

Article Information

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Vocational Education and Training Industry Service Providers taught a lesson in the Federal Court

Vocational education providers have been on the top of the Australian Competition and Consumer Commission (ACCC) hit list. In the last two months alone, the Federal Court has ruled against three major service providers, Get Qualified Australia Pty Ltd, Acquire Learning and Careers Pty Ltd and Unique International College Pty Ltd. Penalties are yet to be decided in the case of Get Qualified and Unique. Acquire has been ordered to pay penalties of \$4.5 million which is the ACCC's second largest consumer protection penalty.

Thousands of consumers have suffered loss as a result of the misconduct by these major service providers. The ACCC are particularly concerned that unscrupulous door to door marketing practices previously used in the energy sector are now appearing in the education sector. This update will focus on the decision of Australian Competition and Consumer Commission v Unique International College [2017] FCA 727.

The Unique decision

On 30 June 2017, Justice Perram of the Federal Court found that in breach of the Australian Consumer Law, Unique made false or misleading representations and engaged in a pattern of behaviour that amounted to unconscionable conduct.

During the relevant period, Unique offered potential students courses in respect of which many students would be eligible for Commonwealth financial assistance known as 'VET FEE-HELP.' These courses cost between \$10,000 and \$25,000. Unique misled consumers by stating that the courses were free, when in fact they would incur a debt payable to the Commonwealth Government if they earned more than \$54,126 in the 2014/2015 income year.

Unique also employed incentive procedures which included gifting students who enrolled in one of its four courses a free laptop, iPad or a \$1,000 cash gift with which to purchase such a device. It also conducted a student referral program where a student would receive a \$200 reward and sometimes more in the instance where the student lasted until the census date for their course, which triggered the Commonwealth's payment obligation to Unique.

The ACCC alleged that Unique's incentive procedures, amongst other tactics, were unconscionable in that it targeted particular locations for enrolment purposes. These towns and cities were said to be situated in areas where inhabitants were generally people of lower socio-economic means and/or were comprised of a higher percentage of indigenous persons than the average eastern Australian town or city.

At these locations, it was said that Unique conducted marketing operations which included door to door sales and conducting group marketing events. At these group marketing events, it is alleged that Unique's staff told the attendees that its courses were free or free until they reached a particular level of income following completion of their chosen course. At the same time, free laptops were allegedly handed out to those who signed up.

Unique found to have breached the Australian Consumer Law

The ACCC formed their case by demonstrating two primary breaches of the Australian Consumer law:

1. that Unique had engaged in misleading or deceptive conduct in relation to each of the consumers because it had not informed any of them that the courses were not in fact free and that each student would be left with a debt to the Commonwealth under the VET FEE-HELP scheme. These were alleged to be 'representations by silence' which were false or misleading (or likely to mislead or deceive); and

2. that Unique had behaved unconscionably towards the consumers because of its failure to explain the nature of what they were signing up to against the backdrop of an aggressive enrolment process and where there were elements of disadvantage in the circumstances of each of the individual consumers. Essentially, that Unique had a 'system of conduct or pattern of behaviour' within the meaning of s 21(4)(b) of the Australian Consumer Law.

Justice Perram accepted that the strategy of targeting disadvantaged people by reference to indigeneity, remoteness and social disadvantage (whether deliberate or not), the use of gifts to students signing up, the use of incentives to staff to encourage them to sign up students, and the holding of signing up meetings constituted a 'system' because they were mostly the result of considered decision making by senior management within Unique.

Justice Perram found that in New South Wales, this system was unconscionable. His Honour held that with the correct student cohort and management practices, this style of operation may well have been permissible. However, when the practices are deployed against a targeted group of disadvantaged persons, the effect was to supercharge the exploitation of the disadvantaged group being targeted and also Unique's remarkable profits.

Orders and relief sought

A further case management hearing is scheduled to take place on Friday, 28 July 2017. The Court will likely make orders for the preparation of further argument on relief and costs. The ACCC has stated that it is seeking redress for affected consumers by cancelling enrolments and debts. The ACCC and Department of Education are seeking orders for the repayment of the funds paid by the Commonwealth. In total, Unique accessed \$139.9 million in Commonwealth funds.

The ACCC is currently awaiting judgment against three other private colleges namely, AIPE, Empower Institute and Phoenix. It has accepted court-enforceable undertakings to cancel enrolments and repay government loans from two others, Australian Vocational Learning Centre and Careers Australia, which went into voluntary administration in May 2017.

A common theme emerging from these cases is that services providers have taken advantage of vulnerable consumers by employing unfair and high pressure sales tactics. The ACCC has warned businesses that using unfair sales tactics and making misleading representations to pressure vulnerable consumers is unacceptable.