



Higher Education Support Amendment (Streamlining and Other Measures) Act 2012

No. 160, 2012

**An Act to amend the law in relation to higher
education and vocational education and training,
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. 160, 2012

**An Act to amend the law in relation to higher
education and vocational education and training,
and for related purposes**

[Assented to 28 November 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Support
Amendment (Streamlining and Other Measures) Act 2012*.

Higher Education Support Amendment (Streamlining and Other Measures) Act 2012 No. 160,
2012

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 November 2012
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	29 November 2012
4. Schedule 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4A. Schedule 3A	The day this Act receives the Royal Assent.	28 November 2012
5. Schedule 4	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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—COAG amendments

Part 1—Kinds of VET providers

Division 1—Amendments

Higher Education Support Act 2003

1 Clause 4 of Schedule 1A

Omit “corporate”.

2 Subclauses 5(1) and 6(1) of Schedule 1A

Omit “corporate”.

3 Before paragraph 6(1)(a) of Schedule 1A

Insert:

(aa) the body is a body corporate; and

4 After subclause 6(1) of Schedule 1A

Insert:

(1A) The Minister, in writing, may also approve a body as a *VET provider if:

- (a) the body is of a kind specified in the *VET Guidelines; and
- (b) the body:
 - (i) is established under the law of the Commonwealth, a State or a Territory; and
 - (ii) carries on business in Australia; and
 - (iii) has its central management and control in Australia; and
- (c) subject to subclause (2), providing education is, or is taken to be, the body’s principal purpose; and
- (d) the body is a *registered training organisation as listed on the *National Register; and
- (e) the body either fulfils the *VET tuition assurance requirements or is exempted from those requirements under clause 8; and
- (f) the body offers at least one *VET course of study; and

- (g) the body applies for approval as provided for in clause 9; and
- (h) the Minister is satisfied that the body is willing and able to meet the *VET quality and accountability requirements; and
- (i) the body complies with any requirements set out in the VET Guidelines.

5 Subclause 6(2) of Schedule 1A

Omit “paragraph (1)(b)”, substitute “paragraph (1)(b) or (1A)(c)”.

6 Clause 7 of Schedule 1A

Omit “corporate”.

7 Subclauses 8(1) and 9(1) of Schedule 1A

Omit “corporate”.

8 Clause 9A of Schedule 1A

Omit “corporate” (first occurring).

9 Subclause 11(2) of Schedule 1A

Omit “paragraph 6(1)(f)”, substitute “paragraph 6(1)(f) or 6(1A)(h)”.

10 Paragraphs 11(2)(a) and (b) of Schedule 1A

Omit “corporate”.

11 Subclause 11(2A) of Schedule 1A

Omit “paragraph 6(1)(f)”, substitute “paragraph 6(1)(f) or 6(1A)(h)”.

12 Subclauses 11(2A) and 12(2) of Schedule 1A

Omit “corporate”.

13 Subclause 12A(1) of Schedule 1A

Omit “body corporate’s”, substitute “body’s”.

14 Clause 16 of Schedule 1A

Omit all the words after “regard”, substitute:

to:

- (a) any financial statement provided by the provider under clause 15; and

(b) any financial information provided by the provider in response to a notice given to the provider under clause 24.

15 Subclause 17(3) of Schedule 1A

Repeal the subclause.

16 Paragraph 25(2)(a) of Schedule 1A

Before “any”, insert “if the VET provider was approved under subclause 6(1)—”.

17 After paragraph 25(2)(a) of Schedule 1A

Insert:

(aa) if the VET provider was approved under subclause 6(1A)—any of the conditions in subclause 6(1A) are or could be met in relation to the provider after the event; or

18 Paragraph 30A(a) of Schedule 1A

After “6(1)(a)” insert “or 6(1A)(b)”.

19 Paragraph 39A(1)(a) of Schedule 1A

Omit “corporate”.

Division 2—Application and transitional

20 Application of amendments made by Division 1

The amendments made by Division 1 (other than items 14, 18 and 19) apply in relation to applications for approval as a VET provider made on or after the commencement of this item.

21 Application of amendment made by item 14

The amendment made by item 14 applies in relation to financial statements or financial information provided before, on or after the commencement of this item.

