Commonwealth if Job Applicant D enrolled in a Client's VET FEE-HELP assisted course; and
  - (v) did not ascertain whether Job Applicant D understood the nature of his obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 10 and 11 of this order.

### Job Applicant E

13. On or about 15 September 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce, engaged in conduct in contravention of s 76 of the ACL by failing to provide Job Applicant E with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.
14. On or about 15 September 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce:
- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;
  - (b) made false or misleading representations about uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and
  - (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant E as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,
- by the Career Adviser, during a telephone call to Job Applicant E:
- (d) making the following representations with respect to future matters to Job Applicant E without having reasonable grounds for making them:
    - (i) by becoming a participating student, Job Applicant E would find employment;

- (ii) by becoming a participating student, Job Applicant E would find employment in a role of their choice;
  - (iii) that the proposed VET FEE-HELP assisted course could be completed by Job Applicant E within a period of one to two months;
  - (e) falsely representing to Job Applicant E that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant E, when the primary purpose of the telephone call was to procure the enrolment of Job Applicant E in a VET FEE-HELP assisted course.
15. On or about 15 September 2014, Acquire, in trade or commerce, during the course of a telephone call made by a Career Adviser to Job Applicant E for the purpose of procuring Job Applicant E's enrolment in a VET FEE-HELP assisted course, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below:
- (a) Acquire obtained Job Applicant E's personal information from a job application she had submitted in response to an online job advertisement;
  - (b) Job Applicant E:
    - (i) disclosed that she was enrolled in a course, had not passed the last two classes and had not yet finished the course; and
    - (ii) indicated that she was not very computer literate;
  - (c) the Career Adviser:
    - (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant E;
    - (ii) suggested to Job Applicant E that the call related to work that Acquire was undertaking with recruitment firms;
    - (iii) suggested that Job Applicant E had been chosen for the course, and that the course had been organised for Job Applicant E;
    - (iv) directed Job Applicant E to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant E to



consider the appropriateness of and relevant information about the course and about such assistance;

- (v) suggested that Acquire was affiliated with the Government;
  - (vi) did not adequately disclose the circumstances in which Job Applicant E would incur a debt to the Commonwealth if Job Applicant E enrolled in a Client's VET FEE-HELP assisted course; and
  - (vii) did not ascertain whether Job Applicant E understood the nature of her obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 13 and 14 of this order.

### **Job Applicant F**

16. On or about 10 December 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce, engaged in conduct in contravention of s 76 of the ACL by failing to provide Job Applicant F with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.

17. On or about 10 December 2014, Acquire, by the conduct of its Career Adviser, in trade or commerce:

- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;
- (b) made false or misleading representations about uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and
- (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant F as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,

by the Career Adviser, during a telephone call to Job Applicant F, falsely representing to Job Applicant F that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant F, when the primary purpose of the telephone call was to procure the enrolment of Job Applicant F in a VET FEE-HELP assisted course.

18. On or about 10 December 2014, Acquire, in trade or commerce, during the course of a telephone call made by a Career Adviser to Job Applicant F for the

purpose of procuring Job Applicant F's enrolment in a VET FEE-HELP assisted course, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below: Document 11

- (a) Acquire obtained Job Applicant F's personal information from a job application she had submitted in response to an online job advertisement;
- (b) Job Applicant F appeared to have difficulty comprehending what was being said to her by the Career Adviser during the telephone call;
- (c) the Career Adviser:
  - (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant F;
  - (ii) stated that the course had been arranged for Job Applicant F;
  - (iii) directed Job Applicant F to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant F to consider the appropriateness of and relevant information about the course and about such assistance;
  - (iv) did not adequately disclose the circumstances in which Job Applicant F would incur a debt to the Commonwealth if Job Applicant F enrolled in a Client's VET FEE-HELP assisted course; and
  - (v) did not ascertain whether Job Applicant F understood the nature of her obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 16 and 17 of this order.

### **Job Applicant G**

19. On or about 19 January 2015, Acquire, by the conduct of its Career Adviser, in trade or commerce, engaged in conduct in contravention of s 76 of the ACL by failing to provide Job Applicant G with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.

20. On or about 19 January 2015, Acquire, by the conduct of its Career Adviser, in trade or commerce:

- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;
- (b) made false or misleading representations about uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and
- (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant B as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,

by the Career Adviser, during a telephone call to Job Applicant G:

- (d) making the following representations with respect to future matters to Job Applicant G:
  - (i) that successful completion of the proposed VET FEE-HELP assisted course was guaranteed, without having reasonable grounds for making that representation; and
  - (ii) by becoming a participating student, Job Applicant G would find employment and “paid decent money” without having reasonable grounds for making that representation; and
- (e) falsely representing to Job Applicant G that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant G, when the primary purpose of the telephone call was to procure the enrolment of Job Applicant G in a VET FEE-HELP assisted course.

21. On or about 19 January 2015, Acquire, in trade or commerce, during the course of a telephone call made by a Career Adviser to Job Applicant G for the purpose of procuring Job Applicant G's enrolment in a VET FEE-HELP assisted course, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below:

- (a) Acquire obtained Job Applicant G's personal information from a job application she had submitted in response to an online job advertisement;
- (b) Job Applicant G disclosed to the Career Adviser that she:

- (i) had a learning and mental illness which meant she was concerned she might not be smart enough to undertake the course;
  - (ii) had enrolled in, and been unable to complete, a different course;
  - (iii) did not have internet and computer access at her house;
- (c) the Career Adviser:
- (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant G;
  - (ii) directed Job Applicant G to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant G to consider the appropriateness of and relevant information about the course and about such assistance; and
  - (iii) did not adequately disclose the circumstances in which Job Applicant G would incur a debt to the Commonwealth if Job Applicant G enrolled in a Client's VET FEE-HELP assisted course; and
  - (iv) did not ascertain whether Job Applicant G understood the nature of her obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 19 and 20 of this order.

### Job Applicant H

22. On or about 24 March 2015, Acquire, by the conduct of its Career Adviser, in trade or commerce, engaged in conduct in contravention of s 76 of the ACL by failing to provide Job Applicant H with the information relating to unsolicited consumer agreements prescribed by s 76 of the ACL.
23. On or about 24 March 2015, Acquire, by the conduct of its Career Adviser, in trade or commerce:
- (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL; and

- (b) made false or misleading representations about uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29 (1)(g) of the ACL; and
- (c) engaged in conduct in trade or commerce which was liable to mislead Job Applicant H as to the nature and the characteristics of the service provided by the Career Adviser in contravention of s 34 of the ACL,

by the Career Adviser, during telephone calls to Job Applicant H:

- (d) falsely representing to Job Applicant H that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant H, when the primary purpose of the telephone call was to procure the enrolment of Job Applicant H in a VET FEE-HELP assisted course; and
- (e) representing to Job Applicant H that by becoming a participating student, they would find employment in a role that would pay significantly more than if Job Applicant H did not enrol in the VET FEE-HELP assisted course, without having reasonable grounds for making that representation as to future matters.

24. On or about 24 March 2015, Acquire, in trade or commerce, during the course of a telephone call made by a Career Adviser to Job Applicant H for the purpose of procuring Job Applicant H's enrolment in a VET FEE-HELP assisted course for which Job Applicant H may incur a debt to the Commonwealth under the VET FEE-HELP scheme, engaged in conduct that was unconscionable in contravention of s 21 of the ACL, by using unfair sales tactics and imposing undue pressure, in the collective circumstances considered together set out below:

- (a) Acquire obtained Job Applicant H's personal information from a job application she had submitted in response to an online job advertisement;
- (b) Job Applicant H disclosed to the Career Adviser that she:
  - (i) had only completed schooling up to year 7, was 18 years of age and had no experience in the workforce; and
  - (ii) did not have a computer at home;
- (c) the Career Adviser:
  - (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for Job Applicant H;

- (ii) directed Job Applicant H to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing sufficient opportunity for Job Applicant H to consider the appropriateness of and relevant information about the course and about such assistance;
  - (iii) did not adequately disclose the circumstances in which Job Applicant H would incur a debt to the Commonwealth if Job Applicant H enrolled in a Client's VET FEE-HELP assisted course; and
  - (iv) did not ascertain whether Job Applicant H understood the nature of her obligations under the VET FEE-HELP scheme; and
- (d) Acquire failed to comply with the provisions of the ACL relating to unsolicited consumer agreements and engaged in the false, misleading or deceptive conduct referred to in paragraphs 22 and 23 of this order.

## AND THE COURT ORDERS THAT:

### Injunctions

25. Acquire be restrained for a period of three years from the date of this Order, whether by itself, its servants, agents or otherwise howsoever, when engaging with a consumer for the purpose of entering into any negotiation, discussion or dealing directed towards enrolling the consumer in a course of study, from making any statements or representations to the consumer to the effect that by enrolling in the course, the consumer would be certain to:
- (a) find employment;
  - (b) find employment in a role of their choice; and
  - (c) find employment in a role that would pay significantly more than if the consumer did not enrol in the VET FEE-HELP assisted course.

### Compliance program

26. For a period of three years from the date of this order, Acquire undertake a review by the end of each six month period of its existing compliance programme to ensure that it is effective in ensuring that its employees, agents and other persons involved in its business are aware of their responsibilities and obligations in relation to the conduct declared by the Court in this proceeding to be in contravention of ss 18, 21, 29(1)(g), 34 and 76 of the ACL.

