





# **Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020**

**No. 101, 2020**

**An Act to amend the law relating to tuition  
protection, 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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## Contents

|  |   |           |
|--|---|-----------|
| 1  | Short title.....  | 1         |
| 2  | Commencement.....   | 2         |
| 3  | Schedules.....  | 2         |
| <b>Schedule 1—Amendment of the Tertiary Education Quality and Standards Agency Act 2011</b>  |   | <b>3</b>  |
|  | <i>Tertiary Education Quality and Standards Agency Act 2011</i>         | 3         |
| <b>Schedule 2—Amendment of the Higher Education Support Act 2003</b>   |   | <b>43</b> |
| Part 1—Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board |   | 43        |
|  | <i>Higher Education Support Act 2003</i>                                | 43        |
| Part 2—Amendments relating to information collection and sharing   |   | 57        |
|  | <i>Higher Education Support Act 2003</i>                                | 57        |
| Part 3—Other amendments  |   | 60        |
|  | <i>Higher Education Support Act 2003</i>                                | 60        |
| <b>Schedule 3—Amendments of other Acts</b>   |   | <b>76</b> |
|  | <i>Education Services for Overseas Students Act 2000</i>                | 76        |
|  | <i>Higher Education Support (HELP Tuition Protection Levy) Act 2020</i> | 76        |
|  | <i>Student Identifiers Act 2014</i>                                     | 77        |
|  | <i>VET Student Loans Act 2016</i>                                       | 78        |





# Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020

No. 101, 2020

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

[Assented to 20 November 2020]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020*.

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No. 101, 2020

*Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020*

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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.

| <b>Commencement information</b> |                     |                     |
|---------------------------------|---------------------|---------------------|
| <b>Column 1</b>                 | <b>Column 2</b>     | <b>Column 3</b>     |
| <b>Provisions</b>               | <b>Commencement</b> | <b>Date/Details</b> |
| 1. The whole of this Act        | 1 January 2021      | 1 January 2021      |

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.

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## Schedule 1—Amendment of the Tertiary Education Quality and Standards Agency Act 2011

### *Tertiary Education Quality and Standards Agency Act 2011*

#### 1 Section 5

Insert:

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

***applicable court*** has the same meaning as in the *Higher Education Support Act 2003*.

#### 2 Section 5 (definition of *civil penalty provision*)

Repeal the definition, substitute:

***civil penalty provision***:

- (a) other than in Part 5A—means a subsection, or a section that is not divided into subsections, of this Act (other than Part 5A) that has set out at its foot the words “civil penalty” and one or more amounts in penalty units; or
- (b) in Part 5A—has the same meaning as in the Regulatory Powers Act.

#### 3 Section 5

Insert:

***decision-maker*** for a decision relating to tuition protection: see section 187A.

***default***: see section 62C.

***domestic student*** means a person who:

- (a) is not an overseas student (or an overseas student within the meaning of the *Education Services for Overseas Students Act 2000*); and
- (b) is enrolled, or proposes to become enrolled, in an Australian course of study with a registered higher education provider.

**enrolled:** a person **enrolled** in an Australian course of study (or unit of study) includes a person undertaking the course (or unit).

**FEE-HELP assistance** has the same meaning as in the *Higher Education Support Act 2003*.

**HECS-HELP assistance** has the same meaning as in the *Higher Education Support Act 2003*.

**HESA investigator** has the same meaning as in the *Higher Education Support Act 2003*.

**Higher Education Tuition Protection Director** means the person referred to in section 167-15 of the *Higher Education Support Act 2003*.

**Higher Education Tuition Protection Fund** means the Fund established by section 167-1 of the *Higher Education Support Act 2003*.

**judicial officer** has the same meaning as in the *Higher Education Support Act 2003*.

**Open Universities Australia** means Open Universities Australia Pty Ltd (ACN 053 431 888).

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

**overseas student** means a person who:

- (a) is not an Australian citizen; and
- (b) is enrolled, or proposes to become enrolled, in:
  - (i) an Australian course of study with a registered higher education provider; or
  - (ii) a unit of study access to which was provided by Open Universities Australia;

but does not include:

- (c) a person entitled to stay in Australia, or to enter and stay in Australia, without any limitation as to time; or
- (d) a New Zealand citizen; or
- (e) a diplomatic or consular representative of New Zealand, a member of the staff of such a representative or the spouse, de facto partner (within the meaning of the *Acts Interpretation Act 1901*) or dependent relative of such a representative.

