



Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019

No. 111, 2019

**An Act to amend the law relating to tuition
protection, and for other 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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Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019

No. 111, 2019

An Act to amend the law relating to tuition protection, and for other purposes

[Assented to 6 December 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019*.

No. 111, 2019

Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019

1

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.	6 December 2019
2. Schedule 1	1 January 2020.	1 January 2020
3. Schedule 2, Part 1	1 January 2020.	1 January 2020
4. Schedule 2, Part 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
5. Schedule 3	The day this Act receives the Royal Assent.	6 December 2019

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Main amendments

Division 1—Amendments

VET Student Loans Act 2016

1 Section 5

After:

Part 5 sets out requirements to be met by approved course providers, and includes civil penalty and offence provisions.

insert:

Part 5A sets out arrangements relating to tuition protection.

Part 5B establishes the VSL Tuition Protection Fund, the office of the VSL Tuition Protection Director and the VSL Tuition Protection Fund Advisory Board.

2 Section 6

Insert:

affected part, of an original course, means a part of the course that a student was enrolled in when an approved course provider defaulted in relation to the student.

3 Section 6 (definition of *approved tuition assurance arrangement*)

Repeal the definition.

4 Section 6

Insert:

default: see section 66B.

Education Minister means the Minister who administers the *Education Services for Overseas Students Act 2000*.

eligible student: see section 9.

listed course provider: see subsection 27(2).

5 Section 6 (definition of officer of a tuition assurance scheme operator)

Repeal the definition.

6 Section 6

Insert:

original course means an approved course in relation to which an approved course provider has defaulted.

replacement component means a part of a replacement course that replaces an affected part of an original course.

replacement course means an approved course that enables a student to finish:

- (a) an original course; or
- (b) a course that is equivalent to an original course.

7 Section 6 (definition of tuition assurance arrangement)

Repeal the definition.

8 Section 6 (definition of tuition assurance scheme operator)

Repeal the definition.

9 Section 6 (paragraph (d) of the definition of VET officer)

Repeal the paragraph.

10 Section 6

Insert:

VSL Tuition Protection Director means the person referred to in section 66M.

VSL Tuition Protection Fund means the VSL Tuition Protection Fund established by section 66J.

VSL Tuition Protection Fund Advisory Board means the VSL Tuition Protection Fund Advisory Board established by section 66Q.

VSL tuition protection levy means levy imposed by the *VET Student Loans (VSL Tuition Protection Levy) Act 2019*.

11 Section 23

Repeal the section.

12 Paragraph 25(2)(g)

Repeal the paragraph.

13 Subsection 25(3)

Repeal the subsection, substitute:

- (3) The Secretary may, in writing, exempt a body from the requirement in paragraph (2)(h) to be a member of an approved external dispute resolution scheme.

14 Section 39

Repeal the section, substitute:

39 Secretary to notify relevant VET Regulator and VSL Tuition Protection Director if approval is revoked or suspended

If the approval of an approved course provider is revoked or suspended, the Secretary must give written notice of the revocation or suspension to:

- (a) the relevant VET Regulator; and
- (b) the VSL Tuition Protection Director.

15 Division 4 of Part 4

Repeal the Division.

16 After paragraph 46(b)

Insert:

- (ba) the VSL Tuition Protection Director;

17 Paragraph 48(2)(c)

Repeal the paragraph, substitute:

- (c) tuition protection, including requirements about offering replacement courses;

18 At the end of Division 1 of Part 5

Add:

49A VSL tuition protection levy

- (1) An approved course provider to whom Part 5A applies must pay the following when it is due and payable by the provider:
 - (a) VSL tuition protection levy;
 - (b) any penalty for late payment of VSL tuition protection levy.

Note 1: VSL tuition protection levy is imposed by the *VET Student Loans (VSL Tuition Protection Levy) Act 2019*. Amounts of levy for a year are either determined before, or indexed on, 1 August in the year: see sections 9 and 10 of that Act.

Note 2: See section 66A for the providers to whom Part 5A applies.

- (2) The rules may make provision for, or in relation to, all or any of the following matters:
 - (a) the issue of notices setting out the amount of VSL tuition protection levy payable by a provider;
 - (b) when VSL tuition protection levy is due and payable;
 - (c) the issue of notices extending the time for payment of VSL tuition protection levy;
 - (d) penalties for late payment of VSL tuition protection levy;
 - (e) to whom VSL tuition protection levy and any penalties for late payment are payable;
 - (f) the refund, remission or waiver of VSL tuition protection levy or penalties for late payment;
 - (g) the notional liability of the Commonwealth to pay VSL tuition protection levy;

- (h) the review of decisions made under the rules in relation to the collection or recovery of VSL tuition protection levy;
- (i) any other matters relating to the collection or recovery of VSL tuition protection levy.

19 At the end of paragraph 52(2)(b)

Add:

- (x) tuition protection;

20 After Part 5

Insert:

Part 5A—Tuition protection

Division 1—Preliminary

66A Application of this Part

- (1) This Part applies to approved course providers other than:
 - (a) Table A providers; or
 - (b) providers of a kind prescribed by the rules.
- (2) Despite subsection (1), sections 66F and 66G apply to all approved course providers.

Note: Section 66F deals with provider obligations to provide information about replacement courses and section 66G deals with obligations of providers who provide replacement courses.

66B When an approved course provider defaults in relation to a student

- (1) An approved course provider *defaults* in relation to a student if:
 - (a) the provider fails to start to provide a course or a part of a course to the student on the day on which the course or part was scheduled to start; and
 - (b) the student has not withdrawn before that day; and
 - (c) either:

- (i) a VET student loan has been approved for the student for the course on or before that day; or
 - (ii) the student is an eligible student for the course and has a HELP balance of greater than zero on that day.
- (2) An approved course provider **defaults** in relation to a student if:
 - (a) the provider ceases to provide a course or a part of a course to the student on a day that is after the course or part starts but before it is completed; and
 - (b) the student has not withdrawn before that day; and
 - (c) either:
 - (i) a VET student loan has been approved for the student for the course on or before that day; or
 - (ii) the student is an eligible student for the course and has a HELP balance of greater than zero on that day.
- (3) An approved course provider **defaults** in relation to a student if circumstances prescribed by the rules apply in relation to the provider and the student.

Division 2—Obligations when a provider defaults in relation to a student

66C Approved course providers must give notice of default to VSL Tuition Protection Director

Application of section

- (1) This section applies if an approved course provider defaults in relation to a student.

Notifying the VSL Tuition Protection Director of default

- (2) The approved course provider must, within 24 hours of the default occurring, give written notice to the VSL Tuition Protection Director of the circumstances of the default.

Notifying the VSL Tuition Protection Director of details of default

- (3) The approved course provider must, within 3 business days of the default occurring, give a written notice to the VSL Tuition Protection Director specifying:
- (a) the following information for each student in relation to whom the provider has defaulted:
 - (i) the student's full name and contact details;
 - (ii) the course, or part or parts of the course, that the student was enrolled in at the time of the default;
 - (iii) the amount of the tuition fees for each course, or part of the course, that student was enrolled in at the time of the default;
 - (iv) details about the payment of those tuition fees, including the amounts that are covered fees; and
 - (b) any other matter prescribed by the rules.
- (4) If requested in writing by the VSL Tuition Protection Director, the approved course provider must give to the Director either of the following for a student in relation to whom the provider has defaulted:
- (a) a copy of a statement of attainment or other Australian Qualifications Framework certification documentation issued by the course provider or an authorised issuing organisation in accordance with the Australian Qualifications Framework for the parts of the course that the student has completed;
 - (b) a copy of an authenticated VET transcript prepared by the Registrar (within the meaning of the *Student Identifiers Act 2014*) for the parts of the course that the student has completed.

Notice requirements

- (5) A notice given under subsection (2) or (3) must comply with any requirements prescribed by the rules for the purposes of this subsection.

Civil penalty

- (6) An approved course provider contravenes this subsection if the provider fails to comply with this section.

Civil penalty: 60 penalty units.

Offence

- (7) An approved course provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

66D Approved course providers must give notice of default to affected students

Application of section

- (1) This section applies if an approved course provider defaults in relation to a student.

Notifying students of default

- (2) The approved course provider must, within 24 hours of the default occurring, give written notice of the default to the students in relation to whom the provider has defaulted.

Notice requirements

- (3) A notice given under subsection (2) must comply with any requirements prescribed by the rules for the purposes of this subsection.

Civil penalty

- (4) An approved course provider contravenes this subsection if the provider fails to comply with this section.

Civil penalty: 60 penalty units.

