



Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015

No. 168, 2015

**An Act to amend the law relating to higher
education, and for related purposes**

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—VET FEE-HELP Reform amendments		3
Part 1—Main amendments		3
<i>Higher Education Support Act 2003</i>		3
Part 2—Civil penalties and enforcement		26
<i>Higher Education Support Act 2003</i>		26
Schedule 2—Other amendments		42
<i>Higher Education Support Act 2003</i>		42



Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015

No. 168, 2015

An Act to amend the law relating to higher education, and for related purposes

[Assented to 11 December 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*.

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
Provisions	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.	11 December 2015
2. Schedule 1	Immediately before 1 January 2016.	31 December 2015
3. Schedule 2	Immediately after the start of a single day to be fixed by Proclamation. However, if the commencement of the provisions is not fixed by a Proclamation registered on the Federal Register of Legislative Instruments established under the <i>Legislative Instruments Act 2003</i> , within the period of 12 months beginning on the day this Act receives the Royal Assent, the provisions are repealed on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Main amendments

Higher Education Support Act 2003

1 Subsection 137-18(4)

Omit “clause 46, 47 or 51”, substitute “clause 46, 46A, 47 or 51”.

1A At the end of section 137-18

Add:

- (5) A person’s *VET FEE-HELP debt in relation to a *VET unit of study is taken to be remitted to the extent that the person’s *FEE-HELP balance is re-credited under clause 46B of Schedule 1A in relation to the unit.

2 Paragraph 6(1)(aa) of Schedule 1A

After “body corporate”, insert “that is not the trustee of a trust”.

3 Paragraph 6(1)(c) of Schedule 1A

Repeal the paragraph, substitute:

- (c) the body is a *registered training organisation, as listed on the *National Register, that has been a registered training organisation since at least 1 January 2011; and
- (ca) the body has been offering:
- (i) at least one *qualifying VET course continuously since at least 1 January 2011; or
- (ii) one or more series of qualifying VET courses since at least 1 January 2011, with each course in a series superseding the other without interruption; and

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

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

4A After paragraph 6(1A)(d) of Schedule 1A

Insert:

- (da) the body has been offering:
 - (i) at least one *qualifying VET course continuously since at least 1 January 2011; or
 - (ii) one or more series of qualifying VET courses since at least 1 January 2011, with each course in a series superseding the other without interruption; and

4B After subclause 6(2) of Schedule 1A

Insert:

- (2A) For the purposes of (but without limiting) paragraph (1)(g) or (1A)(i), the requirements set out in the *VET Guidelines can include requirements relating to a body's capacity to satisfactorily and sustainably provide *VET courses of study.

Note: These requirements could, for example, relate to the stability of the body's ownership and management, its experience, its business relationships with particular kinds of educational institutions and its record in providing quality student outcomes.

5 At the end of clause 9 of Schedule 1A

Add:

- (3) If:
 - (a) a body applies to the Minister for approval as a *VET provider; and
 - (b) the Minister decides, under clause 6, not to approve the body as a VET provider;the body cannot make a subsequent application for approval as a VET provider during the 6-month period starting on the date of the notice given to the applicant under paragraph 11(1)(b) about the decision.

6 Paragraph 15(2)(b) of Schedule 1A

Repeal the paragraph, substitute:

- (b) must be provided with a report, on the statement, by:
 - (i) the Auditor-General of a State, of the Australian Capital Territory or of the Northern Territory; or
 - (ii) a registered company auditor (within the meaning of section 9 of the *Corporations Act 2001*), who is independent of the *VET provider; or
-

- (iii) a person approved by the Minister under paragraph (d) of the definition of *qualified auditor* in subclause 1(1) of Schedule 1, who is independent of the VET provider; and

7 After clause 23A of Schedule 1A

Insert:

23B Entry procedure for students

- (1) A *VET provider must make and publish a *student entry procedure in accordance with the *VET Guidelines.
- (2) A *VET provider must comply with its *student entry procedure.
- (3) A *student entry procedure* is a written procedure that specifies, in accordance with the *VET Guidelines:
 - (a) when a student is academically suited to undertake a *VET course of study; and
 - (b) how to assess whether a student is so suited; and
 - (c) how to report to the *Secretary about the results of such assessments; and
 - (d) how long the *VET provider must retain those results.

Note: The VET Guidelines could, for example, require a student entry procedure to:

- (a) set out the literacy, numeracy and general academic skills needed by a student to undertake a VET course of study; and
 - (b) provide for assessments of those skills to be conducted online.
- (4) For the purposes of subclause (3), the *VET Guidelines may empower:
 - (a) a person or body:
 - (i) to decide whether to approve a particular tool for use when assessing whether a student is academically suited to undertake a *VET course of study; and
 - (ii) to charge a fee for making such a decision; and
 - (b) a person or body to charge a fee for the use of a tool for such an assessment.

A fee so charged must not be such as to amount to taxation.

23C Receiving requests for Commonwealth assistance

- (1) A *VET provider must not treat a student as being entitled to *VET FEE-HELP assistance for a *VET unit of study if:
 - (a) the student gives an *appropriate officer of the VET provider:
 - (i) a *request for Commonwealth assistance relating to the unit or a *VET course of study of which the unit forms a part; or
 - (ii) a form that would be such a request if it were signed by a *responsible parent of the student; and
 - (b) the student is not entitled to that assistance for that unit or course.

Note: To be a request for Commonwealth assistance, a responsible parent must sign the form if the student is under 18 years old and subclause 88(3A) applies (see paragraph 88(3)(aa)).

- (2) Before a *VET provider enrolls a student in a *VET unit of study less than 2 business days before the *census date for the unit, the VET provider must advise the student that the student will not be able to receive *VET FEE-HELP assistance for the unit.
- (3) Before a *VET provider enrolls a student in a *VET unit of study, the VET provider must advise the student that any *request for Commonwealth assistance by the student in relation to the unit must be given:
 - (a) at least 2 business days after the student enrolls in:
 - (i) if the *VET course of study of which the unit forms a part is undertaken with the provider—the course; or
 - (ii) otherwise—the unit; and
 - (b) on or before the *census date for the unit;if the student has not already given an *appropriate officer of the VET provider such a request relating to the course.
- (4) A *VET provider must not encourage a student to give a *request for Commonwealth assistance relating to a *VET unit of study so that the request is given less than 2 business days after the student enrolls in the unit.

7A Subclause 26(1) of Schedule 1A

Repeal the subclause, substitute:

- (1) The Minister may require a *VET provider to be audited:
- (a) about compliance with any or all of the following requirements:
 - (i) the *VET financial viability requirements;
 - (ii) the *VET fairness requirements;
 - (iii) the *VET compliance requirements;
 - (iv) the *VET fee requirements;
 - (v) other requirements for VET quality and accountability set out in the *VET Guidelines; or
 - (b) about any or all of the following matters relating to *VET courses of study provided by the VET provider:
 - (i) the approaches used to recruit or enrol students (or potential students) of those courses who receive (or who could receive) *VET FEE-HELP assistance for *VET units of study forming part of those courses;
 - (ii) the veracity of enrolments in those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses;
 - (iii) the level of teaching resources, or the quality of those resources, for any of those courses;
 - (iv) the level of engagement in any of those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses;
 - (v) the completion rates for any of those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses.

