



# **Higher Education Support Amendment (VET FEE-HELP and Providers) Act 2009**

**No. 39, 2009**

**An Act to amend the *Higher Education Support Act*  
*2003*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**No. 39, 2009**

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**An Act to amend the *Higher Education Support Act 2003*, and for related purposes**

*[Assented to 23 June 2009]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Higher Education Support Amendment (VET FEE-HELP and Providers) Act 2009*.

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## **2 Commencement**

This Act commences on the day after it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—VET FEE-HELP

### *Higher Education Support Act 2003*

#### **1 After paragraph 6(d) of Schedule 1A**

Insert:

(da) the body offers at least one \*VET course of study; and

#### **2 Application**

Paragraph 6(da) of Schedule 1A to the *Higher Education Support Act 2003* applies to decisions about approvals relating to applications made after the commencement of that paragraph.

#### **3 After clause 30 of Schedule 1A**

Insert:

#### **30A Revocation of approval if body's links to Australia are broken**

The Minister may revoke a body's approval as a \*VET provider if:

- (a) the body ceases to be one described in paragraph 6(a); and
- (b) the Minister complies with the requirements of clause 34.

#### **4 Application**

Clause 30A of Schedule 1A to the *Higher Education Support Act 2003* applies to an approval granted before, on or after the commencement of that clause.

#### **5 After clause 32 of Schedule 1A**

Insert:

#### **32A Revocation of approval if body ceases to offer VET courses of study**

The Minister may revoke a body's approval as a \*VET provider if:

- (a) the body no longer offers any \*VET courses of study; and
- (b) the Minister complies with the requirements of clause 34.

## 6 Application

Clause 32A of Schedule 1A to the *Higher Education Support Act 2003* applies to an approval granted as a result of an application made after the commencement of that clause.

## 7 At the end of clause 43 of Schedule 1A

Add:

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

## 8 At the end of subclause 45(1) of Schedule 1A

Add:

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

## 9 At the end of Subdivision 7-A of Schedule 1A

Add:

### 45A VET unit of study not undertaken as part of VET course of study

For the purposes of paragraphs 43(e) and 45(1)(a), a student is taken not to undertake a \*VET unit of study as part of a \*VET course of study if undertaking the unit involves the student doing more than he or she needs to do to be awarded whichever of the following the course leads to:

- (a) a \*VET diploma;
- (b) a \*VET advanced diploma;
- (c) a \*VET graduate diploma;
- (d) a \*VET graduate certificate.



## **Schedule 2—Date of effect of approval of providers**

### ***Higher Education Support Act 2003***

#### **1 At the end of subsection 16-5(3)**

Add “or the notice of the provider’s approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*”.

#### **2 Subsection 16-55(2)**

Repeal the subsection, substitute:

- (2) A decision of the Minister to approve a body corporate as a higher education provider takes effect when the notice of approval takes effect under the *Legislative Instruments Act 2003*.

Note: Section 12 of the *Legislative Instruments Act 2003* provides for when a legislative instrument takes effect.

#### **3 At the end of section 22-1**

Add:

- ; or (c) if the notice of the provider’s approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.

#### **4 At the end of Division 22**

Add:

### **Subdivision 22-E—Notice of approval ceasing to have effect under the Legislative Instruments Act 2003**

#### **22-45 Notice of approval ceasing to have effect under the *Legislative Instruments Act 2003***

- (1) This section applies if:
- (a) a decision of the Minister to approve a body corporate as a higher education provider has taken effect; and

- (b) the body ceases to be approved as a higher education provider because the notice of the approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.
- (2) The fact that the body ceases to be approved as a higher education provider does not:
  - (a) affect:
    - (i) the operation of this Act, or any instrument made under this Act, in relation to the body before the cessation; or
    - (ii) anything duly done or suffered in relation to the body before the cessation; or
  - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred before the cessation; or
  - (c) affect any penalty, forfeiture or punishment incurred in respect of the body having been a higher education provider; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

Any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the body had not ceased to be approved as a higher education provider.

#### **5 At the end of subclause 5(2) of Schedule 1A**

Add “or the notice of the provider’s approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*”.

#### **6 Subclause 12(2) of Schedule 1A**

Repeal the subclause, substitute:

- (2) A decision of the Minister to approve a body corporate as a \*VET provider takes effect when the notice of approval takes effect under the *Legislative Instruments Act 2003*.

Note: Section 12 of the *Legislative Instruments Act 2003* provides for when a legislative instrument takes effect.

#### **7 At the end of clause 29 of Schedule 1A**

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Add:

- ; or (c) if the notice of the provider's approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.

## **8 At the end of Division 5 of Schedule 1A**

Add:

### **Subdivision 5-E—Notice of approval ceasing to have effect under the Legislative Instruments Act 2003**

#### **39A Notice of approval ceasing to have effect under the *Legislative Instruments Act 2003***

- (1) This clause applies if:
- (a) a decision of the Minister to approve a body corporate as a \*VET provider has taken effect; and
  - (b) the body ceases to be approved as a VET provider because the notice of the approval ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.
- (2) The fact that the body ceases to be approved as a \*VET provider does not:
- (a) affect:
    - (i) the operation of this Act, or any instrument made under this Act, in relation to the body before the cessation; or
    - (ii) anything duly done or suffered in relation to the body before the cessation; or
  - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred before the cessation; or
  - (c) affect any penalty, forfeiture or punishment incurred in respect of the body having been a VET provider; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.

Any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the body had not ceased to be approved as a VET provider.

## 9 Application and transitional provisions

- (1) The amendments made by this Schedule apply in relation to the following decisions to approve bodies corporate as higher education providers or VET providers:
- (a) decisions that were made on or after the commencement of this Schedule;
  - (b) decisions that were made before the commencement of this Schedule, except:
    - (i) decisions that took effect before that commencement; and
    - (ii) decisions, notices of which ceased to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003* before that commencement.
- (2) However, a decision to approve a body corporate as a higher education provider or VET provider takes effect on the commencement of this Schedule if:
- (a) notice of the approval was registered under the *Legislative Instruments Act 2003* before that commencement; and
  - (b) apart from this subitem, the decision would have taken effect before that commencement because of the amendments made by this Schedule applying as described in subitem (1).

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[*Minister's second reading speech made in—  
House of Representatives on 18 March 2009  
Senate on 15 June 2009*]

(41/09)

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