Offence

- (5) An approved course provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

66E Student placement service

VSL Tuition Protection Director must decide

- (1) If an approved course provider defaults in relation to a student, the VSL Tuition Protection Director must decide:
- (a) that the Director is satisfied that there are one or more suitable replacement courses for the student; or
 - (b) that the Director is not satisfied that there is a suitable replacement course for the student.

Matters relating to whether a course is a suitable replacement course

- (2) In deciding whether the VSL Tuition Protection Director is satisfied that there is a suitable replacement course for a student, the Director must have regard to the following matters:
- (a) whether the replacement course leads to the same or a comparable qualification as the original course;
 - (b) whether the mode of delivery of the replacement course is the same as the mode of delivery of the original course;
 - (c) the location where the replacement course for a student will be primarily delivered;
 - (d) whether a student who enrolls in the replacement course:
 - (i) will incur additional fees that are unreasonable; and
 - (ii) will be able to attend the course without unreasonable impacts on the student's prior commitments;
 - (e) any other matters prescribed by the rules.

Suitable replacement course available

- (3) If paragraph (1)(a) applies, the VSL Tuition Protection Director must give a written notice to the student that includes the following:
- (a) a description of each suitable replacement course, including the qualification that the course leads to;
 - (b) the contact details of the provider of each suitable replacement course;
 - (c) an explanation that, if tuition fees have been paid for the affected part of the original course, tuition fees would not be payable for the replacement component of the replacement course;
 - (d) an explanation that if the student chooses to enrol in another course, there is no obligation on the provider of the other course to offer a replacement component without charge to the student;
 - (e) an explanation of the matters the Director must have regard to under subsection (2);
 - (f) an explanation of the student's right to request reconsideration, under section 76, of the Director's decision within 28 days after the day on which the student is given the notice (or such longer period as the Director allows);
 - (g) an explanation that if, upon reconsideration, it is determined that there is no suitable replacement course for the student, an amount equal to the student's loan amount that has been used to pay tuition fees for the student for the affected part will be re-credited to the student's HELP balance;
 - (h) any other matters prescribed by the rules.

No suitable replacement course available

- (4) If paragraph (1)(b) applies, the VSL Tuition Protection Director must give a written notice to the student that includes the following:
- (a) an explanation of the matters the Director must have regard to under subsection (2);
 - (b) an explanation of the student's right to request reconsideration, under section 76, of the Director's decision

within 28 days after the day on which the student is given the notice (or such longer period as the Director allows);

- (c) a statement that, to facilitate early re-crediting, the student may, at any time during the 28 days, give the VSL Tuition Protection Director notice in writing that the student will not seek reconsideration of the decision;
- (d) a statement that, if the decision is not reconsidered or is confirmed, an amount equal to the student's loan amount that has been used to pay tuition fees for the student for the affected part will be re-credited to the student's HELP balance.

66F Obligations of providers to provide information about replacement courses

- (1) The VSL Tuition Protection Director may, by notice in writing, require an approved course provider to provide such information that the Director reasonably requires to enable the Director to make a decision under subsection 66E(1) regarding suitable replacement courses for a student in relation to whom a provider has defaulted.
- (2) The information must be provided:
 - (a) in a form (if any) approved by the VSL Tuition Protection Director for the information; and
 - (b) in accordance with such other requirements as the Director makes.

Civil penalty

- (3) An approved course provider contravenes this subsection if:
 - (a) the provider is given a notice under subsection (1); and
 - (b) the provider fails to comply with the notice.

Civil penalty: 60 penalty units.

Offence

- (4) An approved course provider commits an offence of strict liability if:
 - (a) the provider is given a notice under subsection (1); and

- (b) the provider fails to comply with the notice.

Penalty: 60 penalty units.

66G Obligations of replacement provider

Application of section

- (1) This section applies if a student accepts an offer of a place in a replacement course.

Notice of acceptance

- (2) The approved course provider who provides the replacement course must give written notice of the acceptance to the VSL Tuition Protection Director within 14 days of the acceptance.

Course credits must be granted etc.

- (3) The approved course provider who provides the replacement course must ensure that the student:
- (a) is granted course credits for parts of the original course successfully completed by the student, as evidenced by:
 - (i) a statement of attainment or other Australian Qualifications Framework certification documentation issued in accordance with the Australian Qualifications Framework; or
 - (ii) an authenticated VET transcript prepared by the Registrar (within the meaning of the *Student Identifiers Act 2014*); and
 - (b) if tuition fees have been paid for the affected part of the original course—is not charged tuition fees for the replacement component of the replacement course; and
 - (c) is enrolled in the replacement course as soon as practicable.

Civil penalty

- (4) An approved course provider contravenes this subsection if the provider fails to comply with this section.

Civil penalty: 60 penalty units.

Offence

- (5) An approved course provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

66H Obligations where there is no replacement course

- (1) This section applies if:
- (a) an approved course provider defaults in relation to a student; and
 - (b) the VSL Tuition Protection Director decides, under paragraph 66E(1)(b), that the Director is not satisfied that there is a suitable replacement course for the student.
- (2) The VSL Tuition Protection Director must give a written notice to the Secretary of that fact.
- (3) The VSL Tuition Protection Director must give a written notice to the provider:
- (a) stating that an amount equal to the loan amount that has been used to pay tuition fees for the student for the affected part:
 - (i) will be re-credited to the student's HELP balance; and
 - (ii) will be required to be paid by the provider to the Commonwealth; and
 - (b) inviting the provider to make written submissions to the Director about the amount of the re-credit within 28 days.

Note: The amount is re-credited by the Secretary under section 72A. The Secretary must consider submissions before re-crediting a student's HELP balance.

Part 5B—VSL Tuition Protection Fund, VSL Tuition Protection Director and VSL Tuition Protection Fund Advisory Board

Division 1—VSL Tuition Protection Fund

66J Name of Fund

- (1) The VSL Tuition Protection Fund is established by this section.
- (2) The VSL Tuition Protection Fund is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

66K Credits to the VSL Tuition Protection Fund

There must be credited to the VSL Tuition Protection Fund amounts equal to the following:

- (a) each amount of VSL tuition protection levy received from an approved course provider;
- (b) each amount paid by a course provider to the Commonwealth under section 22 that relates to an amount re-credited under section 72A if the balance of the Fund had previously been reduced under paragraph 66L(1)(f) in relation to that amount;
- (c) any other money appropriated by the Parliament for the purposes of the VSL Tuition Protection Fund;
- (d) any penalties for late payment of VSL tuition protection levy;
- (e) each amount received by the Commonwealth for the purposes of the VSL Tuition Protection Fund.

Note 1: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

Note 2: VSL tuition protection levy is imposed by the *VET Student Loans (VSL Tuition Protection Levy) Act 2019*. The rules deal with collection of the levy (see subsection 49A(2)).

66L Purposes of the VSL Tuition Protection Fund

- (1) The purposes of the VSL Tuition Protection Fund are as follows:
- (a) making payments in connection with tuition protection;
 - (b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the VSL Tuition Protection Director's functions, including in managing the VSL Tuition Protection Fund;
 - (c) paying any remuneration and allowances payable to the VSL Tuition Protection Director;
 - (d) paying any remuneration and allowances payable to the members of the VSL Tuition Protection Fund Advisory Board;
 - (e) paying any amount that is required or permitted to be repaid;
 - (f) reducing the balance of the Fund (and therefore the available appropriation for the Fund) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

- (2) The rules may, for the purposes of paragraph (1)(a), make provision in relation to such payments, including in relation to the following:
- (a) the circumstances in which payments may be made;
 - (b) amounts of different kinds of payments;
 - (c) methods for calculating different kinds of payments.

Note: For example, the rules may provide that a replacement provider may receive a transfer payment if a student accepts an offer of a replacement course with the provider.

- (3) The purposes in subsection (1) do not include paying or discharging any costs, expenses or other obligations associated with services provided to the VSL Tuition Protection Director by any employee or officer of a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

Division 2—VSL Tuition Protection Director

66M VSL Tuition Protection Director

- (1) There is to be a VSL Tuition Protection Director.
- (2) The office of VSL Tuition Protection Director is to be held by the person who holds the office of TPS Director under section 54A of the *Education Services for Overseas Students Act 2000*.

Note: The TPS Director also holds the office of HELP Tuition Protection Director under the *Higher Education Support Act 2003*.

- (3) The reference in subsection (2) to the person who holds the office of TPS Director includes a reference to a person acting in that office for the time being because of an appointment under section 54K of the *Education Services for Overseas Students Act 2000*.