27. Within 14 days of undertaking the reviews referred to in paragraph 26 above, Acquire provide the Applicant (ACCC) with a written report specifying the outcome of the review. Document 11

### **Pecuniary penalties**

28. Acquire pay to the Commonwealth of Australia such pecuniary penalties in respect of Acquire's contraventions of ss 21, 29(1)(g), 34 and 76 of the ACL referred to in paragraphs 1 to 24 above in the total amount of \$4.5 million, payable in 12 equal monthly instalments, with the first such instalment to be paid within 30 days of the date of this order.

### **Costs**

29. Acquire pay a contribution towards the ACCC's costs of this proceeding, fixed in the sum of \$100,000, within 30 days of the date of this Order.

**NOTICE PURSUANT TO RULE 41.06 OF THE *FEDERAL COURT RULES 2011***

**TO: ACQUIRE LEARNING & CAREERS PTY LTD**

You are liable to imprisonment, sequestration of property or to punishment for contempt if:

- (a) where this order requires you to do an act or thing within a specified time, you refuse or neglect to do the act within that time; or
- (b) where this order requires you not to do an act or thing, you disobey the order.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## **REASONS FOR JUDGMENT**

**MURPHY J:**

**INTRODUCTION**

- Document 11
1. In this proceeding the applicant, the Australian Competition and Consumer Commission (ACCC), alleges that in the period 3 July 2014 to 24 March 2015 (the **relevant period**) the respondent, Acquire Learning & Careers Pty Ltd (**Acquire**), engaged in misleading or deceptive conduct, made false or misleading representations, engaged in unconscionable conduct and contravened provisions relating to unsolicited consumer agreements, in breach of the *Australian Consumer Law (ACL)* in Schedule 2 to the *Competition and Consumer Act 2010 (Cth) (CCA)*. Acquire admits the contraventions and the underlying conduct by way of a Statement of Agreed Facts and Admissions (**the agreed facts and admissions**) and the parties have provided joint submissions on relief.

2. Following paragraph cited by:

*Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 4)* (19 September 2018) (GLEESON J)

721. In *Acquire*, the respondent's staff used personal information that Acquire had purchased to make unsolicited marketing calls to job seekers and aggressively market vocational education courses to them. The courses were run by education providers who had agreed to pay Acquire a fee for referrals and enrolments, sometimes a percentage of the course fee. Acquire aimed to enrol the job seekers, on the spot, into VET FEE-HELP eligible courses and also into VET FEE-HELP to pay for the relevant course. Acquire used various unfair and misleading sales techniques to induce job seekers. For example, its staff represented to consumers the primary or only purpose of the telephone call was for Acquire to find employment for the job seeker, when their purpose was in fact to procure the enrolment of consumers into a VET FEE-HELP assisted course. The enrolled consumers incurred debts of between \$9,900 and \$21,000 due to their enrolment in the courses: *Acquire* at [2]

In the relevant period Acquire employed sales staff, misleadingly called Career Advisers, to use personal information that Acquire had purchased to make unsolicited marketing calls to job seekers and aggressively market vocational education courses to them. The courses were run by education providers who had agreed to pay Acquire a fee for referrals and enrolments, sometimes a percentage of the course fee. Acquire aimed to enrol the job seekers, on the spot, into a vocational education course (often into a management course which was plainly inappropriate) and also into a Commonwealth Government education loan scheme to pay for the course (the **VET FEE-HELP scheme**). It used various unfair and misleading sales techniques to induce job seekers. The enrolled job seekers incurred an interest-earning debt to the Commonwealth under the VET FEE-HELP scheme of between \$9,900 and \$21,000, repayable if the person reached a minimum income level. If the job seeker never reaches the minimum income level the Commonwealth is not repaid the loan.

3. Acquire only admits contravening conduct in relation to telemarketing calls it made to eight unemployed job seekers (**the Job Applicants**), but it admits that the contravening conduct was not that of rogue employees and was a core part of its business model. It accepts that its sales system courted the risk of contravening the ACL. I infer that these eight instances were not



isolated examples. Acquire admits that it used undue pressure, unfair sales tactics, made false and misleading representations, did not provide an opportunity for the Job Applicants to consider the suitability of the courses being offered, did not disclose the circumstances in which the Job Applicants would incur a significant debt to the Commonwealth, and did not provide prescribed information about the enrolment agreement to the Job Applicants.

4. In some instances there were grave aggravating features to Acquire's unconscionable conduct. Some Job Applicants disclosed that they had a learning disability including difficulty reading, mental illness, an inability to complete other education courses, or had only completed school to year seven or ten. One Job Applicant had difficulty understanding and speaking English. Notwithstanding this Acquire induced them to enrol on the spot in a course which they were unlikely to be able to complete and/or which was unlikely to assist them to obtain better employment than if they had not enrolled.
5. Acquire admits that its conduct was unfair, misleading and unconscionable. It admits that it misled the Job Applicants by falsely representing that the primary or only purpose of the telephone call was for Acquire to find employment for them, that it had an employment opportunity for them, and in the case of some Job Applicants that he or she had been "chosen" for the offer. It admits that it had no reasonable grounds for representing to the Job Applicants that by enrolling in the course they would find employment or would find employment in a job that would pay significantly more than if they did not enrol. In most instances the Job Applicants incurred a significant debt to the Commonwealth for no real benefit, and it is likely the Commonwealth suffered a significant loss because the debt was unlikely to be repaid.
6. I consider Acquire's motive was not, as it pretended, to help job seekers out of the unemployment queue and into employment, but to maximise its profits through fees it received from course providers. Its activities resembled those of an unscrupulous fly by night operation rather than those of a prominent and market leading provider of student recruitment services, as it describes itself. In my opinion Acquire took advantage of vulnerable unemployed job seekers in order to rort the VET FEE-HELP scheme and its conduct was disgraceful. Ultimately, Acquire received significant fees and the burden of its conduct was most likely shared between such job seekers and the Australian taxpayer.
7. As the parties submitted, it is appropriate to make declarations that Acquire :
  - (a) engaged in misleading or deceptive conduct in contravention of s 18 of the ACL;
  - (b) made false or misleading representations about the uses or benefits of enrolling in a VET FEE-HELP assisted course in contravention of s 29(1)(g) of the ACL;
  - (c) engaged in conduct in trade or commerce which was liable to mislead as to the nature and the characteristics of the service provided by Acquire in contravention of s 34 of the ACL;
  - (d) engaged in conduct in contravention of s 76 of the ACL and reg 84 of the *Competition and Consumer Regulations 2010 (Regulations)* by failing to provide the Job Applicants with prescribed information relating to unsolicited consumer agreements; and
  - (e) engaged in conduct which was in all the circumstances unconscionable in contravention of s 21 of the ACL.

8. It is also appropriate to order injunctions against the repetition of such conduct, to require Acquire to pay pecuniary penalties totalling \$4.5 million and to pay \$100,000 towards the ACCC's costs. I gave close consideration to ordering a higher penalty but, particularly in light of the fact that Acquire is now in a parlous financial position, a penalty of \$4.5 million meets the central aims of specific and general deterrence.

## THE AGREED FACTS AND ADMISSIONS

9. I thank the parties for the quality of the agreed facts and admissions and the joint submissions on relief. I have directly drawn on them at some points.

### Acquire's business

10. Acquire is and was at all material times a trading corporation within the meaning of s 4 of the CCA. Before and during the relevant period Acquire's business model included it:
- (a) entering into agreements with online job advertisers (**Advertisers**) pursuant to which the Advertisers agreed to provide Acquire with the personal information of job seekers who responded to online job advertisements. Acquire obtained similar information from their own recruitment businesses which had online "job boards". This gave Acquire the personal information and contact details of job seekers to use in marketing vocational education courses;
  - (b) entering into agreements with certain VET approved providers of vocational education courses (**Clients**) to market and promote their courses. Each Client appointed Acquire as its agent and agreed to pay Acquire a fee, sometimes a percentage of the course fee, for each student enrolled in a VET FEE-HELP assisted course. Acquire's services included seeking to have prospective students fully complete the Client's application forms for enrolment and the forms for VET FEE-HELP during the sales calls;
  - (c) employing or contracting (misleadingly titled) Career Advisers to make telemarketing calls to job seekers (whose personal details it had acquired) to market VET FEE-HELP assisted courses offered by its Clients. The Career Advisers were paid an hourly rate of \$20.20 plus commission based on the number of job seekers referred and enrolled in the courses, together with other incentives in the form of cash and prizes awarded on the same basis; and
  - (d) training Career Advisers to "book the maximum amount of enrolments possible" and incentivising them to maximise sales. It provided the Career Advisers with a script for use during telemarketing calls which made misleading representations, and the Career Advisers used high-pressure and unfair sales techniques to enrol job seekers, on the spot, in the relevant courses and in the VET FEE-HELP scheme.

### The Debt to the Commonwealth

11. Each person who enrolled in a VET FEE-HELP assisted course incurred a debt to the Commonwealth (**Debt**) being the fee charged by the education provider and in most instances a 20% loan fee. Each Debt was indexed annually and increased to reflect increases in the

Consumer Price Index and was repayable via compulsory deductions from that person's taxable income once it exceeded a minimum repayment income level. During the relevant period, the minimum repayment income level was \$53,345. The Debts incurred by the Job Applicants ranged between \$9,900 and \$21,000.

### **Acquire's conduct**

12. During the relevant period Career Advisers made unsolicited telephone calls to each of the eight Job Applicants, amongst many others. The Career Advisers did so for the purpose of procuring their enrolment, on the spot, in a VET FEE-HELP assisted course run by one of Acquire's Clients and their participation in the VET FEE HELP scheme.