8 Subclause 27(2) of Schedule 1A

Omit “*VET tuition fees”, substitute “*VET tuition fees*”.

8A Before subclause 36(1) of Schedule 1A

Insert:

Suspension pending revocation

8B At the end of clause 36 of Schedule 1A

Add:

Suspension for poor performance

- (5) The *Secretary may, in writing, suspend a body's approval as a *VET provider if:
 - (a) an audit of the body has been conducted about any or all of the matters in paragraph 26(1)(b); and
 - (b) the audit identified one or more concerns; and
 - (c) those concerns have yet to be resolved as described in paragraph (6)(b).
- (6) The suspension:
 - (a) starts on the day of the decision under subclause (5); and
 - (b) ends on the day (if any) that the *Secretary notifies the body, in writing, that the Secretary reasonably believes that those concerns have been satisfactorily resolved by the body in accordance with a plan agreed between the body and the Commonwealth.
- (7) Before making a decision under subclause (5), the *Secretary must give the body a notice in writing:
 - (a) stating that the Secretary is considering making the decision; and
 - (b) stating the reasons why the Secretary is considering making the decision; and
 - (c) inviting the body to respond to the Secretary, in writing, within 14 days; and
 - (d) informing the body that, if no response is received within the 14 day period, the Secretary may proceed to make the decision.
- (8) In deciding whether to make the decision under subclause (5), the *Secretary must consider any response received from the body within the 14 day period.
- (9) The *Secretary must give written notice of a decision under subclause (5) to the body. The notice must be given within 14 days after the day the decision was made.

8C Before subclause 37(1) of Schedule 1A

Insert:

Suspension pending revocation

8D Subclause 37(1) of Schedule 1A

Omit “clause 36 is of no effect for the purposes of”, substitute “subclause 36(1) is of no effect for purposes of or relating to”.

8E At the end of clause 37 of Schedule 1A

Add:

Suspension for poor performance—no impact on existing students

- (6) A suspension of a body’s approval as a *VET provider under subclause 36(5) is of no effect for purposes of or relating to assistance payable to the body’s students under Part 2 to the extent that the assistance relates to students of the body who have not completed the *VET courses of study in which they were enrolled with the body before the day the suspension starts (see paragraph 36(6)(a)).

Note: One consequence of this subclause is that clauses 45E and 46B (which apply if the body’s VET FEE-HELP account is in deficit at the end of a calendar year) will continue to apply to the body during the suspension.

8F Subclause 39(1) of Schedule 1A

Omit “may revoke”, substitute “must revoke”.

8G After subclause 39(2) of Schedule 1A

Insert:

- (2A) The revocation is subject to the condition that, after the revocation:
- (a) clauses 45E and 46B continue to apply to the body as if the body were still approved as a *VET provider; and
 - (b) other provisions of this Act, or the *VET Guidelines, that:
 - (i) relate (directly or indirectly) to entitlements to *VET FEE-HELP assistance arising before the revocation; and
 - (ii) are specified in the notice of revocation under subclause (3) of this clause;continue to apply to the body as if the body were still approved as a VET provider.

9 After paragraph 43(1)(e) of Schedule 1A

Insert:

- (ea) the student meets the entry procedure requirements under clause 45B; and

10 Subparagraph 43(1)(f)(i) of Schedule 1A

Repeal the subparagraph, substitute:

- (i) enrolls in the unit at least 2 business days before the census date for the unit; and

10A After paragraph 43(1)(f) of Schedule 1A

Insert:

- (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

10B Before paragraph 43(1)(g) of Schedule 1A

Insert:

- (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

11 Paragraph 43(1)(h) of Schedule 1A

Repeal the paragraph, substitute:

- (h) the student meets the request for Commonwealth assistance requirements under clause 45C; and

11A Subclause 43(1) of Schedule 1A (note)

Repeal the note, substitute:

- 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.

12 At the end of Subdivision 7-A of Schedule 1A

Add:

45B Entry procedure requirements

The entry procedure requirements for *VET FEE-HELP assistance for a *VET unit of study are that the student, in accordance with the *VET provider's *student entry procedure, has been assessed as academically suited to undertake the *VET course of study of which the unit forms a part.

45C Request for Commonwealth assistance requirements

- (1) The request for Commonwealth assistance requirements for *VET FEE-HELP assistance for a *VET unit of study are that:
- (a) the student completes, signs and gives an *appropriate officer of the *VET provider a *request for Commonwealth assistance that:
 - (i) if the *VET course of study of which the unit forms a part is undertaken with the provider—relates to the course, and is so given at least 2 business days after the student enrolls in the course; or
 - (ii) otherwise—relates to the unit, and is so given at least 2 business days after the student enrolls in the unit; and
 - (b) the request is so given on or before the *census date for the unit; and
 - (ba) if the student enrolls in the course after the day the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015* receives the Royal Assent—the student being entitled to the VET FEE-HELP assistance for the unit:

Schedule 1 VET FEE-HELP Reform amendments

Part 1 Main amendments

- (i) would not cause the VET provider's *VET FEE-HELP account to be in deficit at the end of that census date (see subclause 45D(7)); and
- (ii) would not cause or contribute to that account being in deficit at the end of 2016 or a later calendar year; and
- (c) the request is not withdrawn before the end of that census date.

If VET provider incorrectly treats student as being entitled

- (2) However, for the purposes of this Act (other than clause 39DH), if:
 - (a) either or both of the following things happen:
 - (i) the student fails to comply with paragraph (1)(a) of this clause by not giving the request at least 2 business days after the enrolment referred to in that paragraph;
 - (ii) paragraph (1)(ba) of this clause is not complied with; and
 - (b) the *VET provider treats the student as being entitled to *VET FEE-HELP assistance for the unit;those paragraphs of this clause are taken to have been complied with.

- Note 1: The VET provider should not treat the student as being entitled to VET FEE-HELP assistance:
- (a) if the student requests the assistance during the 2 business day cooling-off period after the enrolment; or
 - (b) if being entitled would cause or contribute to the provider's VET FEE-HELP account being in deficit.
- Note 2: However, if the provider does treat the student as being entitled, the provider will contravene subclause 39DH(1) (a civil penalty provision), and the student may still be able to receive the assistance.

45D Notional VET FEE-HELP accounts

- (1) There is a notional ***VET FEE-HELP account*** for each *VET provider.