***provider obligation period***: see subsection 62F(2).

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

***relative***, in relation to a representative, includes:

- (a) an exnuptial or adoptive child of the representative, or someone of whom the representative is an exnuptial or adoptive child; and
- (b) someone who is a child (within the meaning of the *Family Law Act 1975*) of the representative, or of whom the representative is a child (within the meaning of that Act); and
- (c) relatives traced through relationships referred to in paragraphs (a) and (b).

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

#### **4 Section 5 (definition of reviewable decision)**

Repeal the definition, substitute:

***reviewable decision***:

- (a) for a decision by TEQSA—means a decision covered by section 183;
- (b) for a decision relating to tuition protection—means a decision covered by section 187A.

## 5 Section 5

Insert:

**reviewer**, of a reviewable decision relating to tuition protection: see section 187B.

**Table A provider** has the same meaning as in the *Higher Education Support Act 2003*.

**tuition fees** means:

- (a) in relation to a unit of study for which a domestic student is liable to pay a student contribution amount within the meaning of the *Higher Education Support Act 2003*—that amount; or
- (b) in relation to a unit of study for which a domestic student is liable to pay a tuition fee within the meaning of the *Higher Education Support Act 2003*—that amount; or
- (c) if paragraph (a) or (b) does not apply—the amount, or the amount worked out using a method, prescribed by the Up-front Payments Guidelines.

**tuition protection requirements** has the meaning given by subsection 26A(3).

**unit of study**:

- (a) in relation to an Australian course of study and a registered higher education provider that is also a higher education provider within the meaning of the *Higher Education Support Act 2003*—has the same meaning as in that Act; or
- (b) in relation to an Australian course of study and a registered higher education provider that is not of the kind mentioned in paragraph (a) means:
  - (i) a subject or unit (however described) that a person may undertake as part of the course; or
  - (ii) if the course is not comprised of subjects or units as referred to in subparagraph (i)—the course.

**up-front payment** for a domestic student for a unit of study:

- (a) for a unit of study for which the student is liable to pay a student contribution amount within the meaning of the

*Higher Education Support Act 2003*—has the same meaning as in section 93-15 of that Act; or

(b) for a unit of study for which the student is liable to pay a tuition fee within the meaning of the *Higher Education Support Act 2003*—has the same meaning as in section 107-5 of that Act; or

(c) if paragraph (a) or (b) does not apply—means a payment of all or a part of the student’s tuition fees for the unit.

***Up-front Payments Guidelines*** means guidelines made by the Minister under section 26B.

***up-front payments tuition protection levy*** means levy imposed by the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*.

## **6 At the end of subsection 21(1)**

Add:

; and (c) for an applicant to which Part 5A will apply—the applicant will comply with tuition protection requirements.

## **7 After section 26**

Insert:

### **26A Condition—compliance with the tuition protection requirements**

- (1) This section applies to a registered higher education provider if Part 5A applies to the provider.
- (2) The provider must comply with the tuition protection requirements.
- (3) The ***tuition protection requirements*** are:
  - (a) the requirements set out in this section, Part 5A and the Up-front Payments Guidelines; and
  - (b) the requirements set out in the Up-front Payments Guidelines for the purposes of this paragraph.
- (4) The provider must pay the following when it is due and payable by the provider:

- (a) up-front payments tuition protection levy;
- (b) any penalty for late payment of up-front payments tuition protection levy.

Note 1: Up-front payments tuition protection levy is imposed by the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*.

Note 2: An amount equal to each amount of up-front payments tuition protection levy received from a registered higher education provider is credited to the Higher Education Tuition Protection Fund: see paragraph 167-5(aa) of the *Higher Education Support Act 2003*.

