



Higher Education Support Amendment (VET FEE-HELP Student Protection) Act 2018

No. 160, 2018

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Higher Education Support Amendment (VET FEE-HELP Student Protection) Act 2018

No. 160, 2018

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

[Assented to 10 December 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Higher Education Support Amendment (VET FEE-HELP Student Protection) Act 2018*.

No. 160, 2018

*Higher Education Support Amendment (VET FEE-HELP Student
Protection) Act 2018*

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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.	10 December 2018
2. Schedule 1	1 January 2019.	1 January 2019
3. Schedule 2	Immediately after the commencement of Schedule 3 to the <i>Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018</i> .	1 January 2020

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments

Higher Education Support Act 2003

1 Subsection 137-18(4)

After “46A,”, insert “46AA,”.

2 Subclause 46(1) of Schedule 1A

After “46A”, insert “, 46AA”.

3 After clause 46A of Schedule 1A

Insert:

46AA Re-crediting a person’s FEE-HELP balance—inappropriate conduct by provider or provider’s agent

Re-crediting

- (1) The *Secretary may, on application under subclause (3) or on the Secretary’s own initiative, 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 with a *VET provider, if the Secretary is satisfied that:
 - (a) either:
 - (i) the person has not completed the requirements for the unit during the period the person undertook, or was to undertake, the unit; or
 - (ii) under *VET Guidelines prescribed for the purposes of this subparagraph, the person is taken not to have completed those requirements during that period; and
 - (b) it is reasonably likely that, having regard to any matters prescribed by the *VET Guidelines for the purposes of this paragraph, the VET provider (or an agent of the VET provider) engaged in inappropriate conduct towards the person in relation to the unit, or the *VET course of study of which the unit forms a part.

Note 1: 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.

Note 2: The VET provider may be required to repay an amount to the Commonwealth under subclause 56(4), depending on the nature of the inappropriate conduct.

- (2) The *VET Guidelines may prescribe matters for the purposes of paragraph (1)(b) that are also prescribed for the purposes of paragraph 46A(1)(c) (circumstances involving unacceptable conduct).
- (3) A person may apply to the *Secretary for the person's *FEE-HELP balance to be re-credited under subclause (1). The application must:
- (a) be in writing; and
 - (b) be in the form (if any) approved by the Secretary and accompanied by the information (if any) required by the Secretary; and
 - (c) meet any requirements prescribed by the *VET Guidelines for the purposes of this paragraph.

Submissions by applicants before refusal to re-credit

- (4) Before making a decision to refuse a person's application under subclause (3) for re-crediting of the person's *FEE-HELP balance, the Secretary must give the person 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 person to make written submissions to the Secretary, within 28 days, about why that decision should not be made; and
 - (d) informing the person that, if no submissions are received within the 28 day period, the Secretary may proceed to make the decision.
- (5) In deciding whether to re-credit the *FEE-HELP balance, the *Secretary must take into account any submissions received from the person within the 28 day period.

Submissions by providers before decision to re-credit in circumstances requiring repayment by provider

- (6) Before making a decision to re-credit a person's *FEE-HELP balance to which subclause 56(4) applies, the Secretary must give the *VET provider a notice in writing:
- (a) stating that the Secretary is considering making the decision; and
 - (b) stating that, if the Secretary makes the decision, the VET provider will be required to pay an amount to the Commonwealth under subclause 56(4) in relation to the re-crediting; and
 - (c) stating the reasons why the Secretary is considering making the decision; and
 - (d) inviting the VET provider to make written submissions to the Secretary, within 28 days, about why that decision should not be made; and
 - (e) informing the VET provider that, if no submissions are received within the 28 day period, the Secretary may proceed to make the decision.
- (7) In deciding whether to re-credit the *FEE-HELP balance, the *Secretary must take into account any submissions received from the *VET provider within the 28 day period.

Written notice of decision

- (8) If the *Secretary re-credits a person's *FEE-HELP balance under subclause (1), the Secretary must, as soon as practicable, give written notice of the Secretary's decision and the reasons for it to:
- (a) the person; and
 - (b) if subclause 56(4) applies to the decision—the *VET provider.