Note 1: The VET provider will need to monitor the balance of its account, as it will have to repay an amount to the Commonwealth if the account is in deficit at the end of 2016 or a later year.

Note 2: This account applies in relation to all students entitled to VET FEE-HELP assistance for VET units of study with census dates on or after 1 January 2016 (whether or not the student received VET

FEE-HELP assistance for earlier units before that day). See subclause (7).

Credits to the VET provider's VET FEE-HELP account

- (2) A credit arises in the *VET provider's *VET FEE-HELP account as follows:
- (a) if the VET provider is already a VET provider on 1 January 2015, a credit arises on the first day of each later calendar year that is equal to the amount worked out under subclause (3);
 - (b) if the VET provider becomes a VET provider during 2015, a credit arises on the first day of each later calendar year that is equal to the amount worked out under subclause (4);
 - (c) if the VET provider becomes a VET provider on a day after 2015, a credit arises on that day that is equal to the amount worked out under subclause (5);
 - (d) if the VET provider pays on a particular day any part of any amount that becomes due under subclause 45E(2), a credit arises on that day that is equal to the amount of that payment;
 - (e) if another body ceases to be a VET provider, a credit may arise:
 - (i) in accordance with a determination under subclause (6) at the time of the cessation; and
 - (ii) that is equal to the amount worked out under that determination;
 - (f) if the *Secretary, on application by the VET provider, is satisfied on a particular day that:
 - (i) the VET provider is offering a VET course of study that confers skills in an identified area of national importance; and
 - (ii) the course is relevant for employment in a licensed occupation; and
 - (iii) one or more students are unable to readily access training places in courses of this kind with any other VET provider; and
 - (iv) insufficient credits have arisen in the VET provider's VET FEE-HELP account for an appropriate number of students to undertake the course with the VET provider; and
-

(v) granting an extra credit of a particular amount is appropriate (which need not be the amount specified in the application);

the Secretary may grant a credit, which arises on that day, that is equal to the amount considered appropriate under subparagraph (v).

(3) For the purposes of paragraph (2)(a), the amount to be credited is the amount equal to:

$$\frac{3}{2} \times \text{VET provider's adjusted 2015 total loan amount}$$

where:

VET provider's adjusted 2015 total loan amount means the sum of the amounts of *VET FEE-HELP assistance paid for students undertaking, with the *VET provider, *VET units of study that had *census dates during the period starting on 1 January 2015 and ending on 31 August 2015.

(4) For the purposes of paragraph (2)(b), the amount to be credited is the amount equal to the sum of:

(a) the *VET provider's fee revenue for the period:

(i) starting on 1 January 2015; and

(ii) ending on the day before the VET provider was approved as a VET provider;

for *domestic students undertaking *qualifying VET courses in that period; and

(b) the sum of the amounts of *VET FEE-HELP assistance paid for students undertaking, with the VET provider, *VET units of study that had *census dates during 2015.

(5) For the purposes of paragraph (2)(c), the amount to be credited is the amount equal to the *VET provider's fee revenue for the 2015 calendar year for *domestic students undertaking in that year the *qualifying VET courses that enabled paragraph 6(1)(ca) or (1A)(da) to be satisfied for the purposes of the VET provider's approval as a VET provider.

(6) The Minister may, by legislative instrument, determine:

- (a) whether credits arise in the *VET FEE-HELP accounts of specified *VET providers when another body ceases to be a VET provider; and
- (b) the amounts of such credits.

Debits to the VET FEE-HELP account

- (7) A debit arises in the *VET provider's *VET FEE-HELP account if a student is entitled to *VET FEE-HELP assistance for a *VET unit of study:
 - (a) that is to be undertaken with the VET provider; and
 - (b) that has a *census date on or after 1 January 2016.The debit arises at the end of that census date, and is equal to the amount of that assistance.

45E Effect of VET FEE-HELP account being in deficit at the end of a calendar year

- (1) If:
 - (a) a *VET provider's *VET FEE-HELP account is in deficit at the end of a calendar year; and
 - (b) the *Secretary gives the VET provider a written notice about the deficit;the VET provider must pay to the Commonwealth an amount equal to the amount of the deficit (the *excess loan amount*).
- (2) The excess loan amount is due on the seventh day (the *due day*) after the day the notice is given.

Late payments of the excess loan amount attract the general interest charge

- (3) If some or all of the excess loan amount remains unpaid after the due day, the *VET provider must pay to the Commonwealth an amount (the *general interest charge*) relating to the unpaid amount for each day in the period that:
 - (a) starts at the beginning of the day after the due day; and
 - (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the excess loan amount;

Schedule 1 VET FEE-HELP Reform amendments
Part 1 Main amendments

- (ii) general interest charge on any of the excess loan amount.
- (4) The general interest charge for a particular day is worked out by multiplying the *general interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
 - (a) the general interest charge from previous days;
 - (b) the excess loan amount.
- (5) The general interest charge for a day is due and payable to the Commonwealth at the end of that day.
- (6) The *Secretary may give written notice to the *VET provider of the amount of the general interest charge for a particular day or days. A notice given under this subclause is prima facie evidence of the matters stated in the notice.
- (7) The *Secretary may remit all or a part of the general interest charge payable by the *VET provider if the Secretary is satisfied:
 - (a) that:
 - (i) the circumstances that contributed to the delay in payment were not due to, or caused directly or indirectly by, an act or omission of the VET provider; and
 - (ii) the VET provider has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
 - (b) that it is otherwise appropriate to do so.
- (8) An amount payable under this clause may be recovered by the Commonwealth from the *VET provider as a debt due to the Commonwealth.

13 Subclause 46(1) of Schedule 1A

Omit “clause 51”, substitute “clause 46A or 51”.

14 After clause 46 of Schedule 1A

Insert:

46A Re-crediting a person's FEE-HELP balance—unacceptable conduct by provider or provider's agent

Decision to re-credit due to unacceptable conduct

- (1) The *Secretary must re-credit a person's *FEE-HELP balance with an amount equal to the amounts of *VET FEE-HELP assistance that the person received for a *VET unit of study if the Secretary is satisfied that:
- (a) the person has been enrolled in the unit with a *VET provider; and
 - (b) the person has not completed the requirements for the unit during the period the person undertook, or was to undertake, the unit; and
 - (c) circumstances exist, of a kind specified in the *VET Guidelines for the purposes of this paragraph, involving unacceptable conduct by the VET provider (or an agent of the VET provider) relating to the person's *request for Commonwealth assistance relating to:
 - (i) the unit; or
 - (ii) the *VET course of study of which the unit forms a part; and
 - (d) the person has applied in writing to the Secretary for re-crediting of the FEE-HELP balance under this subclause; and
 - (e) the application is in the form approved by the Secretary, and is accompanied by such information as the Secretary requests; and
 - (f) either:
 - (i) the application was made during the first 3 years after the period during which the person undertook, or was to undertake, the unit; or
 - (ii) it would not be, or was not, possible for the application to be made during those 3 years.