### **Job Applicant A**

13. On or about 3 July 2014 a Career Adviser made an unsolicited telephone call to Job Applicant A, who had difficulty understanding and speaking English. During the telephone call the Career Adviser made statements to the following effect:
  - (a) that the call was in regards to Job Applicant A's recent online job search. The Career Adviser asked if she was still looking for work and told her that he had "an opportunity to run past you in regard to potential employment". He told her that an Advertiser who had not been able to place her in a job had passed her details on to Acquire "so we can help you out";
  - (b) that Acquire would "organise a fully government assisted online qualification, whilst also helping you get the job that you are after". Job Applicant A asked whether Acquire was affiliated with the government and the Career Adviser said that he was not calling from the Government, but that Acquire was "affiliated with some of the government incentives, though" and the VET FEE-HELP assisted course "works in conjunction with the Federal Government". He told Job Applicant A that she would not have to pay anything for the course up front and that the government will "front the entire course cost";
  - (c) Job Applicant A said that she had been looking for work for about five months and the Career Adviser said "we will be able to help you out with that" and "we want to get you into a job as soon as possible". He said "being in your current employment situation, I'm assuming this is something you would like to take advantage of, so we can help you out to get a job?" He said that the VET FEE-HELP assisted course would make Job Applicant A more employable and put her in "the top eighth percentile of people going for similar jobs", would enable her to go for any entry level office work and would make her "eligible to go for a management position"; and
  - (d) that because Job Applicant A was organising enrolment with him that day, she would receive a free Apple iPad. He directed Job Applicant A to apply for VET FEE-HELP online and directed her to tick the boxes under the heading "Your Obligations" and said "hit submit whenever you're ready";
14. During the telephone call Job Applicant A submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in a VET FEE-HELP assisted course provided by a Client of Acquire. Her application was accepted and resulted in an agreement for the Client to supply

education services to her. Acquire did not provide her with information about her right to terminate the agreement during the termination period (as provided in s 76 of the ACL), the way in which she could terminate the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call.

***Job Applicant B***

15. On or about 17 July 2014 a Career Adviser made an unsolicited telephone call to Job Applicant B during which the Career Adviser made statements to the following effect:
  - (a) that he could see that Job Applicant B had been applying for jobs online recently and asked what sort of job she was looking for. She replied that she was looking for a job as a kitchen hand or something similar. In response the Career Adviser said “so you’re looking to get into hospitality. And that is obviously something you’re looking to progress - work your way up into a management role?” Job Applicant B responded “sort of, not really. I don’t really have the experience for that”;
  - (b) that he works with a group called APTI “who work in conjunction with the Federal Government” and that “what has been organised for you is a placement into a nationally recognised diploma level qualification in management.” He said that obtaining the qualification would mean that she will get the job that she was after and a job that pays a good income as well. He said that it would put her in the top 8% of job applicants;
  - (c) Job Applicant B disclosed that she had a “little bit of a disability” which involved difficulty with reading;
  - (d) the Career Adviser said that the proposed course is “fully paid for by the government upfront” and “it only gets paid back very slowly through the tax system if and when you start earning over...” and Job Applicant B replied that she had to be careful with her Centrelink payments; and
  - (e) that “obviously being in your current employment situation, I’m going to assume this is something you would want to take advantage of, correct?” Job Applicant B responded “yes” and the Career Adviser said “well, it’s actually my job to get that organised for you. It’s just done through a quick online enrolment form.” Job Applicant B asked if she could “come back to you” and the Career Adviser said that he had to stay on the telephone while she filled the form out because there were questions that she would not be able to answer and he would need to tell her what to say. Job Applicant B then said she would get her mother to help her out.
16. In a second telephone call on the same day the Career Adviser made statements to the effect that upon completion of the course Job Applicant B would “acquire a nationally-accredited diploma level qualification of management with one of the most recognised, registered training organisations”. During this telephone call Job Applicant B submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in a VET FEE-HELP assisted course provided by a Client of Acquire. Her application was accepted and resulted in an agreement for the Client to supply education services to her. Acquire did not provide her with information about her right to terminate the agreement during the termination period, the way in which she could terminate

the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call. Document 11

### *Job Applicant C*

17. On or about 4 August 2014 a Career Adviser made an unsolicited telephone call to Job Applicant C during which the Career Adviser made statements to the following effect:
  - (a) that “the government has chosen you for the qualification” which means “that you can basically get yourself into every single job industry”, and that by “having the qualification on your resume, you actually go in the top eight percent of applicants in Australia applying for work online”;
  - (b) Job Applicant C said that she was specifically interested in working in real estate but the Career Adviser proposed that she enrol in a management course. He said that the course was done through VET FEE-HELP “so the Australian government pays your entire qualification for you”. He said that “you’re actually not liable to pay absolutely anything for your qualification in your entire lifetime if you’re earning under \$52,000 a year”; and
  - (c) that she could not fail the proposed course.
18. During this telephone call Job Applicant C submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in a VET FEE-HELP assisted course provided by a Client of Acquire. Her application was accepted and resulted in an agreement for the Client to supply education services to her. Acquire did not provide her with information about her right to terminate the agreement during the termination period, the way in which she could terminate the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call.

### *Job Applicant D*

19. On or about 8 September 2014 a Career Adviser made an unsolicited telephone call to Job Applicant D during which the Career Adviser said that the reason for the call was that Job Applicant D had recently been searching for work. Job Applicant D said that he had previously received calls about their education courses and that he was not interested. In response the Career Adviser said that the course “will basically assist you with your job search and help you...get that job you want”. Job Applicant D reiterated that he was not interested.
20. On or about 9 October 2014 a Career Adviser made another unsolicited telephone call to Job Applicant D, during which the Career Adviser made statements to the following effect:
  - (a) Job Applicant D disclosed to the Career Adviser that he had a learning disability, that he was “not the best at studying”, and that he had only completed up to year 10 of high school. He also said that he was looking for retail jobs and that he had enrolled in a VET FEE-HELP assisted business course run by Ivy College;
  - (b) in response the Career Adviser said that Job Applicant D should withdraw from that course and enrol in the VET FEE-HELP assisted course that he proposed. He said that the business course offered by Ivy College was not relevant to retail jobs and that

the management course he recommended would “definitely help you a lot more”. He said “I don’t want you to be enrolled into the wrong course” and that a management course is “a lot more relevant to you”. He said that a Diploma of Management would possibly allow Job Applicant D “to move forward into a managerial supervisor-type role” thereby gaining a “higher earning income”; and

- (c) the Career Adviser said that the suggested course was fully government assisted and that “the government actually pays for [Job Applicant D] to do the entire qualification” and “it only gets paid back very slowly through the tax system if [he earns] over \$53,345 a year”.
21. During this telephone call Job Applicant D submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in a VET FEE-HELP assisted course provided by a Client of Acquire. His application was accepted and resulted in an agreement for the Client to supply education services to him. Acquire did not provide him with information about his right to terminate the agreement during the termination period, the way in which he could terminate the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call.

### *Job Applicant E*

22. On or about 15 September 2014 a Career Adviser made an unsolicited telephone call to Job Applicant E during which the Career Adviser made statements to the following effect:
- (a) that Acquire is “an education and employment centre”, that Acquire’s records indicated that Job Applicant E had been applying for work online and that Job Applicant E’s details had been “passed to us as someone who is active on the job-seeking market”;
- (b) Job Applicant E said that she wanted to work on the “medical side” and said that she had commenced but not completed a Certificate III in Health Service Assistance, and that she had not passed the last two classes;
- (c) that Job Applicant E had “been chosen” and that “the government has organised for you... a placement into a nationally recognised diploma-level qualification in management”. She told Job Applicant E that “what the qualification actually enables you to do is actually get yourself into every single job industry”;
- (d) that if Job Applicant E was “really dedicated” she could complete the proposed course in one to two months. The Career Adviser also said that “the benefit of this qualification [is that] you cannot fail it, because it is all based on competency”;
- (e) that “basically the Australian Government pays your entire qualification for you”, that “it’s all fully government assisted, so it means the VET FEE-HELP pays your entire qualification, which is actually \$20,000, which is fantastic” and that if Job Applicant E “earn[s] under \$53,000 a year, you never pay anything”; and

- (f) that Job Applicant E should update her resume immediately to show that she is currently studying a “diploma level qualification in management” and that “usually with some studies, you can’t put it on there until it’s completed, but because it’s a high level qualification at diploma level, then you can place it on there instantly”;
23. During this telephone call Job Applicant E submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in an assisted course provided by one of Acquire’s Clients. Her application was accepted and resulted in an agreement for the Client to supply education services to her. She was not provided with information about her right to terminate the agreement during the termination period, the way in which she could terminate the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call.

#### *Job Applicant F*

24. On or about 10 December 2014 a Career Adviser made an unsolicited telephone call to Job Applicant F during which the Career Adviser made statements to the following effect:
- (a) that she had seen that Job Applicant F had been looking for work online recently. Job Applicant F told the Career Adviser that she had in fact found a job that day. The Career Adviser continued to propose a VET FEE-HELP assisted course and said “I’ll let you know why we’re in contact with you today because it’d still be a good opportunity for you”. She said that “the reason that [the course] had been arranged for you is because you were looking for work online for quite a while”; and
- (b) that “we basically just get the government to pay upfront for this qualification” and she only had to pay back the course fee, slowly, if she earned over \$53,000 per year. Job Applicant F then asked if “it’s fully paid for” to which the Career Adviser replied “Yep, fully paid for upfront by the government”.
25. During the telephone call Job Applicant F submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in a VET FEE-HELP assisted course provided by a Client of Acquire. Her application was accepted and resulted in an agreement for the Client to supply education services to her. Acquire did not provide her with information about her right to terminate the agreement during the termination period, the way in which she could terminate the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call.