66N Functions of the VSL Tuition Protection Director

- (1) The VSL Tuition Protection Director has the following functions:
 - (a) facilitating and monitoring the placement of students in relation to whom an approved course provider has defaulted;
 - (b) paying amounts out of, or reducing the balance of, the VSL Tuition Protection Fund under section 66L;
 - (c) reporting to the Minister on:
 - (i) the operation of Part 5A (tuition protection); and
 - (ii) the financial status of the VSL Tuition Protection Fund;
 - (d) managing the VSL Tuition Protection Fund in a way that ensures that it is able to meet all its liabilities from time to time (including entering into a loan agreement for the benefit of the VSL Tuition Protection Fund);
 - (e) making the legislative instrument each year for the purposes of section 12 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2019*;
 - (f) recommending that the Secretary take action against an approved course provider that has defaulted in relation to a student or has otherwise not complied with this Act;

- (g) any other function conferred by this Act or any other law of the Commonwealth;
- (h) any other function that is incidental or conducive to the performance of the above functions.
- (2) The VSL Tuition Protection Director has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Director's functions.

66P Administrative provisions relating to the VSL Tuition Protection Director

- (1) Each provision of the *Education Services for Overseas Students Act 2000* specified in column 1 of an item in the following table applies in relation to the VSL Tuition Protection Director in accordance with columns 2 and 3 of the item.

Administrative provisions relating to the VSL Tuition Protection Director			
Item	Column 1	Column 2	Column 3
	This provision of the <i>Education Services for Overseas Students Act 2000</i> ...	applies in relation to the VSL Tuition Protection Director as if the reference in that provision to ...	were a reference to ...
1	A provision covered by subsection (2) of this section	TPS Director	VSL Tuition Protection Director
2	A provision covered by subsection (2) of this section	the regulations	the rules
3	A provision covered by subsection (2) of this section	the Department	the Department administered by the Minister administering this Act
4	Section 54D	the Minister	the Education Minister
5	Section 54E	the Minister	the Education Minister
6	Section 54F	the Minister	the Minister administering this Act and the Education

Schedule 1 VET student loans tuition protection

Part 1 Main amendments

Administrative provisions relating to the VSL Tuition Protection Director			
Item	Column 1	Column 2	Column 3
	This provision of the <i>Education Services for Overseas Students Act 2000</i> ...	applies in relation to the VSL Tuition Protection Director as if the reference in that provision to ...	were a reference to ...
			Minister
7	Section 54J	the Minister	the Education Minister

(2) This subsection covers the following provisions of the *Education Services for Overseas Students Act 2000*:

- (a) section 54C;
- (b) section 54D;
- (c) section 54E;
- (d) section 54F;
- (e) section 54J;
- (f) section 54L;
- (g) section 54N.

(3) For the purposes of section 54E of the *Education Services for Overseas Students Act 2000*, the Education Minister is taken to have given approval to the TPS Director to engage in paid employment as the VSL Tuition Protection Director.

(4) The Education Minister may terminate the appointment of the TPS Director if:

- (a) the TPS Director engages, except with the Education Minister's approval, in paid employment outside the duties of his or her office as VSL Tuition Protection Director; or
- (b) the VSL Tuition Protection Director fails, without reasonable excuse, to comply with section 54F of the *Education Services for Overseas Students Act 2000* as applied to the VSL Tuition Protection Director by item 6 of the table in subsection (1) of this section.

(5) In this section:

TPS Director has the same meaning as in the *Education Services for Overseas Students Act 2000*.

Division 3—VSL Tuition Protection Fund Advisory Board

66Q Establishment and membership

- (1) The VSL Tuition Protection Fund Advisory Board is established by this section.
- (2) The members of the VSL Tuition Protection Fund Advisory Board are the members of the TPS Advisory Board appointed under section 55D of the *Education Services for Overseas Students Act 2000*.
- (3) The reference in subsection (2) to the members of the TPS Advisory Board includes a reference to a person for the time being acting as a member of that Board because of an appointment under subsection 55N(1) of the *Education Services for Overseas Students Act 2000*.
- (4) The Chair of the VSL Tuition Protection Fund Advisory Board is the Chair of the TPS Advisory Board appointed under subsection 55C(3) of the *Education Services for Overseas Students Act 2000*.
- (5) The reference in subsection (4) to the Chair of the TPS Advisory Board includes a reference to a person for the time being acting as the Chair of that Board because of an appointment under subsection 55N(2) of the *Education Services for Overseas Students Act 2000*.
- (6) The Deputy Chair of the VSL Tuition Protection Fund Advisory Board is the Deputy Chair of the TPS Advisory Board appointed under subsection 55C(3) of the *Education Services for Overseas Students Act 2000*.
- (7) Despite subsection 55C(2) of the *Education Services for Overseas Students Act 2000*, a person is eligible to be appointed to the TPS Advisory Board if the Education Minister is satisfied that the person has qualifications or experience that the Education Minister

considers relevant to the performance of the VSL Tuition Protection Fund Advisory Board's functions.

66R Function of the VSL Tuition Protection Fund Advisory Board

The VSL Tuition Protection Fund Advisory Board's function is, either on its own initiative or at the request of the VSL Tuition Protection Director, to provide advice and make recommendations to the Director in relation to the making of a legislative instrument each year under section 12 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2019*.

66S Administrative provisions relating to the VSL Tuition Protection Fund Advisory Board

- (1) Each provision of the *Education Services for Overseas Students Act 2000* specified in column 1 of an item in the following table applies in relation to the VSL Tuition Protection Fund Advisory Board in accordance with columns 2 and 3 of the item.

Administrative provisions relating to the VSL Tuition Protection Fund Advisory Board			
Item	Column 1	Column 2	Column 3
	This provision of the <i>Education Services for Overseas Students Act 2000</i> ...	applies in relation to the VSL Tuition Protection Fund Advisory Board as if the reference in that provision to ...	were a reference to ...
1	A provision covered by subsection (2) of this section	the Board	the VSL Tuition Protection Fund Advisory Board
2	A provision covered by subsection (2) of this section	the Chair	the Chair of the VSL Tuition Protection Fund Advisory Board
3	A provision covered by subsection (2) of this section	the Deputy Chair	the Deputy Chair of the VSL Tuition Protection Fund Advisory Board
4	A provision covered by	a Board member	a member of the VSL

Administrative provisions relating to the VSL Tuition Protection Fund Advisory Board

Item	Column 1	Column 2	Column 3
	This provision of the <i>Education Services for Overseas Students Act 2000</i> ...	applies in relation to the VSL Tuition Protection Fund Advisory Board as if the reference in that provision to ...	were a reference to ...
	subsection (2) of this section		Tuition Protection Fund Advisory Board
5	A provision covered by subsection (2) of this section	the Board members	the members of the VSL Tuition Protection Fund Advisory Board
6	A provision covered by subsection (2) of this section	the Minister	the Minister administering this Act
7	Section 55E	the regulations	the rules
8	Paragraph 55L(2)(d)	section 55H	section 55H as applied to a member of the VSL Tuition Protection Fund Advisory Board by this section
9	Paragraph 55L(2)(d)	section 55J	section 55J as applied to a member of the VSL Tuition Protection Fund Advisory Board by this section
10	Paragraph 56C(2)(a)	section 55J	section 55J as applied to a member of the VSL Tuition Protection Fund Advisory Board by this section

(2) This subsection covers the following provisions of the *Education Services for Overseas Students Act 2000*:

- (a) section 55E;
- (b) section 55H;

- (c) section 55J;
- (d) section 56A;
- (e) section 56B;
- (f) section 56C;
- (g) section 56D;
- (h) section 56E;
- (i) section 56F;
- (j) section 56G.

21 Section 69

Repeal the section.

22 After section 72

Insert:

72A When Secretary must re-credit HELP balance

- (1) The Secretary must re-credit a student's HELP balance if:
 - (a) the student has not completed the requirements for the course, or the part of the course, because the provider defaulted in relation to the student; and
 - (b) the VSL Tuition Protection Director decides, under paragraph 66E(1)(b), that the Director is not satisfied that there is a suitable replacement course for the student.

Note: A course provider may be required to pay an amount to the Commonwealth as a result of re-crediting under this section: see section 22. That amount may be debited from the VSL Tuition Protection Fund: see section 66L. If the amount is debited from the Fund, a later payment of the amount by the provider is credited to the Fund: see section 66K.

- (2) The amount re-credited must equal the loan amount that has been used to pay tuition fees for the student for the affected part.
- (3) In determining the amount to be re-credited for the purposes of subsection (2), the Secretary must take into account any submissions received by the VSL Tuition Protection Director under subsection 66H(3) in relation to the amount to be re-credited.

- (4) The Secretary must give the student and the provider written notice of the Secretary's decision in relation to the re-credited amount. The notice must be given as soon as practicable after the decision is made.

23 Subsection 73(1)

After "this Division", insert "(other than section 72A)".