22 Application of amendments made by items 18 and 19

The amendments made by items 18 and 19 apply in relation to a VET provider approved before, on or after the commencement of this item.

23 Specified kind of provider must be approved under subclause 6(1A) of Schedule 1A

If a body corporate:

- (a) applied for approval as a VET provider before the commencement of this item; and
- (b) at the time of making the decision on the application, is of a kind specified in the VET Guidelines for the purposes of paragraph 6(1A)(a) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule);

then the Minister may approve the body under subclause 6(1A) of Schedule 1A to that Act and must not approve the body under subclause 6(1) of Schedule 1A to that Act.

24 Specified kind of provider taken to be approved under subclause 6(1A) of Schedule 1A

If a body corporate was:

- (a) immediately before the commencement of this item, a VET provider; and
- (b) immediately after the commencement of this item, a body of a kind specified in the VET Guidelines for the purposes of paragraph 6(1A)(a) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule);

then the body is to be treated (and may be dealt with) as if it had been approved under subclause 6(1A) of Schedule 1A to that Act.

Part 2—VET qualifications

Division 1—Amendments

Higher Education Support Act 2003

25 Subparagraphs 45(1)(b)(i) and (ii) of Schedule 1A

Omit “determination”, substitute “specification”.

26 Subclause 45(2) of Schedule 1A

Repeal the subclause, substitute:

- (2) The *VET Guidelines may specify that:
- (a) a specified course or a specified kind of course provided by a specified *VET provider or a specified kind of VET provider is a course in relation to which *VET FEE-HELP assistance is unavailable; or
 - (b) all courses provided by a specified VET provider or a specified kind of VET provider are courses in relation to which VET FEE-HELP assistance is unavailable.

27 Subclause 45(3) of Schedule 1A

Omit “determination under”, substitute “specification for the purposes of”.

28 Subclause 45(3) of Schedule 1A

Omit “the determination”, substitute “the specification”.

29 Subclause 45(4) of Schedule 1A

Repeal the subclause.

30 Clause 45A of Schedule 1A

Omit all the words after “awarded”, substitute “a *VET qualification that the course leads to”.

31 Subclause 1(1) of Schedule 1 (*definition of VET course of study*)

Omit all the words after “award”, substitute “of a *VET qualification”.

32 Subclause 1(1) of Schedule 1

Insert:

VET qualification means:

- (a) a *VET diploma; or
- (b) a *VET advanced diploma; or
- (c) a *VET graduate diploma; or
- (d) a *VET graduate certificate; or
- (e) a qualification specified by the *VET Guidelines.

Division 2—Application

33 Application of amendments made by Division 1

The amendments made by Division 1 apply in relation to a VET unit of study commenced by a student on or after the commencement of this item.

Schedule 2—Approval and revocation of approval

Part 1—Date of effect of revocation of approval

Division 1—Amendments

Higher Education Support Act 2003

1 Paragraph 22-1(1)(a)

Repeal the paragraph, substitute:

- (a) if a decision to revoke the approval is in effect under Subdivision 22-B or 22-D; or

2 Paragraph 22-20(3)(c)

Repeal the paragraph, substitute:

- (c) if the Minister decides to revoke the body's approval—must specify that the revocation takes effect on the day that the notice is registered in the *Federal Register of Legislative Instruments.

3 After subsection 22-20(3)

Insert:

- (3A) A notice of revocation under subsection (3) is a legislative instrument.

4 Subsection 22-20(5)

Repeal the subsection, substitute:

- (5) A decision of the Minister to revoke a body's approval as a higher education provider takes effect on the day that the notice of revocation under subsection (3) is registered in the *Federal Register of Legislative Instruments.
- (6) If the notice of revocation under subsection (3) ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*, then the

decision to revoke the approval ceases to have effect at the same time.

5 Subsection 22-25(1)

Omit “specified for the purposes of paragraph 22-20(5)(a)”, substitute “referred to in subsection 22-20(5)”.

6 Section 22-35

Repeal the section.