Note: A VET FEE-HELP debt relating to a VET unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited: see section 137-18.

- (2) If:

Schedule 1 VET FEE-HELP Reform amendments

Part 1 Main amendments

- (a) the person received the *VET FEE-HELP assistance as a result of giving an *appropriate officer of the *VET provider a form; and
- (b) the form would have been a *request for Commonwealth assistance relating to the unit if it had been signed by a *responsible parent of the person;

paragraph (1)(c) applies as if the form were the person's request for Commonwealth assistance relating to the unit.

Note: To be a request for Commonwealth assistance, a responsible parent must sign the form if the student is under 18 years old and subclause 88(3A) applies (see paragraph 88(3)(aa)).

Inviting submissions before making a decision

- (3) Before making a decision under subclause (1), the *Secretary must give the applicant and the *VET provider a notice in writing:
 - (a) stating that the Secretary is considering making the decision; and
 - (b) describing the decision and stating the reasons why the Secretary is considering making it; and
 - (c) inviting the applicant and the VET provider to each make written submissions to the Secretary within 28 days on either or both of the following matters:
 - (i) why that decision should not be made;
 - (ii) if that decision would re-credit the applicant's *FEE-HELP balance with a particular amount—why that amount should be changed; and
 - (d) informing the applicant and the VET provider that, if no submissions are received within the 28 day period, the Secretary may proceed to make the decision.
- (4) In deciding whether to make the decision under subclause (1), the *Secretary must consider any submissions received from the applicant, and from the *VET provider, within the 28 day period.

Notice of a decision

- (5) The *Secretary must give written notice of a decision under subclause (1) to the applicant and the *VET provider. The notice must be given within 28 days after the day the decision was made.

14A Before clause 47 of Schedule 1A

Insert:

46B Re-crediting a person's FEE-HELP balance—VET FEE-HELP account in deficit at the end of a calendar year

Main case

- (1) A *VET provider must, on the *Secretary's behalf, re-credit a student's *FEE-HELP balance with an amount if:
 - (a) the student receives *VET FEE-HELP assistance in a calendar year for a *VET unit of study undertaken with the VET provider; and
 - (b) under subclause 45E(1), the Secretary notifies the VET provider that the VET provider's *VET FEE-HELP account was in deficit at the end of the calendar year; and
 - (c) the VET provider reasonably believes that some or all of that assistance caused or contributed to the deficit.

- (2) The amount to be re-credited is equal to so much of that assistance as the *VET provider reasonably believes caused or contributed to the deficit.

Note: A corresponding amount of the student's VET FEE-HELP debt relating to the unit will be remitted (see section 137-18).

- (3) The *Secretary may re-credit the student's *FEE-HELP balance under this subclause if:
 - (a) the *VET provider is unable to do so under subclauses (1) and (2); and
 - (b) the Secretary knows how much of that assistance that the VET provider reasonably believes caused or contributed to the deficit.

If not all of the deficit can be re-credited under subclauses (1) and (3)

- (4) If the deficit exceeds the total amount able to be re-credited under subclauses (1) and (3) for all of the *VET provider's students who received *VET FEE-HELP assistance in the calendar year for *VET units of study undertaken with the VET provider, the

Schedule 1 VET FEE-HELP Reform amendments

Part 1 Main amendments

*Secretary may re-credit the *FEE-HELP balance of each of those students with the amount equal to:

That excess \times Student's percentage of the total assistance

where:

student's percentage of the total assistance means the percentage equal to the percentage that the student's *VET FEE-HELP assistance referred to in paragraph (1)(a) is of the total VET FEE-HELP assistance received by students of the *VET provider in the calendar year for *VET units of study undertaken with the VET provider.

14B At the end of Subdivision 7-B of Schedule 1A

Add:

51A Implications for the student's liability to the VET provider for the VET tuition fee

If a student's *FEE-HELP balance is re-credited in accordance with this Subdivision with an amount for a *VET unit of study, the student is discharged from all liability to pay or account for so much of the student's *VET tuition fee for the unit as is equal to that amount.

15 Subclause 56(1) of Schedule 1A

Omit "subclause 46(2) or 47(1)", substitute "subclause 46(2), 46A(1) or 47(1)".

15A Clause 60 of Schedule 1A

Repeal the clause, substitute:

60 Time and manner of payments

- (1) Amounts payable by the Commonwealth to a *VET provider under this Schedule are to be paid in accordance with an applicable determination under subclause (2) or (3).
- (2) The Minister may, by legislative instrument, determine the way (including payment in instalments or in arrears), and the times

when, amounts payable by the Commonwealth under this Schedule are to be paid to specified kinds of *VET providers.

- (3) The Minister may, in writing, determine the way (including payment in instalments or in arrears), and the times when, amounts payable by the Commonwealth under this Schedule are to be paid to a particular *VET provider.
- (4) A determination under subclause (3) is not a legislative instrument.

16 After subclause 64(2) of Schedule 1A

Insert:

Manner in which notice to be given

- (2A) A notice must be given in the manner (if any) set out in the *VET Guidelines.

17 After paragraph 75(ca) of Schedule 1A

Insert:

- (cb) disclosure by a Commonwealth officer of VET personal information to a person appointed to, or employed or engaged by, a *State or Territory VET regulator to assist the person in their service with that regulator;

18 After paragraph 88(3)(a) of Schedule 1A

Insert:

- (aa) if subclause (3A) applies to the person—that is signed by a *responsible parent of the person (in addition to being signed by the person); and

19 After subclause 88(3) of Schedule 1A

Insert:

- (3A) This subclause applies to the person if the person:
 - (a) is under 18 years old; and
 - (b) has at least one *responsible parent;unless the person is receiving, or has received, youth allowance (within the meaning of the *Social Security Act 1991*) on the basis that the person is independent (within the meaning of Part 2.11 of that Act).

20 Subclause 88(4) of Schedule 1A

Omit “This clause does”, substitute “Subclauses (1) and (2) do”.

20A Clause 91 of Schedule 1A (after table item 1B)

Insert:

1C	A decision to suspend a body’s approval as a *VET provider	subclause 36(5)	the *Secretary
1D	A decision that concerns have not been satisfactorily resolved in accordance with a plan agreed with the Commonwealth	paragraph 36(6)(b)	the *Secretary
1E	Refusal to grant a credit for a *VET provider’s *VET FEE-HELP account	paragraph 45D(2)(f)	the *Secretary
1F	Granting a credit for a *VET provider’s *VET FEE-HELP account	paragraph 45D(2)(f)	the *Secretary
1G	Refusal to remit the general interest charge	subclause 45E(7)	the *Secretary
1H	Remitting part of the general interest charge	subclause 45E(7)	the *Secretary

21 Clause 91 of Schedule 1A (at the end of the table)

Add:

2	Refusal to re-credit a person’s *FEE-HELP balance	subclause 46A(1)	the *Secretary
3	Re-crediting a person’s *FEE-HELP balance	subclause 46A(1)	the *Secretary

21A Before clause 98 of Schedule 1A

Insert:

97A Compensation for acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this clause:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

22 Subclause 1(1) of Schedule 1

Insert:

general interest charge rate has the same meaning as in section 8AAD of the *Taxation Administration Act 1953*.

qualifying VET course means a structured and integrated program of vocational education or vocational training, usually consisting of a number of modules (units of study) or shorter programs, and leading to the award of a *VET diploma, *VET advanced diploma, *VET graduate diploma or *VET graduate certificate.

responsible parent has the same meaning as in the *Australian Citizenship Act 2007*.