Final date for re-crediting

- (9) The *Secretary must not re-credit a person's *FEE-HELP balance under subclause (1) on the Secretary's own initiative, after:
- (a) 31 December 2020; or

- (b) if a later day is prescribed by the *VET Guidelines for the purposes of this paragraph—that later day.
- (10) The *Secretary must not re-credit a person’s *FEE-HELP balance under subclause (1) on application made by the person, if the application is made after:
 - (a) 31 December 2020; or
 - (b) if a later day is prescribed by the *VET Guidelines for the purposes of this paragraph—that later day.

4 Before subclause 56(1) of Schedule 1A

Insert:

Re-crediting other than under subclause 46AA(1)

5 At the end of clause 56 of Schedule 1A

Add:

Re-crediting under subclause 46AA(1)

- (4) If:
 - (a) under subclause 46AA(1) (inappropriate conduct by provider or provider’s agent), a person’s *FEE-HELP balance is re-credited with an amount relating to *VET FEE-HELP assistance for a *VET unit of study with a *VET provider; and
 - (b) the inappropriate conduct which the *Secretary is satisfied was reasonably likely to have been engaged in was, or included, the VET provider treating the person as being entitled to the assistance under clause 43, when the person was not entitled to that assistance;

the VET provider must pay to the Commonwealth an amount equal to the amount of VET FEE-HELP assistance to which the person was treated as being entitled for the unit.

Note: The VET provider must repay the amount under subclause (4) even if the person’s FEE-HELP balance is not increased by an amount equal to the amount re-credited.

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

Add:

4	Refusal of an application under subclause 46AA(3) to re-credit a person's *FEE-HELP balance	subclause 46AA(1)	the *Secretary
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5	A decision to re-credit a person's *FEE-HELP balance to which subclause 56(4) applies	subclause 46AA(1)	the *Secretary

Ombudsman Act 1976

7 After paragraph 20ZM(1)(c)

Insert:

- (ca) to make recommendations, to the Secretary of the Department administered by the Minister administering the *Higher Education Support Act 2003*, about the re-crediting of the FEE-HELP balances of particular persons or classes of persons under clauses 46A and 46AA of Schedule 1A of that Act;

8 At the end of subsection 20ZX(7)

Add:

- ; and (e) in relation to the function mentioned in paragraph 20ZM(1)(ca)—set out the number of persons whose FEE-HELP balances the VET Student Loans Ombudsman has recommended be re-credited.

9 Application of amendments

- (1) Clause 46AA of Schedule 1A to the *Higher Education Support Act 2003*, as inserted by this Schedule, applies in relation to conduct engaged in by a VET provider (or an agent of a VET provider) before or after this Schedule commences.
- (2) The amendment of section 20ZX of the *Ombudsman Act 1976* made by this Schedule applies to an annual report for a financial year ending after this Schedule commences.

Schedule 2—Consequential amendments

Higher Education Support Act 2003

1 Clause 46AA of Schedule 1A (heading)

Omit “FEE-HELP balance”, substitute “HELP balance in relation to VET FEE-HELP assistance”.

2 Subclause 46AA(1) of Schedule 1A

Omit “*FEE-HELP balance”, substitute “*HELP balance”.

3 Subclause 46AA(1) of Schedule 1A (note 1)

Omit “FEE-HELP balance”, substitute “HELP balance”.

4 Subclauses 46AA(3) to (10) of Schedule 1A

Omit “*FEE-HELP balance”, substitute “*HELP balance”.

5 Paragraph 56(4)(a) of Schedule 1A

Omit “*FEE-HELP balance”, substitute “*HELP balance”.

6 Subclause 56(4) of Schedule 1A (note)

Omit “FEE-HELP balance”, substitute “HELP balance”.

7 Clause 91 of Schedule 1A (table items 4 and 5)

Omit “*FEE-HELP balance”, substitute “*HELP balance”.

Ombudsman Act 1976

8 Paragraphs 20ZM(1)(ca) and 20ZX(7)(e)

Omit “FEE-HELP balances”, substitute “HELP balances”.

*[Minister's second reading speech made in—
House of Representatives on 20 September 2018
Senate on 29 November 2018]*

(208/18)

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