Note 3: The Higher Education Tuition Protection Fund Advisory Board advises the Higher Education Tuition Protection Director in relation to certain components of the up-front payments tuition protection levy: see paragraph 167-35(1)(b) of the *Higher Education Support Act 2003*.

- (5) The Up-front Payments 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 up-front payments tuition protection levy payable by a provider;
    - (b) when up-front payments tuition protection levy is due and payable;
    - (c) the issue of notices extending the time for payment of up-front payments tuition protection levy;
    - (d) penalties for late payment of up-front payments tuition protection levy;
    - (e) to whom up-front payments tuition protection levy and any penalties for late payment are payable;
    - (f) the refund, remission or waiver of up-front payments tuition protection levy or penalties for late payment;
    - (g) the review of decisions made under the Up-front Payments Guidelines in relation to the collection or recovery of up-front payments tuition protection levy;
    - (h) any other matters relating to the collection or recovery of up-front payments tuition protection levy.
  - (6) The Up-front Payments Guidelines may, for the purposes of paragraph 167-10(1)(b) of the *Higher Education Support Act 2003*, make provision for, or in relation to, payments made in connection with the tuition protection requirements, 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 Up-front Payments Guidelines may provide that a provider of a replacement course may receive a transfer payment if a student accepts an offer of a replacement course with the provider.

*Information and documents related to tuition protection*

- (7) The Up-front Payments Guidelines may set out specified information and documents that a registered higher education provider must:
  - (a) keep records of for the purposes of the tuition protection requirements; and
  - (b) give to the Secretary in accordance with subsection (8).
- (8) The information and documents mentioned in subsection (7) must be given to the Secretary:
  - (a) within the period specified by the Secretary; and
  - (b) in the manner and form approved by the Secretary.
- (9) Without limiting subsection (7), the information and documents may relate to one or more of the following:
  - (a) the provider's domestic students (including information and documents relating to each student's enrolment, progression in units of study and results);
  - (b) the provider's tuition fees, including the amount of any up-front payments received for each domestic student for a unit of study;
  - (c) identifying information about the provider's domestic students, including the full names and contact details of the students;
  - (d) any other matter related to tuition protection under this Act.

## **26B Guidelines**

The Minister may, by legislative instrument, make guidelines (the *Up-front Payments Guidelines*) providing for matters:

- (a) required or permitted by this Act or the *Higher Education Support Act 2003* to be provided by the Up-front Payments Guidelines; or
- (b) necessary or convenient to be provided in order to carry out or give effect to Part 5A of this Act or Part 5-1A or 5-1B of the *Higher Education Support Act 2003*.

## **8 After Part 5**

Insert:

### **Part 5A—Tuition protection**

#### **Division 1—Preliminary**

##### **62A What this Part is about**

Certain registered higher education providers who default in delivering a unit of study to a domestic student for whom an up-front payment for the unit of study has been made must give information about the default to the Higher Education Tuition Protection Director and to the student. If the student was entitled to FEE-HELP assistance or HECS-HELP assistance for the unit, the provider may also have obligations under Part 5-1A of the *Higher Education Support Act 2003* in relation to the default.

The provider must assist the student to find a replacement unit or replacement course, or provide a refund to the student (and offer the student a choice about this). If the provider fails to discharge this obligation, the Director must offer the student a suitable replacement course. If there is no suitable replacement course, or the student does not accept the offer, the Director must provide a refund to the student.

##### **62B Application of this Part**

- (1) This Part applies to registered higher education providers other than:
  - (a) Table A providers; or