#### *Job Applicant G*

26. On or about 19 January 2015 a Career Adviser made an unsolicited telephone call to Job Applicant G during which the Career Adviser made statements to the following effect:
- (a) that the reason the Career Adviser called was because Job Applicant G had been actively looking for work, which “tells us you’re motivated”;
- (b) Job Applicant G disclosed that she was 19 years old, had a learning and mental illness and was concerned that she might not be “smart enough” to undertake the

course proposed by the Career Adviser. She disclosed that she had previously signed up to a different course and had not completed it, as it was too hard. She said that she “hates studying”, and that she was likely to earn less than \$10,000 that year;

- (c) that Job Applicant G “cannot fail” the proposed course and that support would be provided to ensure that she did not;
  - (d) that the qualification could be completed online and was “perfect for people like you”. Job Applicant G responded by stating that she did not have internet access at her home;
  - (e) that the government would pay for the entire course cost upfront, that it was “free of charge” and that if Job Applicant G does not “hit the yearly income threshold, you don’t have to pay anything”, but if she did “creep over it” she would “pay it back through your tax in very, very small percentages”, and that the government pays the entire course cost but they may also charge a loan fee. The Career Adviser said that “it just means you can study now, get the qualification, get the job, get paid decent money”;
  - (f) the Career Adviser identified the link on the website to the VET FEE-HELP information booklet but said that it was 29 to 30 pages long and just reiterates everything that the Career Adviser had already gone over. The Career Adviser said that Job Applicant G should “feel free to look at it in your own time, but I will just go over and summarise”. The Career Adviser told Job Applicant G to check the box that indicates that she agreed with all the obligations listed without identifying the detail of the obligations or ascertaining whether she had read, understood and agreed with that detail; and
  - (g) that she would receive a free laptop with the proposed VET FEE-HELP course.
27. During the telephone call Job Applicant G submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in a VET FEE-HELP assisted course provided by a Client of Acquire. Her application was accepted and resulted in an agreement for the Client to supply education services to her. Acquire did not provide her with information about her right to terminate the agreement during the termination period, the way in which she could terminate the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call.

### *Job Applicant H*

28. On or about 24 March 2015 a Career Adviser made an unsolicited telephone call to Job Applicant H during which the Career Adviser made statements to the following effect:
- (a) Job Applicant H disclosed that she was 18 years of age, had only completed schooling up to year seven, had no experience in the workforce and no current qualifications, and that she did not have a computer at home;
  - (b) the Career Adviser said that Acquire is “an employment agency that kind of focuses on getting people jobs that they want... instead of a job to kind of get them by”. She also said that Acquire “actually put 4217 people, I think, exactly into jobs last month” to which Job Applicant H responded “wow”. The Career Adviser said “instead of



going up against the 400 other people for all the online jobs right now, you [will] actually only go up against maybe one or two others who are in similar programs as yourself”; Document 11

- (c) that “the whole program is actually fully government assisted... So what that means is that the government actually pays for the entire course for this diploma upfront and it only ever has to be paid back slowly into your tax if you were ever to start earning over the yearly income threshold which currently sits at \$53,345 per year... Essentially what that means is either it gets you into the real high paying jobs where you’re earning well over \$1000 a week or if for some reason it doesn’t get you into those jobs, then you just never have to pay back for the course”; and
  - (d) that “in your current situation, I’m going to assume this might be something you want to take advantage of”, to which Job Applicant H responded “Yes”.
29. During the telephone call Job Applicant H submitted a request to participate in the VET FEE-HELP scheme, and applied to enrol in a VET FEE-HELP assisted course provided by a Client of Acquire. Her application was accepted and resulted in an agreement for the Client to supply education services to her. Acquire did not provide her with information about her right to terminate the agreement during the termination period, the way in which she could terminate the agreement or the fact that the education services could not be supplied for a period of 10 business days starting from the first business day after the telephone call.

#### **Cancellation of the Debt**

30. After concerns were raised on behalf of the Job Applicants, Acquire investigated and where necessary procured cancellation of the Job Applicants’ enrolments with its Clients, if that had not already occurred. Except for Job Applicant H, each Job Applicants’ enrolment and VET FEE-HELP Debt has been cancelled.

#### **Compliance Program**

31. Prior to January 2015 Acquire did not have a formalised, organisation-wide ACL compliance program. Acquire launched a CCA compliance program in January 2015 but the contravening conduct in relation to Job Applicants G and H occurred after its introduction. Following concerns raised by the ACCC in the course of its investigation Acquire made improvements to its compliance program.

#### **THE ADMITTED CONTRAVENTIONS**

32. The admitted contraventions are set out in full in the orders, and I will not reiterate them. It suffices to summarise them as follows.

#### **The false or misleading representation provisions of the ACL**

33. Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
34. Section 29(1)(g) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services, make a false or misleading representation

that goods or services have, relevantly, sponsorship, approval, performance characteristics, uses or benefits.

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35. Section 34 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, characteristics or suitability for their purpose of any services.
36. Pursuant to s 191 of the *Evidence Act 1995 (Cth)* (*Evidence Act*) Acquire admits, in relation to each Job Applicant, that during the relevant period its conduct was in contravention of ss 18, 29(1)(g) and 34.
37. Without differentiating between the different circumstances of each Job Applicant, the admitted contraventions are that Acquire, by the conduct of its Career Advisers;
  - (a) engaged in misleading or deceptive conduct in breach of s 18 of the ACL;
  - (b) made false or misleading representations about the uses or benefits of enrolling in a VET FEE-HELP assisted course in breach of s 29(1)(g) of the ACL;
  - (c) engaged in conduct which was liable to mislead the Job Applicants as to the nature and the characteristics of the service provided by the Career Advisers in breach of s 34 of the ACL;

doing so by each Career Adviser;

- (a) making representations with respect to future matters without having reasonable grounds for doing so, namely that:
  - (i) by participating in the VET FEE-HELP assisted course the Job Applicant would find employment, would find employment in a role of his or her choice, would find employment in a role that would pay significantly more than if the Job Applicant did not enrol in the course, or would find employment that paid “decent money”;
  - (ii) the VET FEE-HELP assisted course could be completed within a period of one to two months;
  - (iii) successful completion of the course was guaranteed;
  - (iv) the VET FEE-HELP assisted course proposed by Acquire would be of more assistance to the Job Applicant than the VET FEE-HELP assisted course provided by another VET provider that was not a Client of Acquire; and
- (b) falsely representing to the Job Applicant that the primary or only purpose of the telephone call was for Acquire to find employment for the Job Applicant when the primary purpose was to procure the enrolment of the Job Applicant in a VET FEE-HELP assisted course.

### **The prohibition on unconscionable conduct in the ACL**

38. Section 21 of the ACL relevantly provides that a person must not, in trade or commerce, in connection with the acquisition or possible acquisition of goods or services from another person engage in conduct that is, in all the circumstances, unconscionable.
39. Pursuant to s 191 of the Evidence Act Acquire admits, in relation to each of the Job Applicants, that during the relevant period its conduct was in contravention of s 21.
40. Without differentiating between the different circumstances of each Job Applicant, the admitted contraventions are that Acquire, by the conduct of its Career Advisers, engaged in conduct that was unconscionable through the use of unfair sales tactics, undue pressure and false or misleading representations, in circumstances where;
- (a) Acquire obtained each Job Applicant's personal information from a job application he or she had submitted in response to an online job advertisement;
  - (b) Acquire:
    - (i) falsely represented during the telephone call that the primary or only purpose of the telephone call was for Acquire to find employment for the Job Applicant;
    - (ii) stated that Acquire had an opportunity for the Job Applicant relating to potential employment;
    - (iii) stated that placement in the course had been organised for him or her;
    - (iv) stated that the Job Applicant had been "chosen" to participate in the course;
    - (v) falsely represented that the education course would enable the Job Applicant to find employment in "any industry";
    - (vi) in one instance, encouraged and assisted the Job Applicant to withdraw from a competitor's course for the purpose of enrolling him in a course offered through Acquire, without having a reasonable basis for doing so;
    - (vii) told the Job Applicant that it was necessary to complete the enrolment process during the telephone call;
    - (viii) directed the Job Applicant to complete the online application process and submit a request for VET FEE-HELP assistance during the telephone call without providing the Job Applicant with sufficient opportunity to consider the appropriateness of and relevant information about the course and about such assistance;
    - (ix) suggested that Acquire was affiliated with the government;
    - (x) did not adequately disclose the circumstances in which the Job Applicant would incur a Debt to the Commonwealth through enrolling in a VET FEE-HELP assisted course provided by a Client of Acquire; and

- (xi) did not ascertain whether the Job Applicant understood the nature of his or her obligations under the VET FEE-HELP scheme. Document 11

41. In some instances Acquire's conduct was particularly egregious because it was aware that:
- (a) Job Applicant A had difficulty speaking and reading English;
  - (b) Job Applicant B suffered from a learning disability which meant she had difficulty in reading, and she demonstrated poor cognitive skills during the call and required assistance from her mother to complete the online form;
  - (c) Job Applicant D had a learning disability which meant that he had difficulty studying, that he had received calls about education courses previously and was not interested in participating in such a course, that he had only completed year 10 of high school and that at the time of the call he had already enrolled in another vocational training course; and
  - (d) Job Applicant G had a learning disability and/or mental illness, was concerned that she might not be "smart enough" to undertake the proposed course, and she had previously failed to complete a course because it was "too hard".