State or Territory VET regulator means an agency or authority of a State or Territory responsible for regulating vocational education or vocational training in the State or Territory.

student entry procedure has the meaning given by subclause 23B(3) of Schedule 1A.

VET FEE-HELP account has the meaning given by clause 45D of Schedule 1A.

23 Subclause 1(1) of Schedule 1 (definition of *VET tuition fee*)

After “subclause 27(2)”, insert “of Schedule 1A”.

24 Application of amendments

- (1) The amendments of clause 6 of Schedule 1A to the *Higher Education Support Act 2003* made by this Schedule apply in relation to decisions whether to approve bodies as VET providers made on or after 1 January 2016.
- (2) The amendment of clause 9 of Schedule 1A to the *Higher Education Support Act 2003* made by this Schedule applies in relation to decisions not to approve bodies as VET providers made on or after 1 January 2016.
- (3) The amendment of clause 15 of Schedule 1A to the *Higher Education Support Act 2003* made by this Schedule applies in relation to annual financial reporting periods ending on or after 1 January 2016.
- (3A) Paragraph 26(1)(b) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies to matters happening before, on or after 1 January 2016, to the extent that those matters are relevant to VET courses of study provided wholly or partly on or after 1 January 2016.

Example: When auditing a VET provider about a 2016 VET course of study, the audit could look at:

- (a) any approaches used in 2015 for recruiting students to the 2016 course; or
 - (b) teaching resources, student engagement or completion rates for the corresponding course provided in 2015.
- (3B) The amendments made by this Schedule of clause 39 of Schedule 1A to the *Higher Education Support Act 2003* apply in relation to requests for revocation made on or after 1 January 2016.
 - (4) Paragraph 43(1)(ea) and clause 45B of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) apply in relation to VET courses of study enrolled in on or after 1 January 2016.
-

- (5) Subparagraph 43(1)(f)(i) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to VET units of study enrolled in on or after 1 January 2016.
- (6) Paragraph 43(1)(h) and clause 45C of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) apply in relation to requests for Commonwealth assistance given on or after 1 January 2016.
- (6A) Subclause 45E(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to the 2016 calendar year and later calendar years.
- (7) Clause 46A of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to unacceptable conduct engaged in on or after 1 January 2016.
- (8) Clause 51A of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to the re-crediting of FEE-HELP balances on or after 1 July 2016.
- (9) Clause 60 of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to amounts payable on or after 1 January 2016.

24A Transitional—pending applications

For the purposes of subclause 11(3) of Schedule 1A to the *Higher Education Support Act 2003*, any period referred to in that subclause that was underway on 2 December 2015 is taken to have paused at the end of that day until the end of 21 January 2016.

Part 2—Civil penalties and enforcement

Higher Education Support Act 2003

25 Paragraph 180-20(b)

Repeal the paragraph, substitute:

- (b) a *NVETR staff member;

26 At the end of Part 1 of Schedule 1A

Add:

Division 5A—Civil penalty provisions and enforcement

Subdivision 5A-A—Civil penalty provisions

39DA Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each *civil penalty provision of this Division is enforceable under Part 4 of the *Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the *Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the *civil penalty provisions:

- (a) the *Secretary;
(b) an SES employee, or an acting SES employee, in the Department.

Relevant court

- (3) For the purposes of Part 4 of the *Regulatory Powers Act, each *applicable court is a relevant court in relation to the *civil penalty provisions.

39DB Civil penalty—publishing information that suggests VET FEE-HELP assistance is not a loan etc.

- (1) A person contravenes this subclause if:
- (a) the person is a *VET provider; and
 - (b) the VET provider publishes information, or causes information to be published; and
 - (c) the information suggests that:
 - (i) *VET FEE-HELP assistance for a *VET unit of study or *VET course of study is not in the nature of a loan, or does not need to be repaid; or
 - (ii) if a student receives VET FEE-HELP assistance for such a unit or course, that the unit or course is free from any fees or charges.

Civil penalty: 60 penalty units.

- (2) A person contravenes this subclause if:
- (a) the person publishes information; and
 - (b) the person does so as agent for a *VET provider; and
 - (c) the information suggests that:
 - (i) *VET FEE-HELP assistance for a *VET unit of study or *VET course of study is not in the nature of a loan, or does not need to be repaid; or
 - (ii) if a student receives VET FEE-HELP assistance for such a unit or course, that the unit or course is free from any fees or charges.

Civil penalty: 60 penalty units.

39DC Civil penalty—inappropriate inducements

- (1) A person contravenes this subclause if:
- (a) the person is a *VET provider; and
 - (b) the VET provider:
 - (i) offers a person a benefit; or
 - (ii) provides a person with a benefit; or
 - (iii) causes a person to be offered or provided with a benefit; and

Schedule 1 VET FEE-HELP Reform amendments

Part 2 Civil penalties and enforcement

- (c) the benefit would be reasonably likely to induce a person (the *student*) to:
 - (i) enrol in a *VET unit of study or *VET course of study; and
 - (ii) complete, sign and give an *appropriate officer of the VET provider a *request for Commonwealth assistance relating to the unit or course; and
- (d) the student receives *VET FEE-HELP assistance for that unit or course.

Civil penalty: 60 penalty units.

- (2) A person contravenes this subclause if:
 - (a) the person offers a person a benefit, or provides a person with a benefit; and
 - (b) the person does so as agent for a *VET provider; and
 - (c) the benefit would be reasonably likely to induce a person (the *student*) to:
 - (i) enrol in a *VET unit of study or *VET course of study; and
 - (ii) complete, sign and give an *appropriate officer of the VET provider a *request for Commonwealth assistance relating to the unit or course; and
 - (d) the student receives *VET FEE-HELP assistance for that unit or course.

Civil penalty: 60 penalty units.

- (3) To avoid doubt, the person in paragraph (1)(b) or (2)(a) who is offered, or provided with, the benefit need not be the student.