24 Section 74 (after item 2 of the table)

Insert:

2A	A decision that the VSL Tuition Protection Director is satisfied that there are one or more suitable replacement courses for a student	paragraph 66E(1)(a)	the VSL Tuition Protection Director
2B	A decision that the VSL Tuition Protection Director is not satisfied that there is a suitable replacement course for a student	paragraph 66E(1)(b)	the VSL Tuition Protection Director

25 Section 78 (heading)

Repeal the heading, substitute:

78 Reconsideration by delegates of the Secretary or Commissioner

26 After section 78

Insert:

78A Reconsideration by delegates of the VSL Tuition Protection Director

- (1) A delegate of the VSL Tuition Protection Director must not reconsider a reviewable decision made by the delegate.

- (2) A reviewable decision made by a delegate of the VSL Tuition Protection Director may be reconsidered by another delegate if, and only if, the other delegate:
- (a) was not involved in making the decision; and
 - (b) occupies a position at a level not lower than that of the delegate who made the decision.

27 At the end of section 80

Add:

- (3) Despite subsection (1), an application cannot be made for the review of a decision made under paragraph 66E(1)(a) or (b) (about suitable replacement courses).

28 At the end of section 84

Add:

- (3) For the purposes of Part 4 of the Regulatory Powers Act as it applies in relation to Part 5A and section 104A of this Act, the VSL Tuition Protection Director is an authorised applicant.

29 At the end of section 85

Add:

- (3) For the purposes of Part 5 of the Regulatory Powers Act as it applies in relation to Part 5A and section 104A of this Act, the VSL Tuition Protection Director:
- (a) is an infringement officer; and
 - (b) is the relevant chief executive.

30 After subsection 89(1)

Insert:

- (1A) The VSL Tuition Protection Director may, in writing, delegate his or her powers and functions under the Regulatory Powers Act as it applies in relation to Part 5A and section 104A of this Act, to an SES employee, or an acting SES employee, in:
- (a) the Department; or
 - (b) the Department administered by the Education Minister.

31 Paragraph 92(1)(c)

Repeal the paragraph.

32 Section 94

Before “The”, insert “(1)”.

33 At the end of section 94

Add:

- (2) The VSL Tuition Protection Director may disclose VET information to one or more of the following if the Director believes on reasonable grounds that the disclosure of the information is necessary for an enforcement related activity (within the meaning of the *Privacy Act 1988*):
 - (a) a Department, agency or authority of the Commonwealth, a State or a Territory;
 - (b) an enforcement body (within the meaning of the *Privacy Act 1988*).

34 After section 104

Insert:

104A VSL Tuition Protection Director may require a person to provide information about compliance with Part 5A

- (1) The VSL Tuition Protection Director may, by written notice given to a person who the Director believes on reasonable grounds has information or documents relevant to determining whether Part 5A has been complied with, require the person to give the information or documents to the Director.
- (2) The information must be provided:
 - (a) in a form (if any) approved by the VSL Tuition Protection Director; and
 - (b) in accordance with other requirements specified by the Director.

- (3) A person contravenes this subsection if the person fails to provide information or documents in accordance with a requirement under subsection (1).

Civil penalty: 60 penalty units.

- (4) A person commits an offence of strict liability if the person fails to provide information or documents in accordance with a requirement under subsection (1).

Penalty: 60 penalty units.

35 After section 105

Insert:

105A VSL Tuition Protection Director may use computer programs to make decisions

- (1) The VSL Tuition Protection Director may arrange for the use, under the Director's control, of computer programs for any purposes for which the Director may make decisions under this Act.
- (2) A decision made by the operation of a computer program under such an arrangement is, for the purposes of this Act, taken to be a decision made by the VSL Tuition Protection Director.

36 Subsections 110(3) and (4)

Repeal the subsections.

37 After paragraph 112(1)(a)

Insert:

- (aa) the VSL Tuition Protection Director; and
(ab) a member of the VSL Tuition Protection Fund Advisory Board; and

38 After section 113

Insert:

113A Review of operation of tuition protection

- (1) Before 1 July 2021, the Minister must commence a review of the operation of Parts 5A (about tuition protection) and 5B (about the VSL Tuition Protection Fund and related matters).
- (2) The review must be conducted at the same time as:
 - (a) the review conducted under section 176A of the *Education Services for Overseas Students Act 2000*; and
 - (b) the review conducted under section 238-7 of the *Higher Education Support Act 2003*.

Note: Those sections require the operation of the tuition protection arrangements established under those Acts to be reviewed.

- (3) The Minister must cause to be prepared a report of a review under subsection (1).
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

39 Subsection 114(1)

After “powers”, insert “or functions”.

40 Subsection 114(2)

Omit “exercising powers under the delegation”, substitute “exercising powers or performing functions under a delegation under subsection (1)”.

41 At the end of section 114

Add:

- (3) The VSL Tuition Protection Director may, in writing, delegate any or all of the Director’s powers or functions under this Act (other than paragraph 66N(1)(e)) to an APS employee who holds or performs the duties of an APS Level 6 position, or an equivalent or higher position, in:
 - (a) the Department; or
 - (b) the Department administered by the Education Minister.

Schedule 1 VET student loans tuition protection

Part 1 Main amendments

Note: Paragraph 66N(1)(e) gives the VSL Tuition Protection Director the function of making a legislative instrument under section 12 of the *VET Student Loans (VSL Tuition Protection Levy) Act 2019*.

- (4) In exercising powers or performing functions under a delegation under subsection (3), the delegate must comply with any directions of the VSL Tuition Protection Director.

Division 2—Application and transitional provisions

42 Application and transitional provisions

- (1) The amendments of section 25 of the *VET Student Loans Act 2016* made by this Part apply in relation to applications for approval made:
- (a) after the commencement of this Part; or
 - (b) before the commencement of this Part, if the application had not been decided before that commencement.
- (2) If, before the commencement of this Part, a course was not delivered to completion by a provider, then the *VET Student Loans Act 2016* and any instruments in force under the Act immediately before that commencement continue to apply, after that commencement, in relation to the provider as if the amendments and repeals made by this Part had not happened.
- (3) The amendments of sections 46 and 48 of the *VET Student Loans Act 2016* made by this Part apply in relation to an approved course provider after the commencement of this Part, regardless of when the provider was approved.
- (4) Section 49A, subparagraph 52(2)(b)(x) and Part 5A of the *VET Student Loans Act 2016*, as inserted by this Part, apply in relation to an approved course provider after the commencement of this Part, regardless of when the provider was approved.

Part 2—Consequential amendments

Education Services for Overseas Students Act 2000

43 After paragraph 52C(1)(b) (before the note)

Insert:

- ; (c) paying any remuneration and allowances payable to the TPS Director.

44 Subsection 52C(2)

Repeal the subsection, substitute:

- (2) Paragraph (1)(b) does not include paying or discharging any costs, expenses or other obligations associated with services provided to the TPS Director by any employee or officer of the Department.

45 Subsection 54A(1) (note)

Omit “Note”, substitute “Note 1”.

46 At the end of subsection 54A(1) (after the note)

Add:

- Note 2: The TPS Director is also the VSL Tuition Protection Director under the *VET Student Loans Act 2016* and the HELP Tuition Protection Director under the *Higher Education Support Act 2003*.

47 At the end of section 55A

Add:

- Note: The members of the TPS Advisory Board are also members of the VSL Tuition Protection Fund Advisory Board under the *VET Student Loans Act 2016* and members of the HELP Tuition Protection Fund Advisory Board under the *Higher Education Support Act 2003*.

48 After subparagraph 55C(1)(a)(i)

Insert:

- (ia) the Department administered by the Minister administering the *VET Student Loans Act 2016*;

49 Subsection 55C(2A)

Omit “the international education and training sector”, substitute “the education and training sectors”.

50 After section 176

Insert:

176A Review of operation of tuition protection

- (1) Before 1 July 2021, the Minister must commence a review of the operation of Parts 5 (about tuition protection service) and 5A (about the Overseas Students Tuition Fund and related matters).

Note: The review must be conducted at the same time as a review of the operation of Parts 5-1A and 5-1B of the *Higher Education Support Act 2003* and Parts 5A and 5B of the *VET Student Loans Act 2016* (see section 113A of the latter Act).

- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

Schedule 2—HELP tuition protection

Part 1—Main amendments

Division 1—Amendments

Higher Education Support Act 2003

1 Subsection 5-1(2) (after table item 2)

Insert:

- | | | |
|----|---|--|
| 2A | Section 19-66A (*tuition protection requirements) | Applies to the *Australian branch of the provider and to students undertaking or proposing to undertake units of study at that branch. |
|----|---|--|

2 Paragraph 16-25(1)(c)

Repeal the paragraph, substitute:

- (c) the Minister is satisfied that the body will meet the *tuition protection requirements (if applicable); and

3 Sections 16-30 and 16-31

Repeal the sections, substitute:

16-30 The tuition protection requirements

The *tuition protection requirements* are:

- (a) the requirements set out in Part 5-1A (including in the Higher Education Provider Guidelines made for the purposes of that Part); and
- (b) the requirements set out in the Higher Education Provider Guidelines for the purposes of this paragraph.

4 Section 19-40

Repeal the section.

5 Before section 19-67

Insert:

19-66A Tuition protection requirements

- (1) A higher education provider to whom Part 5-1A applies must comply with the *tuition protection requirements.

Note: See section 166-5 for the providers to whom Part 5-1A applies.

Civil penalty: 60 penalty units.

- (2) A higher education provider to whom Part 5-1A applies must pay the following when it is due and payable by the provider:
- (a) *HELP tuition protection levy;
 - (b) any penalty for late payment of HELP tuition protection levy.

Note: HELP tuition protection levy is imposed by the *Higher Education Support (HELP Tuition Protection Levy) Act 2019*. Amounts of levy for a year are either determined before, or indexed on, 1 August in the year: see sections 9 and 10 of that Act.

- (3) The Higher Education Provider Guidelines may make provision for, or in relation to, all or any of the following matters:
- (a) the issue of notices setting out the amount of *HELP tuition protection levy payable by a provider;
 - (b) when HELP tuition protection levy is due and payable;
 - (c) the issue of notices extending the time for payment of HELP tuition protection levy;
 - (d) penalties for late payment of HELP tuition protection levy;
 - (e) to whom HELP tuition protection levy and any penalties for late payment are payable;
 - (f) the refund, remission or waiver of HELP tuition protection levy or penalties for late payment;
 - (g) the review of decisions made under the Higher Education Provider Guidelines in relation to the collection or recovery of HELP tuition protection levy;
 - (h) any other matters relating to the collection or recovery of HELP tuition protection levy.

6 Paragraph 36-20(3)(a)

Omit “unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements”, substitute “unit as a *replacement unit”.

7 Subsection 36-20(4)

Omit “the *tuition assurance requirements”, substitute “the *tuition protection requirements”.

8 Section 36-24A (heading)

Repeal the heading, substitute:

36-24A Providers to repay amounts—provider defaults

9 Subsection 36-24A(1)

Repeal the subsection, substitute:

- (1) A higher education provider must, on the *Secretary’s behalf, determine that this section applies to a person if:
 - (a) the person has been enrolled as a *Commonwealth supported student with the provider in a unit of study; and
 - (b) the unit would, if completed, form part of a *course of study undertaken with the provider; and
 - (c) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider *defaulted in relation to the person; and
 - (d) Part 5-1A applied to the provider at the time the provider defaulted in relation to the person; and
 - (e) either of the following apply:
 - (i) the *HELP Tuition Protection Director decides, under paragraph 166-25(1)(b), that the Director is not satisfied that there is a suitable *replacement course for the person;
 - (ii) the person elects, under subparagraph 166-25(3)(a)(iii), to have an amount equal to the amounts of *HECS-HELP assistance that the person received for the unit *re-credited to the student’s *HELP balance.

Note: A HECS-HELP debt of a person to whom this section applies is remitted under subsection 137-5(4).

10 Section 104-42 (heading)

Repeal the heading, substitute:

104-42 Re-crediting a person's FEE-HELP balance if provider defaults or person elects re-crediting

11 Paragraphs 104-42(1)(b), (c) and (d) (not including the note)

Repeal the paragraphs, substitute:

- (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider *defaulted in relation to the person; and
- (c) Part 5-1A applied to the provider at the time the provider defaulted in relation to the person; and
- (d) either of the following apply:
 - (i) the *HELP Tuition Protection Director decides, under paragraph 166-25(1)(b), that the Director is not satisfied that there is a suitable *replacement course for the person;
 - (ii) the person elects, under subparagraph 166-25(3)(a)(iii), to have an amount equal to the amounts of *FEE-HELP assistance that the person received for the unit *re-credited to the person's HELP balance.

12 Subsection 104-42(2)

Repeal the subsection, substitute:

- (2) The *Secretary may re-credit the person's *HELP balance under subsection (1) if the Secretary is satisfied that the provider has failed to do so within a reasonable period.

13 Paragraph 110-5(1A)(b)

Omit "unit in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements", substitute "unit as a *replacement unit".

14 Subsection 110-5(1B)

Omit "the tuition assurance requirements", substitute "the *tuition protection requirements".

15 Section 159-1

After:

- payments made by the Commonwealth under this Act (see Part 5-1);

insert:

- tuition protection (see Part 5-1A);
- the HELP Tuition Protection Fund, the HELP Tuition Protection Director and the HELP Tuition Protection Fund Advisory Board (see Part 5-1B);

16 After Part 5-1

Insert:

Part 5-1A—Tuition protection

Division 1—Preliminary

166-1 What this Part is about

Certain higher education providers who default in delivering a unit of study to students receiving or entitled to FEE-HELP assistance or HECS-HELP assistance for the unit must give information about the default to the HELP Tuition Protection Director and to affected students.

The HELP Tuition Protection Director must assist affected students to find replacement courses. If the Director is not satisfied that there is a suitable replacement course for an affected student, or if the student elects re-crediting, the student's HELP balance is re-credited.

166-5 Application of this Part

- (1) This Part applies to higher education providers other than:
 - (a) *Table A providers; or
 - (b) providers of a kind prescribed by the Higher Education Provider Guidelines.
- (2) Despite subsection (1), the Minister may, by written notice, determine that this Part:
 - (a) applies to a specified higher education provider; or
 - (b) does not apply to a specified higher education provider.
- (3) A determination under subsection (2):
 - (a) may be made either unconditionally or subject to conditions; and
 - (b) may be expressed to be in force indefinitely or for a specified period.
- (4) A determination made under subsection (2) is not a legislative instrument.
- (5) Despite subsection (1), sections 166-27 and 166-30 apply to all higher education providers.

Note: Section 166-27 deals with provider obligations to provide information about replacement courses and section 166-30 deals with obligations of providers who provide replacement courses.

166-10 When a higher education provider defaults in relation to a student

- (1) A higher education provider *defaults* in relation to a student if:
 - (a) the provider fails to start to provide a unit of study to the student on the day on which the unit was scheduled to start; and
 - (b) the student has not withdrawn before that day; and
 - (c) the student was entitled, or would have been entitled, to *FEE-HELP assistance or *HECS-HELP assistance for the unit of study.
- (2) A higher education provider *defaults* in relation to a student if:

- (a) the provider ceases to provide a unit of study to the student on a day after the unit starts but before it is completed; and
 - (b) the student has not withdrawn before that day; and
 - (c) the student was entitled, or would have been entitled, to *FEE-HELP assistance or *HECS-HELP assistance for the unit of study.
- (3) A higher education provider *defaults* in relation to a student if circumstances prescribed by the Higher Education Provider Guidelines apply in relation to the provider and the student.

Division 2—Obligations when a provider defaults in relation to a student

166-15 Higher education providers must give notice of default to HELP Tuition Protection Director

Application of section

- (1) This section applies if a higher education provider *defaults in relation to a student.

Notifying the HELP Tuition Protection Director of default

- (2) The higher education provider must, within 24 hours of the *default occurring, give written notice to the *HELP Tuition Protection Director of the circumstances of the default.

Notifying the HELP Tuition Protection Director of details of default

- (3) The higher education provider must, within 3 business days of the *default occurring, give a written notice to the *HELP Tuition Protection Director specifying:
- (a) the following information in relation to each student in relation to whom the provider has defaulted:
 - (i) the student's full name and contact details;
 - (ii) the units of study and the *course of study that the student was enrolled in at the time of the default;

- (iii) the amount of the tuition fees for each unit of study that the student was enrolled in at the time of the default;
 - (iv) details about the payment of those tuition fees; and
 - (b) any other matter prescribed by the Higher Education Provider Guidelines.
- (4) If requested in writing by the *HELP Tuition Protection Director, the higher education provider must give to the Director a copy of a student's record of results for the *units of study that the student has completed.

Notice requirements

- (5) A notice given under subsection (2) or (3) must comply with any requirements prescribed by the Higher Education Provider Guidelines.

Civil penalty

- (6) A higher education provider contravenes this subsection if the provider fails to comply with this section.

Civil penalty: 60 penalty units.

Offence

- (7) A higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

166-20 Higher education providers must give notice of default to affected students

Application of section

- (1) This section applies if a higher education provider *defaults in relation to a student.