7 Subdivision 22-E (heading)

Repeal the heading, substitute:

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

8 At the end of Part 2-1

Add:

22-50 Notice of revocation ceasing to have effect under the *Legislative Instruments Act 2003*

- (1) This section applies if:
 - (a) a decision of the Minister to revoke a body’s approval as a higher education provider has taken effect; and
 - (b) the decision to revoke the approval ceases to have effect because the notice of revocation ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.
- (2) The fact that the decision to revoke the approval ceases to have effect 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 before the cessation; 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 decision to revoke the approval had not ceased to have effect.

9 Paragraph 29(a) of Schedule 1A

Repeal the paragraph, substitute:

- (a) if a decision to revoke the approval is in effect under Subdivision 5-B or 5-D; or

10 Paragraph 34(3)(c) of Schedule 1A

Repeal the paragraph, substitute:

- (c) if the Minister decides to revoke the body's approval—must specify that the revocation takes effect on the day that the notice is registered in the *Federal Register of Legislative Instruments.

11 After subclause 34(3) of Schedule 1A

Insert:

- (3A) A notice of revocation under subclause (3) is a legislative instrument.

12 Subclause 34(5) of Schedule 1A

Repeal the subclause, substitute:

- (5) A decision of the Minister to revoke a body's approval as a *VET provider takes effect on the day that the notice of revocation under subclause (3) is registered in the *Federal Register of Legislative Instruments.
- (6) If the notice of revocation under subclause (3) ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of

the *Legislative Instruments Act 2003*, then the decision to revoke the approval ceases to have effect at the same time.

13 Subclause 35(1) of Schedule 1A

Omit “specified for the purposes of paragraph 34(5)(a)”, substitute “referred to in subclause 34(5)”.

14 Clause 38 of Schedule 1A

Repeal the clause.

15 Subdivision 5-E (heading) of Schedule 1A

Repeal the heading, substitute:

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

16 At the end of Part 1 of Schedule 1A

Add:

39B Notice of revocation ceasing to have effect under the *Legislative Instruments Act 2003*

- (1) This clause applies if:
 - (a) a decision of the Minister to revoke a body’s approval as a *VET provider has taken effect; and
 - (b) the decision to revoke the approval ceases to have effect because the notice of revocation ceases to have effect under Part 5 (Parliamentary scrutiny of legislative instruments) of the *Legislative Instruments Act 2003*.
- (2) The fact that the decision to revoke the approval ceases to have effect 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 before the cessation; 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 decision to revoke the approval had not ceased to have effect.

17 Subclause 1(1) of Schedule 1

Insert:

Federal Register of Legislative Instruments means the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003*.

Division 2—Application

18 Application of amendments made by Division 1

The amendments made by Division 1 apply in relation to decisions to revoke a body's approval as a higher education provider or VET provider made on or after the commencement of this item.

Part 2—Approval and revocation of approval

Division 1—Amendments

Higher Education Support Act 2003

19 After paragraph 16-25(1)(f)

Insert:

- (fa) the body complies with any requirements set out in the Higher Education Provider Guidelines; and

20 Section 16-42

Omit all the words after “*TEQSA”.

21 After section 16-42

Insert:

16-43 Minister may seek information from relevant VET regulator

For the purposes of approving a body corporate as a higher education provider under this Act, the Minister may seek information from the relevant *VET regulator.

22 Section 22-22

Repeal the section, substitute:

22-22 Minister may seek information from TEQSA

For the purpose of determining whether:

- (a) to revoke a body’s approval as a higher education provider;
 - or
 - (b) to suspend a body’s approval as a higher education provider;
- the Minister may seek information from *TEQSA.

22-23 Minister may seek information from relevant VET regulator

For the purpose of determining whether:

- (a) to revoke a body's approval as a higher education provider;
or
 - (b) to suspend a body's approval as a higher education provider;
- the Minister may seek information from the relevant *VET regulator.

23 Clause 9A of Schedule 1A

Omit all the words after “*VET Regulator”.

24 After clause 9A of Schedule 1A

Insert:

9B Minister may seek information from TEQSA

For the purposes of approving a body as a *VET provider, the Minister may seek information from *TEQSA.

25 Clause 34A of Schedule 1A

Repeal the clause, substitute:

34A Minister may seek information from relevant VET Regulator

For the purpose of determining whether:

- (a) to revoke a body's approval as a *VET provider; or
- (b) to suspend a body's approval as a VET provider;

the Minister may seek information from the relevant *VET Regulator.