39DD Appropriate and inappropriate inducements

- (1) Subclauses 39DC(1) and (2), and subclause (2) of this clause, do not apply in relation to any of the following benefits:
 - (a) the content and quality of the *VET unit of study or *VET course of study;
 - (b) the amount of *tuition fees of the unit or course (other than so much of the fees as is conditional on a person identifying other persons as prospective students for a unit or course);
 - (c) *VET FEE-HELP assistance for the unit or course;
-

- (d) the use of a thing if:
 - (i) the use is limited to the period the student is participating in the unit or course; and
 - (ii) the use is required or necessary for the completion of the unit or course (having regard to the learning objectives and outcomes of the unit or course); and
 - (iii) the use of such a thing is available on the same terms to all students, of a kind specified in the *VET Guidelines for the purposes of this subparagraph, who are participating in the unit or course.
- (2) Without limiting subclauses 39DC(1) and (2), those subclauses apply in relation to the following benefits:
 - (a) the use of an electronic device outside the period the student is participating in the *VET unit of study or *VET course of study;
 - (b) internet use, or the use of software, outside that period;
 - (c) travel, entertainment, hospitality or accommodation services;
 - (d) vouchers redeemable for goods or services;
 - (e) money (other than amounts covered by paragraph (1)(b) or (c)).

39DE Civil penalty—failure to provide VET FEE-HELP notices

A person contravenes this clause if:

- (a) the person is a *VET provider; and
- (b) the VET provider fails to comply with subclause 64(1), (2), (2A) or (3).

Civil penalty: 60 penalty units.

39DF Civil penalty—failure to comply with student requests

- (1) A person contravenes this subclause if:
 - (a) the person is a *VET provider; and
 - (b) the VET provider enrolls another person (the *student*) in a *VET unit of study; and
 - (c) the student is entitled to *VET FEE-HELP assistance for the unit; and

- (d) before the end of the *census date for the unit, the student requests, in writing, the VET provider to:
 - (i) cancel the enrolment; or
 - (ii) withdraw the student's *request for Commonwealth assistance relating to the unit or the *VET course of study of which the unit forms a part; and
- (e) the VET provider fails to comply with the request before the end of that census date.

Civil penalty: 60 penalty units.

- (2) For the purposes of paragraph (1)(c), disregard subparagraph 43(1)(f)(ii) and paragraph 45C(1)(c).

39DG Civil penalty—charging a fee etc. for a student to cancel an enrolment or request for assistance

- (1) A person contravenes this subclause if:
 - (a) the person is a *VET provider; and
 - (b) the VET provider enrolls another person (the *student*) in a *VET unit of study; and
 - (c) the student is entitled to *VET FEE-HELP assistance for the unit; and
 - (d) before the end of the *census date for the unit, the student requests, in writing, the VET provider to:
 - (i) cancel that enrolment; or
 - (ii) withdraw the student's *request for Commonwealth assistance relating to the unit or the *VET course of study of which the unit forms a part; and
 - (e) the VET provider charges the student a fee, or imposes a penalty, (however described) in order to do so.

Civil penalty: 60 penalty units.

- (2) For the purposes of paragraph (1)(c), disregard subparagraph 43(1)(f)(ii) and paragraph 45C(1)(c).

39DH Civil penalty—accepting requests for Commonwealth assistance etc. when student not entitled

- (1) A person contravenes this subclause if:
-

- (a) the person is a *VET provider; and
- (b) an *appropriate officer of the VET provider is given a *request for Commonwealth assistance by another person (the *student*) relating to a *VET unit of study or the *VET course of study of which the unit forms a part; and
- (c) the VET provider treats the student as being entitled to *VET FEE-HELP assistance for the unit; and
- (d) the student is not so entitled.

Civil penalty: 60 penalty units.

- (2) A person contravenes this subclause if:
- (a) the person is a *VET provider; and
 - (b) an *appropriate officer of the VET provider is given a form by another person (the *student*); and
 - (c) subclause 88(3A) (about certain students under 18 years old) applies to the student; and
 - (d) that form is not signed by a *responsible parent of the student; and
 - (e) that form would have been a *request for Commonwealth assistance relating to:
 - (i) a *VET unit of study; or
 - (ii) the *VET course of study of which the unit forms a part; if it had been signed by a responsible parent of the student; and
 - (f) the VET provider treats the student as being entitled to *VET FEE-HELP assistance for the unit.

Civil penalty: 60 penalty units.

39DI Civil penalty—failure to advise about requests etc.

- (1) A person contravenes this subclause if:
- (a) the person is a *VET provider; and
 - (b) the VET provider enrolls another person (the *student*) in a *VET unit of study; and
 - (c) the student has not already given an *appropriate officer of the VET provider a *request for Commonwealth assistance relating to the *VET course of study of which the unit forms a part; and

Schedule 1 VET FEE-HELP Reform amendments

Part 2 Civil penalties and enforcement

- (d) the student enrolls in the unit less than 2 business days before the *census date for the unit; and
- (e) before enrolling the student, the VET provider failed to advise the student that the student would not be able to receive *VET FEE-HELP assistance for the unit; and
- (f) the student completes, signs and gives an appropriate officer of the VET provider a request for Commonwealth assistance relating to the unit or the VET course of study of which the unit forms a part.

Civil penalty: 60 penalty units.

- (2) A person contravenes this subclause if:
- (a) the person is a *VET provider; and
 - (b) the VET provider enrolls another person (the *student*) in a *VET unit of study; and
 - (c) the student completes, signs and gives an *appropriate officer of the VET provider a *request for Commonwealth assistance relating to the unit or a *VET course of study of which the unit forms a part; and
 - (d) the request is so given less than 2 business days after the student enrolls in the unit; and
 - (e) either or both of the following subparagraphs applies:
 - (i) before enrolling the student, the VET provider failed to advise the student that *VET FEE-HELP assistance for the unit can only be received if the request is given at least 2 business days after enrolling;
 - (ii) the VET provider encouraged the student to give the request so that it would be given less than 2 business days after enrolling.

Civil penalty: 60 penalty units.

39DJ Civil penalty—failure to apportion fees appropriately

A person contravenes this clause if:

- (a) the person is a *VET provider; and
- (b) the VET provider enrolls another person (the *student*) in a *VET unit of study; and

- (c) the student receives *VET FEE-HELP assistance for the unit; and
- (d) the VET provider charges the student *tuition fees for the unit; and
- (e) for the purposes of clause 27A, the *VET Guidelines specify when the tuition fees may be charged; and
- (f) the tuition fees are not charged in accordance with those VET Guidelines.

Civil penalty: 60 penalty units.

39DK Civil penalty—failure to publish fees

A person contravenes this clause if:

- (a) the person is a *VET provider; and
- (b) the VET provider enrolls another person (the *student*) in a *VET unit of study; and
- (c) the student receives *VET FEE-HELP assistance for the unit; and
- (d) the VET provider charges the student *tuition fees for the unit; and
- (e) on the day before the student enrolls in the unit, the tuition fees were not available on the VET provider's website in a way that was readily accessible by the public.