Notifying students of default

- (2) The higher education provider must, within 24 hours of the *default occurring, give written notice of the default to the students in relation to whom the provider has defaulted.

Notice requirements

- (3) A notice given under subsection (2) must comply with any requirements prescribed by the Higher Education Provider Guidelines.

Civil penalty

- (4) A higher education provider contravenes this subsection if the provider fails to comply with this section.

Civil penalty: 60 penalty units.

Offence

- (5) An approved course provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

166-25 Student placement service

HELP Tuition Protection Director must decide

- (1) If a higher education provider *defaults in relation to a student, the *HELP Tuition Protection Director must decide:
- (a) that the Director is satisfied that there are one or more suitable *replacement courses for the student; or
 - (b) that the Director is not satisfied that there is a suitable replacement course for the student.

Matters relating to whether a course is a suitable replacement course

- (2) In deciding whether the *HELP Tuition Protection Director is satisfied that there is a suitable *replacement course, the Director must have regard to the following matters:
- (a) whether the replacement course leads to the same or a comparable qualification as the *original course;
 - (b) what course credits the student may receive for the units of study of the original course successfully completed by the student;
 - (c) whether the mode of delivery of the replacement course is the same as the mode of delivery of the original course;
 - (d) the location where the replacement course for a student will be primarily delivered;
 - (e) whether a student who enrolls in the course:
 - (i) will incur additional fees that are unreasonable; and
 - (ii) will be able to attend the course without unreasonable impacts on the student's prior commitments;
 - (f) any other matters prescribed by the Higher Education Provider Guidelines.

Suitable replacement course available

- (3) If paragraph (1)(a) applies, the *HELP Tuition Protection Director must give a written notice to the student that includes the following:
- (a) a statement that the student may decide to do one of the following:
 - (i) enrol in a suitable *replacement course;
 - (ii) enrol in another course;
 - (iii) elect to have an amount equal to the amounts of *FEE-HELP assistance or *HECS-HELP assistance that the student received for the *affected unit *re-credited to the student's *HELP balance;
 - (b) a description of each suitable replacement course, including the qualification that the course leads to;
 - (c) the contact details of the provider of each suitable replacement course;

- (d) an explanation that, if *tuition fees have been paid for the affected unit of the original course, tuition fees would not be payable for a *replacement unit of a suitable replacement course;
- (e) an explanation that if the student chooses to enrol in another course, there is no obligation on the provider of the other course to offer a replacement unit without charge to the student;
- (f) an explanation of the matters the Director must have regard to under subsection (2);
- (g) any other matters prescribed by the Higher Education Provider Guidelines.

No suitable replacement course available

- (4) If paragraph (1)(b) applies, the *HELP Tuition Protection Director must give a written notice to the student that includes the following:
 - (a) an explanation of the matters the Director must have regard to under subsection (2);
 - (b) an explanation of the student's right to request reconsideration, under section 209-10, of the Director's decision within 28 days after the day on which the student is given the notice;
 - (c) a statement that, to facilitate early re-crediting, the student may, at any time during the 28 days, give the Director notice in writing that the student will not seek reconsideration of the decision;
 - (d) a statement that, if the student does not apply for reconsideration, an amount equal to the amounts of *FEE-HELP assistance or *HECS-HELP assistance that the student received for the *affected unit will be *re-credited to the student's *HELP balance.

166-27 Obligations of providers to provide information about replacement courses

- (1) The *HELP Tuition Protection Director may, by notice in writing, require a higher education provider to provide such information that the Director reasonably requires to enable the Director to make
-

a decision under subsection 166-25(1) regarding suitable
*replacement courses for a student in relation to whom a provider
has *defaulted.

- (2) The information must be provided:
- (a) in a form (if any) approved by the *HELP Tuition Protection Director for the information; and
 - (b) in accordance with such other requirements as the Director makes.

Civil penalty

- (3) A higher education provider contravenes this subsection if:
- (a) the provider is given a notice under subsection (1); and
 - (b) the provider fails to comply with the notice.

Civil penalty: 60 penalty units.

Offence

- (4) A higher education provider commits an offence of strict liability if:
- (a) the provider is given a notice under subsection (1); and
 - (b) the provider fails to comply with the notice.

Penalty: 60 penalty units.

166-30 Obligations of replacement providers

- (1) This section applies if a student accepts an offer of a place in a *replacement course.
- (2) The higher education provider who provides the *replacement course must give written notice of the acceptance to the *HELP Tuition Protection Director within 14 days of the acceptance.
- (3) The higher education provider who provides the *replacement course must ensure that the student:
 - (a) is granted course credits for units of study of the *original course successfully completed by the student; or

- (b) if the student has been charged a *student contribution amount or a *tuition fee for an *affected unit—is not charged a student contribution amount or a tuition fee for a *replacement unit of the replacement course; and
- (c) is enrolled in the replacement course as soon as practicable.

Civil penalty

- (4) A higher education provider contravenes this subsection if the provider fails to comply with this section.

Civil penalty: 60 penalty units.

Offence

- (5) A higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

166-32 Obligations of replacement providers regarding enrolment information

- (1) A higher education provider who provides a *replacement course to a student must keep up to date records of the following in relation to the student:
 - (a) the student's full name and contact details;
 - (b) the name of the replacement course and the *units of study the student is currently enrolled in;
 - (c) any *student contribution amounts or *tuition fees charged to the student for any units of the replacement course;
 - (d) details of the units of study successfully completed by the student;
 - (e) details of the course credits for units of study of the *original course successfully completed by the student granted to the student.
- (2) A higher education provider contravenes this subsection if the provider fails to comply with this section.

Civil penalty: 60 penalty units.

- (3) A higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

166-35 Notification obligations where there is no replacement course or student elects re-crediting

- (1) This section applies if:
- (a) a higher education provider *defaults in relation to a student; and
 - (b) either:
 - (i) the *HELP Tuition Protection Director decides, under paragraph 166-25(1)(b), that the Director is not satisfied that there is a suitable *replacement course for the student; or
 - (ii) the student elects, under subparagraph 166-25(3)(a)(iii), to have an amount equal to the amounts of *FEE-HELP assistance or *HECS-HELP assistance that the student received for the *affected unit *re-credited to the student's *HELP balance.
- (2) The *HELP Tuition Protection Director must give a written notice to the *Secretary of that fact.
- (3) The *HELP Tuition Protection Director must give a written notice to the provider stating that an amount equal to the amounts of *FEE-HELP assistance or *HECS-HELP assistance that the student received for the *affected unit will be *re-credited to the student's *HELP balance.

Part 5-1B—HELP Tuition Protection Fund, HELP Tuition Protection Director and HELP Tuition Protection Fund Advisory Board

Division 1—HELP Tuition Protection Fund

167-1 Name of Fund

- (1) The *HELP Tuition Protection Fund is established by this section.
- (2) The *HELP Tuition Protection Fund is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

167-5 Credits to the HELP Tuition Protection Fund

There must be credited to the *HELP Tuition Protection Fund amounts equal to the following:

- (a) each amount of *HELP tuition protection levy received from a higher education provider;
- (b) each amount paid by a higher education provider to the Commonwealth under paragraph 36-24A(2)(b), or subsection 110-5(1) because of re-crediting under section 104-42, if the balance of the Fund had previously been reduced under paragraph 167-10(1)(f) in relation to that amount;
- (c) any other money appropriated by the Parliament for the purposes of the HELP Tuition Protection Fund;
- (d) any penalties for late payment of HELP tuition protection levy;
- (e) each amount received by the Commonwealth for the purposes of the HELP Tuition Protection Fund.

Note 1: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

Note 2: HELP tuition protection levy is imposed by the *Higher Education Support (HELP Tuition Protection Levy) Act 2019*. The Higher

Education Provider Guidelines deal with collection of the levy: see section 19-66A.

167-10 Purposes of the HELP Tuition Protection Fund

- (1) The purposes of the *HELP Tuition Protection Fund are as follows:
- (a) making payments in connection with tuition protection;
 - (b) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the *HELP Tuition Protection Director's functions, including in managing the HELP Tuition Protection Fund;
 - (c) paying any remuneration and allowances payable to the HELP Tuition Protection Director;
 - (d) paying any remuneration and allowances payable to the members of the *HELP Tuition Protection Fund Advisory Board;
 - (e) paying any amount that is required or permitted to be repaid;
 - (f) reducing the balance of the Fund (and therefore the available appropriation for the Fund) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

- (2) The Higher Education Provider Guidelines may, for the purposes of paragraph (1)(a), make provision in relation to such payments, including in relation to the following:
- (a) the circumstances in which payments may be made;
 - (b) amounts of different kinds of payments;
 - (c) methods for calculating different kinds of payments.