Notwithstanding these disclosures the Career Advisers procured the Job Applicants' enrolment in VET FEE-HELP assisted courses provided by one of Acquire's Clients, usually a management course. In my view it is unlikely that these Job Applicants would have been able to complete the relevant course and, if they did, it is unlikely that it would have resulted in them obtaining such employment .

42. I consider that Acquire took advantage of vulnerable job seekers for its own financial gain. It admits that its dealings were not done in good conscience (*ACCC v Coles Supermarkets Australia Pty Ltd* [2014] FCA 1405 at [1] per Gordon J), were unfair and unreasonable (*Cameron v Qantas Airways Ltd* (1994) 55 FCR 147; [1995] FCA 1304 at 179 per Beaumont J; *Hurley v McDonalds Australia Ltd* [1999] FCA 1728 at [22] per Heerey, Drummond & Emmett JJ) and were contrary to the business and social values which underpin acceptable standards for dealing with consumers (*ACC C v Lux Distributors Pty Ltd* [2013] FCAFC 90 at [41] per Allsop CJ, Jacobson and Gordon JJ).

#### **The unsolicited consumer agreement provisions of the ACL and Regulations**

43. Section 76(c) of the ACL provides that a dealer must not make an unsolicited consumer agreement with a person unless (where the agreement is made by telephone) the person is given information about termination rights by telephone and subsequently in writing .
44. Section 76(d) of the ACL provides that the form and way in which the information is given must comply with any requirements prescribed by the Regulations. Regulation 84 requires the written information to be attached to the agreement document, to be transparent and in prominent text.
45. Pursuant to s 191 of the *Evidence Act* Acquire admits that during the relevant period:
- (a) it was a dealer within the meaning of s 71 of the ACL and the price of the education services to be provided was more than \$100;

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- (b) its negotiations with each Job Applicant resulted in the Job Applicant making an unsolicited consumer agreement with a Client of Acquire, within the meaning of s 69 (1)(b)(ii) of the ACL;
  - (c) it failed to provide the Job Applicant with the information required by s 76(a) as to the Job Applicant's right to terminate the agreement and the way in which the Job Applicant may exercise that right;
  - (d) it failed to provide the Job Applicant with the information in subparagraph (c) above, as required by s 76(c) and (d) and reg 84; and
  - (e) it contravened s 76 by failing to provide the Job Applicant with the information relating to unsolicited consumer agreements prescribed by s 76 ..

## PECUNIARY PENALTY

### Joint submissions on the appropriate penalty

46. The parties jointly seek orders requiring Acquire to pay pecuniary penalties for its contraventions of the ACL. It is settled that it is appropriate for a regulator in civil proceedings to make submissions on penalties and/or the penalty range: *Commonwealth v Director, Fair Work Building Industry Inspectorate*; *CFMEU v Director, Fair Work Building Industry Inspectorate* (2015) 326 ALR 476; [2015] HCA 46 (*CFMEU*) at [61] (French CJ, Kiefel, Bell, Nettle and Gordon JJ). In that case the plurality said (at [64]) that:

...it is consistent with the purposes of civil penalty regimes... and therefore with the public interest, that the regulator take an active role in attempting to achieve the penalty which the regulator considers to be appropriate and thus that the regulator's submissions as to the terms and quantum of a civil penalty be treated as a relevant consideration.

47. The plurality also said that it was desirable that the Court accept the parties' submissions on penalties, where it is satisfied that the penalty is appropriate in all the circumstances. Their Honours said (at [47]) that, where a particular figure cannot necessarily be said to be more appropriate than another, the Court should not depart from the submitted figure merely because "it might otherwise have been disposed to select some other figure". Their Honours went on to say (at [58]) that:

Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is *an* appropriate remedy in the circumstances thus revealed, it is **consistent with principle and, for the reasons identified in *Allied Mills*, highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty.**

(Emphasis added.)

48. There is an important public policy involved in the Court accepting appropriate agreed penalties. It promotes the predictability of outcomes in civil proceedings, encourages corporations to acknowledge contraventions and avoids lengthy and complex litigation which in turn frees the Court to deal with other matters and ACCC officers to attend to other investigations: *NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* (1996) 71 FCR 285 (*NW*

### The process of fixing a pecuniary penalty

49. In deciding a pecuniary penalty the Court should not adopt a mathematical approach of increases or decreases in the penalty within a predetermined range, or assign numerical or proportionate values to the various relevant factors. The Court must consider all the relevant facts and circumstances and use a process of “instinctive synthesis” to arrive at the appropriate penalty. In *Markarian v The Queen* (2005) 228 CLR 357 (*Markarian*), which concerned criminal sentencing, McHugh J described this process (at 378) as:

...the method of sentencing by which the judge identifies all the factors that are relevant to the sentence, discusses their significance and then makes a value judgment as to what is the appropriate sentence given all the factors of the case.

50. This approach has been adopted and approved in numerous decisions of this Court in civil penalty matters, both at first instance and appellate level.

### The requirement for specific and general deterrence

51. The central object of a civil penalty under s 224 is deterrence, both specific to the contravener and in general to others who might be tempted to contravene the ACL. In *Trade Practices Commission v CSR Ltd* (1991) ATPR 41-076 (*TPC v CSR*) at 52,152 French J said:

The principal, and I think probably the only, object of the penalties imposed by s 76 is to attempt to put a price on contravention that is sufficiently high to deter repetition by the contravener and by others who might be tempted to contravene the Act.

52. In *Singtel Optus v ACCC* (2012) 287 ALR 249; [2012] FCAFC 20 (*Singtel Optus*) at [62]- [63] (Keane CJ, Finn and Gilmour JJ) the Full Court explained:

There may be room for debate as to the proper place of deterrence in the punishment of some kinds of offences, such as crimes of passion; but in relation to offences of calculation by a corporation where the only punishment is a fine, the punishment must be fixed with a view to ensuring that the penalty is not such as to be regarded by that offender or others as an acceptable cost of doing business.

...

Generally speaking, those engaged in trade and commerce must be deterred from the cynical calculation involved in weighing up the risk of penalty against the profits to be made from contravention.

Their Honours said (at [68]) that:

The Court must fashion a penalty which makes it clear to [the contravener], and to the market, that the cost of courting a risk of contravention of the Act cannot be regarded as [an] acceptable cost of doing business.

The latter comments were approved by the High Court in *ACCC v TPG Internet Pty Ltd* (2013) 250 CLR 640; [2013] HCA 54 at [64] (French CJ, Crennan, Bell and Keane JJ).

53. The penalty should be set sufficiently high that a business, acting rationally and in its own best interest, will not be prepared to treat the risk of such a penalty as a business cost. In *NW Frozen Foods* (at 294-295) the Full Court explained:

The Court should not leave room for any impression of weakness in its resolve to impose penalties sufficient to ensure the deterrence, not only of the parties actually before it, but also of others who might be tempted to think that contravention would pay, and detection lead merely to a compliance program for the future.

However, in seeking to deter, a penalty must not be set so high as to be oppressive: *Trade Practices Commission v Stihl Chainsaws (Aust) Pty Ltd* (1978) ATPR 40-091 at 17,896 (Smithers J); *NW Frozen Foods* at 293; *ACCC v Leahy Petroleum (No 2)* [2005] FCA 254 at [9] (Merkel J).

### **The maximum penalty**

54. The maximum penalty under s 224(3) of the ACL for a contravention of ss 21, 29(1)(g) and 34 is \$1.1 million per contravention. The maximum penalty for a contravention of s 76 is \$50,000.
55. Regard must ordinarily be had to the maximum penalty. In *Markarian* (at 372), Gleeson CJ, Gummow, Hayne and Callinan JJ observed:

...careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly, because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick.

### **The number of contraventions and the course of conduct principle**

56. In the present case each relevant telemarketing call to a Job Applicant involved numerous acts or omissions which were contraventions of the misleading conduct, unconscionability, and unsolicited consumer agreement provisions of the ACL. For example, each time that a Career Adviser made a representation to a Job Applicant that Acquire was affiliated with the government, or that enrolment in the VET FEE-HELP assisted course would help them to secure better paid employment, or that the course was appropriate for the Job Applicant notwithstanding his or her learning difficulties, mental illness or lack of proficiency in English, Acquire breached ss 18, 21, 29(1)(g) or 34. The same telephone call also involved Acquire breaching the unsolicited consumer agreement provisions in s 76 through the failure to provide prescribed information to the Job Applicant. The number of contraventions in each telephone call is relevant to the maximum available penalty.

57. Following paragraph cited by:

*Australian Competition and Consumer Commission v Morild Pty Ltd* (10 November 2017) (MCKERRACHER J)

123. Where there is sufficient interrelationship in the legal and factual ~~Documents~~ <sup>16</sup> elements of the acts or omissions constituting the contraventions, the Court may apply the course of conduct or one transaction principle: *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 (at [57]). The principle was explained in *CFMEU v Cahill* by Middleton and Gordon JJ (at [39] and [41]-[42]) in the following terms:

39 [...] The principle recognises that where there is an interrelationship between the *legal and factual elements of two or more offences* for which an offender has been charged, care must be taken to ensure that the offender is not punished twice for what is essentially the same criminality. ...

...

41 [...] In other words, where two offences arise as a result of the same or related conduct that is not a disentiing factor to the application of the single course of conduct principle but a reason why a Court *may* have regard to that principle, as one of the applicable sentencing principles, to guide it in the exercise of the sentencing discretion. It is a tool of analysis which a Court is not compelled to utilise.