Civil penalty: 60 penalty units.

39DL Civil penalty—failure to report data

A person contravenes this clause if:

- (a) the person is a *VET provider; and
- (b) the VET provider enrolls another person (the *student*) in a *VET unit of study; and
- (c) the student receives *VET FEE-HELP assistance for the unit; and
- (d) the VET provider is subject to a requirement under subclause 24(1) or (2) to provide information relating to the VET FEE-HELP assistance; and
- (e) the VET provider fails to comply with the requirement.

Civil penalty: 60 penalty units.

Subdivision 5A-B—Infringement notices

39EA Infringement notices

A *civil penalty provision of this Division is subject to an infringement notice under Part 5 of the *Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

39EB Infringement officers

For the purposes of Part 5 of the *Regulatory Powers Act, an infringement officer in relation to the *civil penalty provisions is:

- (a) each *NVETR staff member who is:
 - (i) an SES employee or an acting SES employee; or
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position; or
- (b) each SES employee, or an acting SES employee, in the Department.

39EC Relevant chief executive

For the purposes of Part 5 of the *Regulatory Powers Act, the relevant chief executive in relation to the *civil penalty provisions is:

- (a) for an infringement notice given by an infringement officer covered by paragraph 39EB(a)—each *NVETR Commissioner; and
- (b) for an infringement notice given by an infringement officer covered by paragraph 39EB(b)—the *Secretary.

Subdivision 5A-C—Monitoring and investigation powers

39FA Monitoring powers

- (1) Subdivision 5A-A is subject to monitoring under Part 2 of the *Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether Subdivision 5A-A has been complied with. It includes powers of entry and inspection.

- (2) Information given in compliance or purported compliance with a provision of Subdivision 5A-A is subject to monitoring under Part 2 of the *Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

39FB Monitoring powers—persons exercising relevant roles etc.

- (1) For the purposes of Part 2 of the *Regulatory Powers Act, as it applies in relation to Subdivision 5A-A of this Schedule:
- (a) each *civil penalty provision of this Division is related to Subdivision 5A-A of this Schedule; and
 - (b) each *Departmental investigator and *NVETR investigator is an authorised applicant; and
 - (c) each Departmental investigator and NVETR investigator is an authorised person; and
 - (d) a *judicial officer is an issuing officer; and
 - (e) for an authorised person who is a Departmental investigator, the *Secretary is the relevant chief executive; and
 - (f) for an authorised person who is a NVETR investigator, each *NVETR Commissioner is the relevant chief executive; and
 - (g) each *applicable court is the relevant court.

Person assisting

- (2) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the *Regulatory Powers Act in relation to a provision of Subdivision 5A-A of this Schedule.

39FC Investigation powers

Each *civil penalty provision of this Division is subject to investigation under Part 3 of the *Regulatory Powers Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

39FD Investigation powers—persons exercising relevant roles etc.

- (1) For the purposes of Part 3 of the *Regulatory Powers Act, as it applies in relation to evidential material that relates to a *civil penalty provision of this Division:
 - (a) each *Departmental investigator and *NVETR investigator is an authorised applicant; and
 - (b) each Departmental investigator and NVETR investigator is an authorised person; and
 - (c) a *judicial officer is an issuing officer; and
 - (d) for an authorised person who is a Departmental investigator, the *Secretary is the relevant chief executive; and
 - (e) for an authorised person who is a NVETR investigator, each *NVETR Commissioner is the relevant chief executive; and
 - (f) each *applicable court is the relevant court.

Person assisting

- (2) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the *Regulatory Powers Act in relation to evidential material that relates to a provision of Subdivision 5A-A of this Schedule.

Subdivision 5A-D—Other matters

39GA Appointment of investigators

- (1) The *Secretary may, in writing, appoint a person as a *Departmental investigator* for the purposes of this Division.
- (2) A *NVETR Commissioner may, in writing, appoint a *NVETR staff member as a *NVETR investigator* for the purposes of this Division.
- (3) A person must not be appointed as a *Departmental investigator, or a *NVETR investigator, unless the appointer is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of such an investigator.
- (4) A *Departmental investigator, and a *NVETR investigator, must, in exercising powers as such, comply with any directions of the appointer.

- (5) If a direction is given under subclause (4) in writing, the direction is not a legislative instrument.

39GB Functions and powers

The functions and powers of a person referred to in:

- (a) subclause 39DA(2) (about authorised applicants); or
- (b) clause 39EB or 39EC (about infringement notices); or
- (c) paragraph 39FB(1)(b), (c), (d), (e) or (f) (about monitoring powers); or
- (d) paragraph 39FD(1)(a), (b), (c), (d) or (e) (about investigation powers);

include those conferred by Part 2, 3, 4 or 5 (as applicable) of the *Regulatory Powers Act in relation to this Division.

39GC Delegation by relevant chief executive etc.

- (1) The *Secretary may, in writing, delegate his or her powers and functions that:
- (a) arise under the *Regulatory Powers Act as the relevant chief executive; and
 - (b) relate to this Division;
- to an SES employee, or an acting SES employee, in the Department.
- (2) A *NVETR Commissioner may, in writing, delegate his or her powers and functions that:
- (a) arise under the *Regulatory Powers Act as the relevant chief executive and relate to this Division; or
 - (b) arise under clause 39GA of this Schedule;
- to an *NVETR staff member who is:
- (c) an SES employee or an acting SES employee; or
 - (d) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
- (3) A person exercising powers or performing functions under a delegation under subclause (1) or (2) must comply with any directions of the delegator.

- (4) A person must not exercise powers or perform functions under a delegation under subclause (1) or (2) in relation to an infringement notice given by the person.

39GD Other enforcement action

To avoid doubt, action may be taken under this Division in addition to, or instead of, any action that may be taken under any other provision of this Act, including under any or all of the following provisions of this Schedule:

- (a) clause 12A (about imposing conditions on an approval);
- (b) clause 26A (about compliance notices);
- (c) Division 5 (about when a body ceases to be a VET provider);
- (d) Subdivision 7-B (about re-crediting FEE-HELP balances).

27 Paragraph 72(b) of Schedule 1A

Repeal the paragraph, substitute:

- (b) obtained or created by a *VET officer for the purposes of:
 - (i) Division 5A of Part 1, or Part 2, of this Schedule; or
 - (ii) Chapter 4, to the extent that it relates to this Schedule.