Note: For example, the Higher Education Provider Guidelines may provide that a replacement provider may receive a transfer payment if a student accepts an offer of a replacement course with the provider.

- (3) The purposes in subsection (1) do not include paying or discharging any costs, expenses or other obligations associated with services provided to the *HELP Tuition Protection Director by any employee or officer of a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

Division 2—HELP Tuition Protection Director

167-15 HELP Tuition Protection Director

- (1) There is to be a *HELP Tuition Protection Director.
- (2) The office of *HELP Tuition Protection Director is to be held by the person who holds the office of TPS Director under section 54A of the *Education Services for Overseas Students Act 2000*.

Note: The TPS Director also holds the office of VSL Tuition Protection Director under the *VET Student Loans Act 2016*.

- (3) The reference in subsection (2) to the person who holds the office of TPS Director includes a reference to a person acting in that office for the time being because of an appointment under section 54K of the *Education Services for Overseas Students Act 2000*.

167-20 Functions of the HELP Tuition Protection Director

- (1) The *HELP Tuition Protection Director has the following functions:
 - (a) facilitating and monitoring the placement of students in relation to whom a higher education provider has *defaulted;
 - (b) paying amounts out of, or reducing the balance of, the *HELP Tuition Protection Fund under section 167-10;
 - (c) reporting to the Minister on:
 - (i) the operation of Part 5-1A (tuition protection); and
 - (ii) the financial status of the HELP Tuition Protection Fund;
 - (d) managing the HELP Tuition Protection Fund in a way that ensures that it is able to meet all its liabilities from time to time (including entering into a loan agreement for the benefit of the HELP Tuition Protection Fund);
 - (e) making the legislative instrument each year for the purposes of section 12 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2019*;
 - (f) recommending that the Secretary take action against a higher education provider that has defaulted in relation to a student;

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- (g) any other function conferred by this Act or any other law of the Commonwealth;
- (h) any other function that is incidental or conducive to the performance of the above functions.
- (2) The *HELP Tuition Protection Director has power to do all things necessary or convenient to be done for, or in connection with, the performance of the Director's functions.

167-25 Administrative provisions relating to the HELP Tuition Protection Director

- (1) Each provision of the *Education Services for Overseas Students Act 2000* specified in column 1 of an item in the following table applies in relation to the *HELP Tuition Protection Director in accordance with columns 2 and 3 of the item.

Administrative provisions relating to the HELP Tuition Protection Director			
Item	Column 1	Column 2	Column 3
	This provision of the <i>Education Services for Overseas Students Act 2000</i> ...	applies in relation to the HELP Tuition Protection Director as if the reference in that provision to ...	were a reference to ...
1	A provision covered by subsection (2) of this section	TPS Director	HELP Tuition Protection Director
2	A provision covered by subsection (2) of this section	the regulations	the Higher Education Provider Guidelines
3	A provision covered by subsection (2) of this section	the Minister	the Minister administering this Act
4	A provision covered by subsection (2) of this section	the Department	the Department administered by the Minister administering this Act

- (2) This subsection covers the following provisions of the *Education Services for Overseas Students Act 2000*:

- (a) section 54C;
 - (b) section 54D;
 - (c) section 54E;
 - (d) section 54F;
 - (e) section 54J;
 - (f) section 54L;
 - (g) section 54N.
- (3) For the purposes of section 54E of the *Education Services for Overseas Students Act 2000*, the Minister administering that Act is taken to have given approval to:
- (a) the TPS Director to engage in paid employment as the *HELP Tuition Protection Director; and
 - (b) the HELP Tuition Protection Director to engage in paid employment as the TPS Director.
- (4) The Minister may terminate the appointment of the TPS Director if:
- (a) the TPS Director engages, except with the Minister's approval, in paid employment outside the duties of his or her office as *HELP Tuition Protection Director; or
 - (b) the HELP Tuition Protection Director fails, without reasonable excuse, to comply with section 54F of the *Education Services for Overseas Students Act 2000* as applied to the HELP Tuition Protection Director by item 1 of the table in subsection (1) of this section.
- (5) The *HELP Tuition Protection Director is not personally subject to any liability to any person (other than the Commonwealth) in respect of anything done, or omitted to be done, in good faith in the exercise or performance of powers or functions under this Act.
- (6) In this section:
- TPS Director*** has the same meaning as in the *Education Services for Overseas Students Act 2000*.

Division 3—HELP Tuition Protection Fund Advisory Board

167-30 Establishment and membership

- (1) The *HELP Tuition Protection Fund Advisory Board is established by this section.
- (2) The members of the *HELP Tuition Protection Fund Advisory Board are the members of the TPS Advisory Board appointed under section 55D of the *Education Services for Overseas Students Act 2000*.
- (3) The reference in subsection (2) to the members of the TPS Advisory Board includes a reference to a person for the time being acting as a member of that Board because of an appointment under subsection 55N(1) of the *Education Services for Overseas Students Act 2000*.
- (4) The Chair of the *HELP Tuition Protection Fund Advisory Board is the Chair of the TPS Advisory Board appointed under subsection 55C(3) of the *Education Services for Overseas Students Act 2000*.
- (5) The reference in subsection (4) to the Chair of the TPS Advisory Board includes a reference to a person for the time being acting as the Chair of that Board because of an appointment under subsection 55N(2) of the *Education Services for Overseas Students Act 2000*.
- (6) The Deputy Chair of the *HELP Tuition Protection Fund Advisory Board is the Deputy Chair of the TPS Advisory Board appointed under subsection 55C(3) of the *Education Services for Overseas Students Act 2000*.
- (7) Despite subsection 55C(2) of the *Education Services for Overseas Students Act 2000*, a person is eligible to be appointed to the TPS Advisory Board if the Minister is satisfied that the person has qualifications or experience that the Minister considers relevant to the performance of the *HELP Tuition Protection Fund Advisory Board's functions.

167-35 Function of the HELP Tuition Protection Fund Advisory Board

The *HELP Tuition Protection Fund Advisory Board's function is, either on its own initiative or at the request of the *HELP Tuition Protection Director, to provide advice and make recommendations to the Director in relation to the making of a legislative instrument each year under section 12 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2019*.

167-40 Administrative provisions relating to the HELP Tuition Protection Fund Advisory Board

- (1) Each provision of the *Education Services for Overseas Students Act 2000* specified in column 1 of an item in the following table applies in relation to the *HELP Tuition Protection Fund Advisory Board in accordance with columns 2 and 3 of the item.

Administrative provisions relating to the HELP Tuition Protection Fund Advisory Board			
Item	Column 1	Column 2	Column 3
	This provision of the <i>Education Services for Overseas Students Act 2000</i> ...	applies in relation to the HELP Tuition Protection Fund Advisory Board as if the reference in that provision to ...	were a reference to ...
1	A provision covered by subsection (2) of this section	the Board	the HELP Tuition Protection Fund Advisory Board
2	A provision covered by subsection (2) of this section	the Chair	the Chair of the HELP Tuition Protection Fund Advisory Board
3	A provision covered by subsection (2) of this section	the Deputy Chair	the Deputy Chair of the HELP Tuition Protection Fund Advisory Board
4	A provision covered by subsection (2) of this section	a Board member	a member of the HELP Tuition Protection

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**Administrative provisions relating to the HELP Tuition Protection Fund
Advisory Board**

Item	Column 1	Column 2	Column 3
	This provision of the <i>Education Services for Overseas Students Act 2000</i> ...	applies in relation to the HELP Tuition Protection Fund Advisory Board as if the reference in that provision to ...	were a reference to ...
	section		Fund Advisory Board
5	A provision covered by subsection (2) of this section	the Board members	the members of the HELP Tuition Protection Fund Advisory Board
6	A provision covered by subsection (2) of this section	the Minister	the Minister administering this Act
7	Section 55E	the regulations	the Higher Education Provider Guidelines
8	Paragraph 55L(2)(d)	section 55H	section 55H as applied to a member of the HELP Tuition Protection Fund Advisory Board by this section
9	Paragraph 55L(2)(d)	section 55J	section 55J as applied to a member of the HELP Tuition Protection Fund Advisory Board by this section
10	Paragraph 56C(2)(a)	section 55J	section 55J as applied to a member of the HELP Tuition Protection Fund Advisory Board by this section

(2) This subsection covers the following provisions of the *Education Services for Overseas Students Act 2000*:

- (a) section 55E;
- (b) section 55H;
- (c) section 55J;
- (d) section 56A;
- (e) section 56B;
- (f) section 56C;
- (g) section 56D;
- (h) section 56E;
- (i) section 56F;
- (j) section 56G.