42 A Court is not compelled to utilise the principle because, as Owen JA said in *Royer* [2009] WASCA 139 at [28], "[d]iscretionary judgments require the weighing of elements, not the formulation of adjustable rules or benchmarks". The exercise of the sentencing discretion does not fall to be exercised in a vacuum. It is a matter of judgment to be exercised according to the facts of each case and having regard to conflicting sentencing objectives. ...

However, rather than imposing a separate penalty for each act or omission, where there is sufficient interrelationship in the legal and factual elements of the acts or omissions constituting the contraventions, the Court may in its discretion apply the "course of conduct" or "one transaction" principle. The principle was explained in *Construction, Forestry, Mining and Energy Union v Cahill* (2010) 269 ALR 1; [2010] FCAFC 39 at [39], [41]-[42] (Middleton and Gordon JJ) in the following terms:

The principle recognises that where there is an interrelationship between the *legal and factual elements of two or more offences* for which an offender has been charged, care must be taken to ensure that the offender is not punished twice for what is essentially the same criminality.

...

In other words, where two offences arise as a result of the same or related conduct that is not a disentiing factor to the application of the single course of conduct principle but a reason why a Court *may* have regard to that principle, as one of the applicable sentencing principles, to guide it in the exercise of the sentencing discretion. It is a tool of analysis which a Court is not compelled to utilise.



A Court is not compelled to utilise the principle because, as Owen JA said in *Royer* [2009] WASCA 139 at [28], “[d]iscretionary judgments require the weighing of elements, not the formulation of adjustable rules or benchmarks”. The exercise of the sentencing discretion does not fall to be exercised in a vacuum. It is a matter of judgment to be exercised according to the facts of each case and having regard to conflicting sentencing objectives.

(Emphasis in original.) (Citations omitted.)

58. As Beach J observed in *ACCC v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2)* [2016] FCA 698 at [24]-[25] (endorsed in *Reckitt* at [141] per Jagot, Yates and Bromwich JJ), the course of conduct principle does not have paramountcy in the process of assessing an appropriate penalty, and it cannot of itself unduly fetter the proper application of s 224 or operate as a de facto limit on the penalty to be imposed for contraventions. Its application must be tailored to the circumstances.
59. In the finish, the question is one of discretion in coming to the correct penalty and the course of conduct principle is a guide for use where it is appropriate. The parties submit, and I agree, that each telephone call between a Career Adviser and a Job Applicant was a single course of conduct or transaction. I accept the parties’ submission that Acquire engaged in eight courses of conduct, being one single course of conduct in respect of each call. On that basis, the maximum penalty for the contraventions is \$8.8 million (\$1.1 million x eight occasions).

#### The relevant factors

60. Pursuant to s 224(2), in determining the appropriate penalty the Court must have regard to “all relevant matters”, including:
- (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission;
  - (b) the circumstances in which the act or omission took place; and
  - (c) whether the person has previously been found by a court in proceedings to have engaged in similar conduct.
61. A number of additional matters are also relevant to the assessment of a penalty. These factors are largely drawn from cases in relation to s 76 of the *Trade Practices Act 1974 (Cth)*; see *TPC v CSR* at 52,152-53, as expanded on in *NW Frozen Foods* at 292-294 and *J McPhee and Son (Aust) Pty Ltd v ACCC* [2000] FCA 365 at [150] (Black CJ, Lee and Goldberg JJ). With some exceptions those principles are equally applicable to s 224: *ACCC v MSY Technology Pty Ltd (No 2)* (2011) 279 ALR 609; [2011] FCA 382 at 624-625 (Perram J); *ACCC v TPG Internet Pty Ltd (No 2)* [2012] FCA 629 (*TPG*) at [59]-[61] (Murphy J); *ACCC v Pepe’s Ducks Ltd* [2013] FCA 570 at [16] (Bromberg J).
62. As I said in *TPG* (at [61]), the relevant considerations include:
- (a) the size of the contravening company;
  - (b) the deliberateness of the contravention and period over which it extended;

- (c) whether the contravention arose out of the conduct of senior management of the contravener or at a lower level;
  - (d) whether the contravener has a corporate culture conducive to compliance with the ACL, as evidenced by educational programs and disciplinary or other corrective measures in response to an acknowledged contravention;
  - (e) whether the contravener has shown a disposition to cooperate with the authorities responsible for enforcement of the ACL;
  - (f) the financial position of the contravener;
  - (g) whether the contravening conduct was systematic, deliberate or covert; and
  - (h) the contravener's position of influence and importance in its industry sector.
63. In any particular case the significance of the factors above will depend on the facts and circumstances. While any pecuniary penalty must be determined for the contravening conduct, the facts relevant to penalty are not confined to that conduct alone: *ACCC v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181 (*Reckitt*) at [83] (Jagot, Yates and Bromwich JJ). In the present case it is relevant that the eight instances of telemarketing calls to the Job Applicants are not isolated examples of conduct by rogue employees.
64. I now turn to each mandatory and additional factor for consideration.

*The nature and extent of the contravening conduct, the circumstances in which it took place and any loss or damage*

65. Acquire's contravening conduct was plainly serious. The contraventions were systemic, they occurred over a considerable period of time, and in some cases they were committed against people with disclosed vulnerabilities. Acquire accepts that the contravening conduct was not undertaken by rogue employees and that its sales system courted the risk of such breaches.

*The unconscionable conduct contraventions*

66. Acquire took advantage of vulnerable unemployed job seekers who were desperate to find employment, by harvesting their personal information via (undisclosed) arrangements with online employment agencies and pretending to be interested in assisting them out of unemployment. It used unfair tactics, undue pressure and misleading representations to gull them into enrolling in vocational education courses which (while it is not admitted) in my view were unsuitable for most of them. There were a number of matters, that must have been apparent to Acquire, which strongly suggest that at least some of the Job Applicants would be unable to successfully complete or would receive no real benefit from the course. These matters include that some of the Job Applicants had learning disabilities, mental illness, difficulty in speaking and reading English, quite limited education, and insufficient time to decide whether the course was appropriate for them.
67. Acquire's behaviour strongly points to the conclusion that it had little interest in assisting these vulnerable people out of unemployment and was instead largely, perhaps only, motivated by the

fees it received for referring and enrolling the Job Applicants in courses provided by its Clients. Each Job Applicant was deprived of the opportunity to give adequate consideration to the merits and suitability of the course which Acquire marketed to them. Its conduct, particularly in relation to those who disclosed learning difficulties, mental illness and limited education, was exploitative in the extreme.

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68. As a result of this conduct each Job Applicant incurred a significant Debt (ranging between \$9,900 and \$21,000). Any Job Applicant that did not complete the relevant course and was enrolled past the relevant payment date, or who was unable to obtain better paid employment as a result of undertaking the course, would have incurred the Debt for no benefit.
69. Acquire later secured the cancellation of the enrolment and corresponding Debt of each Job Applicant, except for Job Applicant H. However, the instances involving the eight Job Applicants were not the actions of rogue employees and are unlikely to be isolated examples. It seems likely that there are many more job seekers who were induced by Acquire to enrol in a VET FEE-HELP assisted course and who were unable to complete it, or received no real benefit from it.

*The false or misleading representations contraventions*

70. Acquire falsely represented to the Job Applicants that:
  - (a) the primary or only purpose of the telephone call was to find employment for them;
  - (b) by enrolling in the relevant course they would find employment, would find employment in a role that would pay significantly more than if the Job Applicants did not enrol in the course or enrolled in some other course. In the case of Job Applicant D the course proposed by Acquire would be of more assistance to him than a course he was already undertaking; and
  - (c) (for some of the Job Applicants) that successful completion of the course was guaranteed or that it could be completed within a short period of time.

These representations were central to its conduct in procuring the Job Applicants' enrolment and were plainly serious.

*The unsolicited consumer agreement contraventions*

71. Unsolicited selling occurs when a trader approaches a consumer directly to offer a product or service for sale, and where a consumer agrees to make a purchase and enters into an agreement with the supplier outside of a retail environment or the supplier's place of business or over the telephone: see cl. 23.48 of the Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010.
72. Chapter 8 and pp 464-491 of the Explanatory Memorandum show that the relevant provisions of the ACL are aimed at addressing the added vulnerability or disadvantage faced by consumers through unsolicited selling practices including:
  - (a) the impact of information asymmetry between the supplier and the consumer. In the case of unsolicited sales the consumer is unlikely to have engaged in a product comparison or sampled the product prior to the unsolicited approach, and the

information available to the consumer is largely that which is represented to them by the trader; and Document 11

- (b) the incentives for unfair conduct. Unsolicited selling often involves sales techniques which take advantage of the unequal market power of the participants and exacerbates the problem of information asymmetry. The sales techniques may include lack of disclosure of important information, exertion of interpersonal pressure by sales people, targeting of vulnerable consumers and misleading representations.

73. Against that backdrop Acquire's misconduct must be seen as serious. It sourced the Job Applicants' contact information from online job applications, made unsolicited telephone calls to them to market VET FEE-HELP assisted courses, and brought unfair tactics, undue pressure, and false or misleading representations to bear on them to induce them to enter into an agreement. Some of the Job Applicants disclosed significant vulnerabilities. Acquire's failure to adhere to the requirements of s 76 to inform the Job Applicants of their right to terminate the agreement during the termination period, and the way in which they could exercise that right, were serious given the significant Debt the Job Applicants incurred.