34B Minister may seek information from TEQSA

For the purpose of determining whether:

- (a) to revoke a body's approval as a *VET provider; or
- (b) to suspend a body's approval as a VET provider;

the Minister may seek information from *TEQSA.

Division 2—Application

26 Application of amendments made by items 20 and 21

The amendments made by items 20 and 21 apply in relation to applications for approval as a higher education provider made before, on or after the commencement of this item.

27 Application of amendment made by item 22

The amendment made by item 22 applies in relation to decisions to revoke or suspend a body's approval as a higher education provider made before, on or after the commencement of this item.

28 Application of amendments made by items 23 and 24

The amendments made by items 23 and 24 apply in relation to applications for approval as a VET provider made before, on or after the commencement of this item.

29 Application of amendment made by item 25

The amendment made by item 25 applies in relation to decisions to revoke or suspend a body's approval as a VET provider made before, on or after the commencement of this item.

Schedule 3—VET Guidelines

Part 1—Amendments

Higher Education Support Act 2003

1 Paragraph 137-18(2)(b)

Omit “FEE-HELP”.

2 Clause 3 of Schedule 1A (heading)

Repeal the heading, substitute:

3 The VET Guidelines

3 Clause 3 of Schedule 1A

Omit “Provider”.

4 Clause 3 of Schedule 1A (note)

Omit “Provider”.

5 Paragraph 6(1)(g) of Schedule 1A

Omit “Provider”.

6 Clause 7 of Schedule 1A

Omit “Provider”.

7 Subclause 8(1) of Schedule 1A (note)

Omit “Provider”.

8 Paragraph 11(2)(b) of Schedule 1A

Omit “Provider”.

9 Subclause 11(4) of Schedule 1A

Omit “VET Provider”, substitute “*VET”.

10 Paragraph 13(1)(f) of Schedule 1A

Omit “Provider”.

11 Subclause 17(2) of Schedule 1A

After “requirements”, insert “relating to quality”.

12 Subclauses 17(2) and (4) of Schedule 1A

Omit “Provider”.

13 Clauses 18 and 19 of Schedule 1A

Omit “Provider”.

14 Paragraph 23(3)(a) of Schedule 1A

Omit “Provider”.

15 Paragraph 26(1)(e) of Schedule 1A

Omit “Provider”.

16 Subclauses 27(1) and (3) of Schedule 1A

Omit “Provider”.

17 Subparagraphs 27(4)(a)(i) and (ii) of Schedule 1A

Omit “Provider”.

18 Clause 27A of Schedule 1A (heading)

Repeal the heading, substitute:

27A Requirements in the VET Guidelines

19 Clause 27A of Schedule 1A

Omit “Provider”.

20 Subclause 28(1) of Schedule 1A

Omit “Provider”.

21 Paragraph 28(2)(b) of Schedule 1A

Omit “Provider”.

22 Subclause 28(2A) of Schedule 1A

Omit “Provider”.

23 Paragraph 33(2)(f) of Schedule 1A

Omit “Provider”.

24 Clauses 41 and 42 of Schedule 1A

Repeal the clauses, substitute:

41 The VET Guidelines

(1) *VET FEE-HELP assistance is also dealt with in the *VET Guidelines. The provisions of this Part indicate when a particular matter is or may be dealt with in these Guidelines.

(2) *VET tuition fees are also dealt with in the *VET Guidelines.

Note: The VET Guidelines are made by the Minister under clause 99.

25 Paragraphs 43(1)(i) and 45(1)(a) of Schedule 1A

Omit “FEE-HELP”.

26 Subclause 45(1A) of Schedule 1A

Omit “FEE-HELP”.

27 Subclause 56(3) of Schedule 1A

Omit “Provider”.

28 Clause 58 of Schedule 1A (heading)

Repeal the heading, substitute:

58 The VET Guidelines

29 Clause 58 of Schedule 1A

Omit “Administration”.

30 Clause 58 of Schedule 1A (note)

Omit “Administration”.

31 Paragraph 61(1A)(a) of Schedule 1A

Omit “Guidelines made under clause 99”, substitute “*VET Guidelines”.