(3) A member of the *HELP Tuition Protection Fund Advisory Board is not personally subject to any liability to any person (other than the Commonwealth) in respect of anything done, or omitted to be done, in good faith in the exercise or performance of powers or functions under this Act or the *Higher Education Support (HELP Tuition Protection Levy) Act 2019*.

17 Subsections 169-15(1A) and (2A)

Omit “in circumstances that make it a replacement unit within the meaning of the *tuition assurance requirements”, substitute “that is a *replacement unit”.

18 Subsection 169-15(4)

Repeal the subsection, substitute:

- (4) Subsection (3) does not apply if:
- (a) the student is no longer enrolled in the unit at the end of the census date because the provider *defaulted in relation to the student; and
 - (b) the student has accepted an offer of a place in a *replacement course.

19 Section 206-1 (at the end of the table)

Add:

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5	A determination that Part 5-1A applies, or does not apply, to a specified higher education provider	subsection 166-5(2)	the Minister
6	A decision that the *HELP Tuition Protection Director is satisfied that there are one or more suitable *replacement courses for a student	paragraph 166-25(1)(a)	the *HELP Tuition Protection Director
7	A decision that the *HELP Tuition Protection Director is not satisfied that there is a suitable *replacement course for a student	paragraph 166-25(1)(b)	the HELP Tuition Protection Director

20 After subsection 209-10(4)

Insert:

- (4A) Despite subsection (4), the *reviewer is not required to reconsider the decision if:
- (a) the decision was made under paragraph 166-25(1)(b); and
 - (b) the person gave notice in writing, under paragraph 166-25(4)(c), that the person would not seek reconsideration of the decision.

21 Section 212-1

Before “An”, insert “(1)”.

22 At the end of section 212-1

Add:

- (2) Despite subsection (1), an application cannot be made for the review of a decision made under paragraph 166-25(1)(a) or (b) (about suitable replacement courses).

23 At the end of section 215-15

Add:

- (3) For the purposes of Part 4 of the *Regulatory Powers Act as it applies in relation to Part 5-1A of this Act, the *HELP Tuition Protection Director is an authorised applicant.

24 At the end of section 215-20

Add:

- (3) For the purposes of Part 5 of the *Regulatory Powers Act as it applies in relation to Part 5-1A of this Act, the *HELP Tuition Protection Director:
 - (a) is an infringement officer; and
 - (b) is the relevant chief executive.

25 After subsection 215-40(1)

Insert:

- (1A) The *HELP Tuition Protection Director may, in writing, delegate his or her powers and functions under the *Regulatory Powers Act as it applies in relation to Part 5-1A of this Act, to an SES employee, or an acting SES employee, in the Department.

26 After paragraph 238-5(1)(a)

Insert:

- (aa) the *HELP Tuition Protection Director; or

27 After section 238-5

Insert:

238-6 Delegations by HELP Tuition Protection Director

- (1) The *HELP Tuition Protection Director may, in writing, delegate all or any of the Director's functions or powers under this Act (other than paragraph 167-20(1)(e)) to an APS employee who holds or performs the duties of an APS Level 6 position, or an equivalent or higher position, in the Department.

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Note: Paragraph 167-20(1)(e) gives the HELP Tuition Protection Director the function of making a legislative instrument under section 12 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2019*.

- (2) In exercising powers or performing functions under the delegation, the delegate must comply with any directions of the *HELP Tuition Protection Director.

28 Section 238-7

Repeal the section, substitute:

238-7 Review of operation of tuition protection

- (1) Before 1 July 2021, the Minister must commence a review of the operation of Parts 5-1A (about tuition protection) and 5-1B (about the *HELP Tuition Protection Fund and related matters).

Note: The review must be conducted at the same time as a review of the operation of Parts 5 and 5A of the *Education Services for Overseas Students Act 2000* and of Parts 5A and 5B of the *VET Student Loans Act 2016* (see section 113A of the latter Act).

- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

29 Subsection 238-10(1) (table item 6, column headed “Chapter/Part/section”)

Before “section 169-17”, insert “Parts 5-1A and 5-1B;”.

30 After subsection 238-10(1A)

Insert:

- (2) The Minister may, by legislative instrument, make Higher Education Provider Guidelines providing for matters required or permitted by the *Higher Education Support (HELP Tuition Protection Levy) Act 2019* to be provided by the Higher Education Provider Guidelines.

31 Subclause 1(1) of Schedule 1

Insert:

affected unit, of an *original course, means a unit of study that a student was undertaking as part of a *course of study when a higher education provider *defaulted in relation to the student.

default: see section 166-10.

HELP Tuition Protection Director means the person referred to in section 167-15.

HELP Tuition Protection Fund means the *HELP Tuition Protection Fund established by section 167-1.

HELP Tuition Protection Fund Advisory Board means the HELP Tuition Protection Fund Advisory Board established by section 167-30.

HELP tuition protection levy means levy imposed by the *Higher Education Support (HELP Tuition Protection Levy) Act 2019*.

original course means a *course of study in relation to which a higher education provider has *defaulted.

replacement course means a *course of study that enables a student to finish:

- (a) an *original course; or
- (b) a course that is equivalent to an *original course.

replacement unit means a unit of study of a *replacement course that replaces an *affected unit of an *original course.

32 Subclause 1(1) of Schedule 1 (definition of *tuition assurance requirements*)

Repeal the definition.

33 Subclause 1(1) of Schedule 1

Insert:

tuition protection requirements has the meaning given by section 16-30.

Division 2—Application and transitional provisions

34 Application and transitional provisions

- (1) Subsection 5-1(2) of the *Higher Education Support Act 2003*, as amended by this Part, applies in relation to a Table C provider after the commencement of this Part, regardless of when the provider was, or was taken to be, approved.
- (2) The amendment of section 16-25 of the *Higher Education Support Act 2003* made by this Part applies in relation to applications for approval made:
 - (a) after the commencement of this Part; or
 - (b) before the commencement of this Part, if the application had not been decided before that commencement.
- (3) If, before the commencement of this Part, a higher education provider ceased to provide a unit of study, then the *Higher Education Support Act 2003* and any instruments in force under that Act immediately before that commencement continue to apply, after that commencement, in relation to the provider as if the amendments and repeals made by this Part had not happened.
- (4) Section 19-66A and Part 5-1A of the *Higher Education Support Act 2003*, as inserted by this Part, apply in relation to a higher education provider after the commencement of this Part, regardless of when the provider was, or was taken to be, approved.
- (5) The amendments of section 169-15 of the *Higher Education Support Act 2003* made by this Part apply in relation to enrolments in a unit of study that occur after the commencement of this Part.

Part 2—Amendments commencing immediately after the commencement of HELP loan limits changes

Higher Education Support Act 2003

35 Section 97-42 (heading)

Repeal the heading, substitute:

97-42 Re-crediting a person's HELP balance in relation to HECS-HELP assistance—provider defaults

36 Paragraphs 97-42(1)(b), (c) and (d)

Repeal the paragraphs (not including the note), substitute:

- (b) the person has not completed the requirements for the unit during the period during which the person undertook, or was to undertake, the unit because the provider *defaulted in relation to the person and the unit; and
- (c) Part 5-1A applied to the provider at the time the provider defaulted in relation to the person; and
- (d) either of the following apply:
 - (i) the *HELP Tuition Protection Director decides, under paragraph 166-25(1)(b), that the Director is not satisfied that there is a suitable *replacement course for the person;
 - (ii) the person elects, under subparagraph 166-25(3)(a)(iii), to have an amount equal to the amounts of HECS-HELP assistance that the person received for the *affected unit *re-credited to the person's HELP balance.

Schedule 3—Other amendments

VET Student Loans Act 2016

1 Section 38

Before “If”, insert “(1)”.

2 At the end of section 38

Add:

- (2) Despite subsection (1), the Secretary may refuse to revoke the approval if, at the time the request is made:
 - (a) the Secretary has given the provider written notice, under subsection 36(2), that the Secretary is proposing to revoke or suspend the approval; and
 - (b) the Secretary has not given written notice, under subsection 36(4), of the Secretary’s decision on the suspension or revocation.
- (3) Despite subsection (1), the Secretary may refuse to revoke the approval if, at the time the request is made:
 - (a) the Secretary has given the provider a written notice, under subsection 36(4) or 37(2), that the Secretary has suspended the provider’s approval; and
 - (b) the suspension has not ended.

*[Minister's second reading speech made in—
House of Representatives on 18 September 2019
Senate on 11 November 2019]*

(182/19)

No. 111, 2019

*Education Legislation Amendment (Tuition Protection and Other
Measures) Act 2019*

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