*Whether the contravener has previously been found in a court to have engaged in similar conduct*

74. Acquire has not previously been found in breach of the ACL or the CCA.

*The size of the contravener and its financial position*

75. At the time of the conduct Acquire was a significant and market leading provider of student recruitment services. Acquire put on the following confidential evidence as to its revenue, profitability and asset position:

- (a) audited financial statements for the Acquire Learning Consolidated Group for the financial year ended 30 June 2015 (FY2015), which covered the period in which the contraventions occurred; and
- (b) draft management accounts for the Acquire Learning Consolidated Group for the financial year ended 30 June 2016 (FY2016) (being the most up-to-date financial reports at the date of the hearing).

76. I considered aspects of the material to be inadequate and I required Acquire to file further evidence. It then adduced further confidential information as to its revenue, profitability and asset position, namely:

- (a) further draft financial summary management accounts for the Acquire Learning Consolidated Group for FY2016 comprising a statement of cash flows, a statement of financial position, a statement of financial performance (profit and loss), and a statement of changes in equity; and
- (b) an explanation of the draft management accounts for FY2016 which had been earlier provided.

77. I made orders pursuant to ss 37AF and 37AG of the *Federal Court of Australia Act 1976 (Cth)* (**Federal Court Act**) for the financial information to be treated as confidential except to the extent that I

considered it necessary or appropriate to refer to the information in the reasons for judgment herein. Document 11

78. The Consolidated Statement of Profit or Loss for FY2015 shows that Acquire earned revenue of \$129.70 million in that financial year. It made a profit before income tax of \$12.11 million and a profit after tax of \$6.30 million. As at 30 June 2015 it had net assets of \$13.31 million. The parties' submissions focused on Acquire's financial position in the financial year ending on 30 June 2015 because the contraventions occurred in that period. However it is also necessary to understand its more recent financial position because one of the primary objects of a pecuniary penalty is to fix a penalty high enough to deter Acquire from a repetition of such conduct.
79. The draft consolidated management accounts for FY2016 show that Acquire earned revenue of \$136.89 million in that financial year. It made a loss before tax of \$15.92 million and a loss after tax of \$12.89 million. As at 30 June 2016, more than a year after the last contravention, the Acquire Learning Consolidated Group had negative assets of \$2 million. Acquire explained the significant worsening of its financial position as arising from new statutory requirements as part of regulatory reform of the vocational education sector, the transitioning of its business from a brokerage style marketing and promotional business to a full education delivery model which increased costs of sales, investment in activities to build revenue streams outside the VET FEE-HELP scheme, and the purchase of a vocational education provider.
80. The fact that Acquire's most recent financial statements show that it made an after-tax loss of almost \$13 million, and that its asset position has dramatically worsened, is significant to my view in relation to the appropriate penalty. Had its financial position been better a higher penalty than that proposed may have been appropriate.

#### *Deliberateness of contravening conduct and the involvement of senior management*

81. Acquire's business model was based on maximising the number of enrolments it was able to achieve for its Clients and thereby maximise the fees payable to it. Acquire's conduct in that regard was deliberate and overt.
82. Acquire provided its Career Advisors with a script for the telemarketing calls, and I infer that it trained them in that regard. It gave them the tools to pressure Job Applicants into enrolling in the recommended course on the spot, without time to consider whether that course was suitable for them. The script included a list of "frequently raised objections" and suggested responses that were designed to overcome objections, including "I think you should give it a go for at least a couple of months, correct?"; "Statistically people who do this course are earning an extra \$10,000 per year on average"; and "I have done this course before and trust me, you can do it!"
83. The script required Career Advisors to make misleading representations such as: "We are all about helping people land their dream job and most importantly finding that job in your local community"; and "It's my job to get you into one of those roles". That was far from the truth.
84. Acquire incentivised its Career Advisors to pressure prospective students into enrolment so as to maximise sales by paying them commission, cash and prizes based on the number of people referred and enrolled. One of its training documents advised Career Advisors to "book the maximum amount of enrolments possible and end up receiving the biggest salary possible."

85. Although no senior management were directly involved in the contraventions, Acquire admits that its senior managers, including its National Sales Manager, were involved in devising the sales system. Acquire accepts that through its sales system it “took the odds” and “courted the risk” of engaging in the contravening conduct. Its conduct was deliberate and it involved senior management to an extent, which also supports the imposition of substantial penalties.

#### *Culture of corporate compliance*

86. Following the ACCC commencing its investigation, Acquire undertook steps to improve its compliance with the ACL, which is to its credit. However, for much of the relevant period Acquire did not have a compliance program in place, and even when it implemented such a program it did not prevent the contravening conduct in relation to Job Applicants G and H. Acquire accepts that the compliance program it implemented was inadequate.

#### *Cooperation with authorities*

87. Acquire has cooperated with authorities from the beginning of the investigation. It voluntarily handed over information and documents and participated in a series of discussions with the ACCC to bring an agreed resolution of the matter before the Court. By admitting to the contraventions the ACCC and the community have avoided the cost and burden of a trial. I accept that Acquire has demonstrated contrition and I have taken its cooperation into account in relation to the penalties.

#### *Deterrence*

88. The deliberateness of the contravening conduct, its nature in targeting vulnerable people, the losses suffered by the Commonwealth, and Acquire’s status as a market leader, indicates a strong requirement for general and specific deterrence.
89. In light of Acquire’s reduced financial position, I consider the proposed penalties totalling \$4.5 million are sufficient to deter it from a repetition of similar conduct. The penalties are proposed in circumstances where Acquire’s most recent financial statements show an after-tax loss of almost \$13 million and a negative net asset position (following an approximately \$15 million worsening of its asset position in one financial year).
90. A penalty of this magnitude, imposed on a market leader in the sector, is also appropriate to deter other businesses from engaging in similar conduct. It is unlikely that another business, acting rationally and in its own best interest, will be prepared to treat the risk of such a penalty as an acceptable cost of doing business. General deterrence is particularly important in circumstances where Acquire rorted the VET FEE-HELP scheme for its own financial gain and, as the parties submit, the VET FEE-HELP sector is beset with compliance issues. It is necessary to send a strong message to deter other businesses from a repetition of similar conduct.

#### *Parity principle*

91. The parity principle provides that, all other things being equal, similar contraventions should incur similar penalties. But, as the Full Court in *NW Frozen Foods* cautioned (at 295), “other things are rarely equal where contraventions of the *Trade Practices Act* are concerned.” There are many difficulties associated with setting penalties by reference to penalties previously imposed for

contraventions in differing circumstances or in circumstances where some of the facts are similar but others are not: *Singtel Optus* at [60] approving the observation of Middleton J in *ACCC v Telstra Corporation Ltd* (2010) 188 FCR 238 at [215].

92. The parties did not seek to support the proposed penalty on the grounds that the facts of this case are comparable to those of other cases.

### *Totality principle*

93. This principle requires that the entirety of the underlying contravening conduct be considered to determine whether a penalty is just and appropriate as a whole. The underlying rationale of the principle is to ensure that the proposed penalty is proportionate when the contraventions are viewed collectively: *TPG* at [138]-[139]. Its application in the present case means that, although there are eight courses of conduct, the total penalty should not exceed what is appropriate for the entirety of the underlying contravening conduct. It operates as a final check to ensure that the penalties imposed are just and appropriate overall: *Trade Practices Commission v Allied Mills Industries Pty Ltd (No 5)* (1981) 60 FLR 38 at 40; *Trade Practices Commission v TNT Australia Pty Limited* (1995) ATPR 41-375 at 40,169. The parties submit, and I agree, that while the proposed penalty of \$4.5 million is substantial it is not oppressive. I would not apply the totality principle so as to reduce the aggregate penalty below that proposed.

### *Pecuniary penalty orders*

94. Having synthesised the relevant matters, I consider a total pecuniary penalty of \$4.5 million is appropriate. There is no good reason to depart from the parties' submissions as to the appropriate penalty. The total penalty relates to the contraventions as follows:
- (a) in respect of the eight contraventions of s 76, \$40,000 for each contravention, totalling \$320,000;
  - (b) in respect of the eight contraventions of ss 29(1)(g) and 34 together, \$225,000 for each contravention totalling \$1.8 million;
  - (c) in respect of the four contraventions of s 21 relating to Job Applicants A, B, D and G, \$345,000 for each contravention, totalling \$1.38 million; and
  - (d) in respect of the four contraventions of s 21 relating to Job Applicants C, E, F and H, \$250,000 for each contravention, totalling \$1 million.

The higher penalty for the four contraventions of s 21 relating to Job Applicants A, B, D and G reflects the aggravating features of Acquire's conduct in those instances.

### *DECLARATIONS*

95. The Court has power under s 21 of the *Federal Court Act* to award declaratory relief. Ordinarily, three requirements should be satisfied before a declaration can be made: see *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421; [1972] HCA 61 at 437-438 (Gibbs J):
- (a) the question must be a real and not a hypothetical or theoretical one;
  - (b) the applicant must have a real interest in raising it; and

- (c) there must be a proper contradictor.

96. Following paragraph cited by:

*Australian Competition and Consumer Commission v Oakmoore Pty Ltd* (13 August 2018) (GLEESON J)

74. Where declarations are sought by consent, the Court's discretion is not supplanted; however, the Court will not usually refuse to give effect to terms of settlement by declining to make orders where they are within jurisdiction and are otherwise unobjectionable: *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 at [96] per Murphy J

*Director of Consumer Affairs Victoria v Fletcher & Parker (Balwyn) Pty Ltd* (14 December 2017) (MURPHY J)

81. The Court has a broad discretion to order declaratory relief under s 21 of the *Federal Court of Australia Act 1976* (Cth). The requirements for the declarations sought in the present case are satisfied. The questions are real, Consumer Affairs has a real interest in seeking the declarations and Fletcher is a proper contradictor: *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421 at 437-438 (Gibbs J). The Court will ordinarily not refuse orders that are within jurisdiction and are otherwise unobjectionable: *Australian Competition and Consumer Commission v Econovite Pty Ltd* [2003] FCA 964 at [11] (French J); *Australian Competition and Consumer Commission v Acquire learning & Careers Pty Ltd* [2017] FCA 602 at [96]

Where declarations are sought by consent the Court's discretion is not supplanted, but the Court will not usually refuse to give effect to terms of settlement by refusing to make orders where they are within jurisdiction and are otherwise unobjectionable: *ACCC v Econovite Pty Ltd* [2003] FCA 964 at [11] (French J).