32 Paragraph 61(1A)(b) of Schedule 1A

Omit “Guidelines made under clause 99”, substitute “VET Guidelines”.

33 Subparagraph 61(1B)(a)(iii) of Schedule 1A

Omit “Guidelines made under clause 99”, substitute “*VET Guidelines”.

34 Paragraph 61(1B)(d) of Schedule 1A

Omit “*VET Administration”, substitute “VET”.

35 Subclauses 64(1), (2) and (3) of Schedule 1A

Omit “Administration”.

36 Paragraph 64(4)(b) of Schedule 1A

Omit “Administration”.

37 Subclauses 67(1) and (3) of Schedule 1A

Omit “Administration”.

38 Subparagraphs 67(4)(a)(i) and (ii) of Schedule 1A

Omit “Administration”.

39 Subclause 67(5) of Schedule 1A

Omit “Administration”.

40 Subclauses 70(1) and (2) of Schedule 1A

Omit “Administration”.

41 Subclause 98(1) of Schedule 1A

Omit “any Guidelines made under clause 99”, substitute “the *VET Guidelines”.

42 Subclause 99(1) of Schedule 1A

Repeal the subclause, substitute:

- (1) The Minister may, by legislative instrument, make guidelines (the *VET Guidelines*), providing for matters:
- (a) required or permitted by this Schedule to be provided; or
 - (b) necessary or convenient to be provided in order to carry out or give effect to this Schedule.

Note: The VET Guidelines may make different provision with respect to different matters or different classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*). For example, the VET Guidelines may provide for different requirements for different kinds of VET providers.

43 Subclause 99(2) of Schedule 1A

Omit “Guidelines” (first occurring), substitute “The *VET Guidelines”.

44 Subclause 99(2) of Schedule 1A

Omit “Guidelines” (second occurring), substitute “VET Guidelines”.

45 Subclause 1(1) of Schedule 1 (definition of *VET Administration Guidelines*)

Repeal the definition.

46 Subclause 1(1) of Schedule 1 (definition of *VET FEE-HELP Guidelines*)

Repeal the definition.

47 Subclause 1(1) of Schedule 1

Insert:

VET Guidelines means the guidelines made under clause 99 of Schedule 1A.

48 Subclause 1(1) of Schedule 1 (definition of *VET Provider Guidelines*)

Repeal the definition.

49 Subclause 1(1) of Schedule 1 (definition of *VET Tuition Fee Guidelines*)

Repeal the definition.

Part 2—Application

50 Application of amendments made by Part 1

The amendments made by Part 1 apply:

- (a) for the purposes of making a decision on an application for approval as a VET provider under clause 6 of Schedule 1A to the *Higher Education Support Act 2003*—in relation to applications for approval made on or after the commencement of this item; and
- (b) in any other case—in relation to a VET provider approved before, on or after the commencement of this item.

Schedule 3A—Student start-up scholarship payments

Social Security Act 1991

1 Section 592H (note)

Repeal the note, substitute:

Note: The amount of the payment is to be indexed on 1 January 2017 and each later 1 January in line with CPI increases (see sections 1190 to 1194).

2 After subsection 1192(8)

Insert:

(8A) The student start-up scholarship payment amount (see item 40 of the CPI Indexation Table in subsection 1191(1)) is not to be indexed on 1 January 2013, 1 January 2014, 1 January 2015 and 1 January 2016.

Schedule 4—Other amendments

Higher Education Support Act 2003

1 Subsection 169-25(2)

Repeal the subsection, substitute:

- (2) A date determined under paragraph (1)(a) must be determined in accordance with the Administration Guidelines.

2 Subsection 238-1(1)

Omit “in the Department”.

3 Paragraph 238-5(1)(b)

Omit “in the Department”.

4 Subclause 67(2) of Schedule 1A

Repeal the subclause, substitute:

- (2) A date determined under subclause (1) must be determined in accordance with the *VET Guidelines.

5 Subclause 98(1) of Schedule 1A

Omit “in the Department”.

*[Minister's second reading speech made in—
House of Representatives on 19 September 2012
Senate on 11 October 2012]*

(162/12)

*26Higher Education Support Amendment (Streamlining and Other Measures) Act 2012No. 160,
2012*