28 Paragraph 74(3)(a) of Schedule 1A

Repeal the paragraph, substitute:

- (a) for a *Commonwealth officer—the performance of duties or functions, or the exercise of powers:
 - (i) under, or for the purposes of, this Schedule; or
 - (ii) conferred as described in clause 39GB (about functions and powers under the Regulatory Powers Act); or

29 After paragraph 75(aa) of Schedule 1A

Insert:

- (ab) disclosure by a Commonwealth officer of VET personal information relating to a *civil penalty provision for purposes relating to:
 - (i) monitoring or investigating compliance with the civil penalty provision; or
 - (ii) enforcing the civil penalty provision; or

- (iii) issuing an infringement notice in relation to the civil penalty provision;

30 Subclause 1(1) of Schedule 1

Insert:

applicable court means:

- (a) the Federal Court of Australia; or
- (b) the Federal Circuit Court of Australia; or
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

civil penalty provision means each of the following clauses or subclauses of Schedule 1A:

- (a) subclauses 39DB(1) and (2);
- (b) subclauses 39DC(1) and (2);
- (c) clause 39DE;
- (d) subclause 39DF(1);
- (e) subclause 39DG(1);
- (f) subclauses 39DH(1) and (2);
- (g) subclauses 39DI(1) and (2);
- (h) clauses 39DJ, 39DK and 39DL.

Departmental investigator means a person appointed under subclause 39GA(1) of Schedule 1A.

judicial officer means:

- (a) a magistrate; or
- (b) a Judge of a court of a State or Territory; or
- (c) a Judge of the Federal Circuit Court of Australia; or
- (d) a Judge of the Federal Court of Australia.

NVETR Commissioner means:

- (a) the Chief Commissioner; or
- (b) a Commissioner;

within the meaning of the *National Vocational Education and Training Regulator Act 2011*.

NVETR investigator means a person appointed under subclause 39GA(2) of Schedule 1A.

NVETR staff member means a member of the staff of the Regulator (within the meaning of the *National Vocational Education and Training Regulator Act 2011*).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

31 Application of amendments

- (1) Subclause 39DC(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to conduct referred to in paragraph (b) of that subclause that happens on or after 1 January 2016.
- (2) Subclause 39DC(2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to conduct referred to in paragraph (a) of that subclause that happens on or after 1 January 2016.
- (3) Subclause 39DF(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to requests referred to in paragraph (d) of that subclause that are given on or after 1 January 2016.
- (4) Subclause 39DG(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to requests referred to in paragraph (d) of that subclause that are given on or after 1 January 2016.
- (5) Subclause 39DH(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to requests referred to in paragraph (b) of that subclause that are given on or after 1 January 2016.
- (6) Subclause 39DH(2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to forms referred to in paragraph (b) of that subclause that are given on or after 1 January 2016.
- (7) Subclauses 39DI(1) and (2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) apply in relation to enrolments on or after 1 January 2016.

- (8) Clause 39DJ of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to VET courses of study that commence on or after 1 January 2016.
- (9) Clauses 39DK and 39DL of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) apply in relation to enrolments on or after 1 January 2016.

Schedule 2—Other amendments

Higher Education Support Act 2003

1 After paragraph 137-18(4)(a)

Insert:

(aa) subclause 46A(1) of Schedule 1A (unacceptable conduct);

2 Paragraph 39GD(d) of Schedule 1A

Omit “about re-crediting FEE-HELP balances”, substitute “about repaying VET FEE-HELP assistance”.

3 Clause 46A of Schedule 1A (heading)

Repeal the heading, substitute:

46A Provider repayment of VET FEE-HELP assistance— unacceptable conduct by provider or provider’s agent

4 Subclause 46A(1) of Schedule 1A (heading)

Repeal the heading, substitute:

Decision that this subclause applies

5 Subclause 46A(1) of Schedule 1A

Omit “re-credit a person’s *FEE-HELP balance with an amount equal to the amounts of *VET FEE-HELP assistance that the person received for a *VET unit of study”, substitute “decide that this subclause applies to a person”.

6 Paragraph 46A(1)(a) of Schedule 1A

Repeal the paragraph, substitute:

- (a) the person has been enrolled in a *VET unit of study with a *VET provider; and
- (aa) the person received *VET FEE-HELP assistance for the unit; and

7 Paragraph 46A(1)(d) of Schedule 1A

Repeal the paragraph, substitute:

- (d) the person applies in writing to the provider for the remission of the person's *VET FEE-HELP debt in relation to the unit; and

8 Subclause 46A(1) of Schedule 1A (note)

Repeal the note, substitute:

- Note 1: If this subclause applies, the VET FEE-HELP debt of the person is remitted (see subsection 137-18(4)) and the provider must repay the amount of the VET FEE-HELP assistance to the Commonwealth (see clause 56).
- Note 2: A decision that this subclause does not apply to a person is reviewable under Division 16.

9 Subclause 46A(3) of Schedule 1A

Omit "decision under subclause (1)", substitute "decision that subclause (1) applies".

10 Paragraph 46A(3)(c) of Schedule 1A

Repeal the paragraph, substitute:

- (c) inviting the applicant and the VET provider to each make written submissions to the Secretary within 28 days on why that decision should not be made; and

11 Subclauses 46A(4) and (5) of Schedule 1A

Omit "decision under subclause (1)", substitute "decision that subclause (1) applies".

12 After paragraph 56(1)(a) of Schedule 1A

Insert:

- (aa) subclause 46A(1) (unacceptable conduct);

13 Clause 91 of Schedule 1A (table items 2 and 3)

Repeal the items, substitute:

- 2 A decision that subclause 46A(1) does not apply to a person in relation to a unit of the *Secretary

	study		
3	A decision that subclause 46A(1) applies to a person in relation to a unit of study	subclause 46A(1)	the *Secretary

14 Application of amendments

The amendments made by this Schedule apply, or are taken to have applied, in relation to unacceptable conduct engaged in on or after 1 January 2016.

15 Transitional

(1) In this item:

new law means the *Higher Education Support Act 2003* as amended by this Schedule.

Note: The new law also includes the earlier amendments made by Schedule 1 to this Act.

old law means the *Higher Education Support Act 2003* as amended by Schedule 1 to this Act.

transitional period means the period starting on 1 January 2016 and ending on the day before this Schedule commences.

(2) This item applies if this Schedule commences after 1 January 2016.

(3) If a thing is done, arises or happens under a provision of the old law at a time during the transitional period, the thing is treated (and may be dealt with) as if it had been done, arisen or happened under the corresponding provision of the new law at the same time.

Example 1: A decision by the Secretary under subclause 46A(1) of Schedule 1A to the old law is treated as if it were made, at the same time, under that subclause of the new law.

Example 2: A VET provider's obligation arising under subclause 56(1) of Schedule 1A to the old law is treated as if it arose, at the same time, under that subclause of the new law.

Example 3: The remission of a person's VET FEE-HELP debt under subsection 137-18(4) of the old law is treated as if the remission happened, at the same time, under that subsection of the new law.

*[Minister's second reading speech made in—
House of Representatives on 15 October 2015
Senate on 12 November 2015]*

(156/15)

*No. 168, 2015 Higher Education Support Amendment (VET FEE-HELP Reform) Act
2015*

45