97. It is unnecessary to now set out the declarations the parties seek when they are detailed in the orders made. It suffices to note that they are in my view appropriate because they serve to record the Court's disapproval of the contravening conduct, inform the public and operate to deter others from contravening the ACL. The questions are real, as a public regulator the ACCC has a real interest in seeking the declarations, and although the declarations are jointly proposed Acquire is a proper contradictor: see *ACCC v MSY Technology Pty Ltd* (2012) 201 FCR 378; [2012] FCAFC 56 at [30] (Greenwood, Logan and Yates JJ).

## INJUNCTIVE RELIEF



98. The parties seek an injunction restraining Acquire for a period of three years from making representations to the effect of one of those made to the Job Applicants. The Court has ample power pursuant to s 232 of the ACL to grant such injunctive relief, subject to three limitations: see *ACCC v Z-Tek Computers Pty Ltd* (1997) 78 FCR 197 at 203-204 (Merkel J):
- (a) the power is confined by reference to the scope and purpose of the ACL. The relief should be designed to prevent a repetition of the conduct for which the relief is sought;
  - (b) there must be a sufficient nexus or relationship between the contravention and the injunction; and
  - (c) the injunction must relate to the “matter” before the Court.
99. After I raised concerns about a lack of clarity in the injunction proposed, the parties put forward an injunction in amended form. The proposed amended injunction is sufficiently clear, has a sufficient relationship to the contraventions, and is designed to deter a repetition of the contravening conduct (by attaching the sanctions available for contempt of Court to any repetition of the contraventions): *ICI Australia Operations Pty Ltd v Trade Practices Commission* (1992) 38 FCR 248 at 268 (French J). In my view it is appropriate to order the injunctive relief the parties seek.

#### COMPLIANCE PROGRAM

100. The parties seek orders requiring Acquire to review its existing compliance program at the end of each six month period, doing so for a period of three years. Such an order is appropriate in circumstances where Acquire’s existing compliance program did not prevent contraventions of the ACL. It is in the interests of consumers and in the public interest that Acquire has an effective compliance program in place, and appropriate to make these orders.

#### COSTS

101. Acquire has agreed to pay \$100,000 towards the ACCC’s costs of the proceeding, within 30 days of the date of this order. Such an order is appropriate.
102. I have made orders in terms of the draft minutes provided by the parties.

I certify that the preceding one hundred and two (102) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Murphy.

Associate:

Dated: 30 May 2017

## Cited by:

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Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 4) [2018] FCA 1408 (19 September 2018) (GLEESON J)

720. Murphy J's judgment in *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 (“

Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 4) [2018] FCA 1408 (19 September 2018) (GLEESON J)

720. Murphy J's judgment in *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 (“*Acquire*

Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 4) [2018] FCA 1408 (19 September 2018) (GLEESON J)

721. In *Acquire* ,

Australian Competition and Consumer Commission v Cornerstone Investment Aust Pty Ltd (in liq) (No 4) [2018] FCA 1408 (19 September 2018) (GLEESON J)

721. In *Acquire* , the respondent's staff used personal information that Acquire had purchased to make unsolicited marketing calls to job seekers and aggressively market vocational education courses to them. The courses were run by education providers who had agreed to pay Acquire a fee for referrals and enrolments, sometimes a percentage of the course fee. Acquire aimed to enrol the job seekers, on the spot, into VET FEE-HELP eligible courses and also into VET FEE-HELP to pay for the relevant course. Acquire used various unfair and misleading sales techniques to induce job seekers. For example, its staff represented to consumers the primary or only purpose of the telephone call was for Acquire to find employment for the job seeker, when their purpose was in fact to procure the enrolment of consumers into a VET FEE-HELP assisted course. The enrolled consumers incurred debts of between \$9,900 and \$21,000 due to their enrolment in the courses: *Acquire* at [2]

Australian Competition and Consumer Commission v Oakmoore Pty Ltd (No 2) [2018] FCA 1170 (13 August 2018) (GLEESON J)

18. Recently, in *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 (“*Acquire Learning*”)

Australian Competition and Consumer Commission v Oakmoore Pty Ltd [2018] FCA 1169 (13 August 2018) (GLEESON J)

74. Where declarations are sought by consent, the Court's discretion is not supplanted; however, the Court will not usually refuse to give effect to terms of settlement by declining to make orders where they are within jurisdiction and are otherwise unobjectionable: *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 at [96] per Murphy J

Director of Consumer Affairs Victoria v Fletcher & Parker (Balwyn) Pty Ltd [2017] FCA 1521 (14 December 2017) (MURPHY J)

81. The Court has a broad discretion to order declaratory relief under s 21 of the *Federal Court of Australia Act 1976 (Cth)* . The requirements for the declarations sought in the present case are satisfied. The questions are real, Consumer Affairs has a real interest in seeking the declarations and Fletcher's is a proper contradictor: *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421 at 437-438 (Gibbs J). The Court will ordinarily not refuse orders that are within

jurisdiction and are otherwise unobjectionable: *Australian Competition and Consumer Commission v Econovite Pty Ltd* [2003] FCA 964 at [11] (French J); *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 at [96]

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*Australian Competition and Consumer Commission v Morild Pty Ltd* [2017] FCA 1308 (10 November 2017) (MCKERRACHER J)

123. Where there is sufficient interrelationship in the legal and factual elements of the acts or omissions constituting the contraventions, the Court may apply the course of conduct or one transaction principle: *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 (at [57]). The principle was explained in *CFMEU v Cahill* by Middleton and Gordon JJ (at [39] and [41]-[42]) in the following terms:

39 [...] The principle recognises that where there is an interrelationship between the *legal and factual elements of two or more offences* for which an offender has been charged, care must be taken to ensure that the offender is not punished twice for what is essentially the same criminality. ...

...

41 [...] In other words, where two offences arise as a result of the same or related conduct that is not a disentitling factor to the application of the single course of conduct principle but a reason why a Court *may* have regard to that principle, as one of the applicable sentencing principles, to guide it in the exercise of the sentencing discretion. It is a tool of analysis which a Court is not compelled to utilise.

42 A Court is not compelled to utilise the principle because, as Owen JA said in *Royer* [2009] WASCA 139 at [28], "[d]iscretionary judgments require the weighing of elements, not the formulation of adjustable rules or benchmarks". The exercise of the sentencing discretion does not fall to be exercised in a vacuum. It is a matter of judgment to be exercised according to the facts of each case and having regard to conflicting sentencing objectives. ...

*Re Acquire Learning & Careers Pty Ltd (administrators appointed)* [2017] VSC 572 (22 September 2017) (Gardiner AsJ)

21. In my earlier reasons, I refer to the ACCC investigations and the findings of Murphy J in the proceedings brought by the ACCC in the Federal Court of

Australia. [16]. Since 1 June, when I granted the first extension, the administrators have:

- (a) reviewed documentation in respect of the ACCC investigation and prosecution;
- (b) reviewed the judgment obtained by the ACCC in the Federal Court in July 2016, and the orders then made against AL&C by Murphy J; and
- (c) considered the impact of the Federal Court judgement against AL&C, having regard to the administrators' appointment.

*via*

[16] See paragraph 6(ix) of my earlier reasons and the reasons of Murphy J which are reported as *Australian Competition and Consumer Commission v Acquire Learning & Careers Pty Ltd* [2017] FCA 602 (30 May 2017). Document 11

*Australian Competition and Consumer Commission v Get Qualified Australia Pty Ltd (in liquidation) (No 3)* [2017] FCA 1018 (30 August 2017) (BEACH J)

55. But I accept that some albeit limited guidance may be taken from the penalties imposed in *Australian Competition and Consumer Commission v Acquire Learning and Careers Pty Ltd* [2017] FCA 602

*Re Acquire Learning Pty Ltd (Administrators Appointed)* [2017] VSC 376 (28 June 2017) (Gardiner AsJ)

(ix) on 30 May 2017, following a trial conducted on 26 July 2016 and based largely on admissions made by Acquire Learning & Careers, Murphy J of the Federal Court of Australia imposed pecuniary penalties totalling \$4.5M on Acquire Learning & Careers and ordered that it contribute \$100,000 toward the costs of the Australian Consumer and Competition Commission ('ACCC') incurred in that proceeding. [2] The penalties were imposed because of contraventions of the *Australian Consumer Law* by Acquire Learning & Careers in marketing VET FEE-HELP assisted courses to job seekers. The contraventions relate to telemarketers employed by Acquire Learning & Careers engaging in misleading or deceptive conduct, making false or misleading representations about VET FEE-HELP courses and engaging in conduct trade or commerce which was likely to mislead. The Court found that the motive of Acquire Learning & Careers was to maximise its profits by so doing. Its conduct was heavily criticised by Murphy J. As the judgment was only delivered on 30 May 2017, the administrators are still assessing the assertions made by the ACCC in the relevant proceedings and considering the impact of the findings by Murphy J in relation to claims which might be made in a liquidation against those involved.

*via*

[2] The reasons of Murphy J are reported as [2017] FCA 602.