- (b) providers that are owned by the Commonwealth, a State or a Territory; or
  - (c) providers that are established under one of the following:
    - (i) the *Technical and Further Education Commission Act 1990* (NSW);
    - (ii) the *Education and Training Reform Act 2006* (Vic.);
    - (iii) the *TAFE Queensland Act 2013* (Qld);
    - (iv) the *Vocational Education and Training Act 1996* (WA);
    - (v) the *TAFE SA Act 2012* (SA);
    - (vi) the *Training and Workforce Development Act 2013* (Tas.);
    - (vii) the *Canberra Institute of Technology Act 1987* (ACT);or
  - (d) providers of a kind prescribed by the Up-front Payments Guidelines.
- (2) Despite subsection (1), the Minister may, by written notice, determine that this Part:
- (a) applies to a specified registered higher education provider; or
  - (b) does not apply to a specified registered higher education provider;
- if the Minister considers it appropriate that this Part applies, or does not apply, to the provider.
- (3) In deciding whether it is appropriate that this Part applies, or does not apply, to a specified registered higher education provider, the Minister must have regard to the following:
- (a) the risk of the provider defaulting in relation to one or more domestic students;
  - (b) the provider's financial status and capacity;
  - (c) any non-compliance, or risk of future non-compliance, with the Threshold Standards, this Act, legislative instruments made under this Act or this Act's associated provisions;
  - (d) any advice given to the Minister by TEQSA or the Higher Education Tuition Protection Director in relation to any of the matters referred to in paragraphs (a) to (c);
  - (e) any other matter the Minister considers appropriate.

- (4) 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.
- (5) A determination made under subsection (2) is not a legislative instrument.
- (6) Despite subsection (1), sections 62N, 62P and 62Q apply to all registered higher education providers.

Note: Section 62N deals with the obligations of providers to provide information about replacement courses, section 62P deals with obligations of providers who provide replacement courses and section 62Q deals with the requirement of providers who provide replacement courses to keep up-to-date enrolment information.

### **62C When a provider defaults in relation to a student**

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

- (ii) was not made for the student for the unit on or before that day and the student was not entitled, and would not have been entitled, to FEE-HELP assistance or HECS-HELP assistance for the unit.
- (3) A registered higher education provider *defaults* in relation to a domestic student if circumstances prescribed by the Up-front Payments Guidelines apply in relation to the provider and the student.

Note: If the student was entitled, or would have been entitled, to FEE-HELP assistance or HECS-HELP assistance in relation to the unit of study (or any other affected units of the original course) the provider may also have defaulted in relation to the student under the *Higher Education Support Act 2003*: see section 166-10 of that Act.

## **Division 2—Tuition Protection**

### **Subdivision A—Obligations of defaulting providers**

#### **62D Providers must give notice of default to Higher Education Tuition Protection Director**

##### *Application of section*

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

##### *Notifying the Higher Education Tuition Protection Director of default*

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

##### *Notifying the Higher Education Tuition Protection Director of details of default*

- (3) The provider must, within 3 business days of the default occurring, give a written notice to the Higher Education Tuition Protection Director specifying:
- (a) the following information:

- (i) the student's full name and contact details;
  - (ii) the units of study and the Australian 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) advice as to:
- (i) whether the provider intends to discharge its obligations to the student under section 62F; and
  - (ii) (if appropriate) how the provider intends to discharge those obligations; and
- (c) any other matter prescribed by the Up-front Payments Guidelines.
- (4) If requested in writing by the Higher Education Tuition Protection Director, the provider must give to the Director a copy of a student's record of results for any 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 Up-front Payments Guidelines.

*Civil penalty*

- (6) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

*Offence*

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

Penalty: 60 penalty units.

## 62E Providers must give notice of default to affected students

### *Application of section*

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

### *Notifying students of default*

- (2) The provider must, within 24 hours of the default occurring, give written notice of the default to the domestic student 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 Up-front Payments Guidelines.

### *Civil penalty*

- (4) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

### *Offence*

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

Penalty: 60 penalty units.

## 62F Obligations on providers in case of default

### *Application of section*

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

### *Provider obligations*

- (2) The provider must discharge its obligations to the student, in accordance with this section, within the period (the ***provider***

*obligation period*) of 14 days after the day the provider defaulted in relation to the student.

- (3) The provider discharges its obligations to the student if:
- (a) the provider arranges for the student to be offered a place in a suitable replacement unit or suitable replacement course and the student accepts the offer in writing; or
  - (b) the provider provides a refund in accordance with subsection (8).

*Suitable replacement units or suitable replacement courses*

- (4) The provider must identify whether:
- (a) there are one or more suitable replacement units or suitable replacement courses for the student; or
  - (b) there is no suitable replacement unit or suitable replacement course for the student.

*Matters relating to whether a course is a suitable replacement course*

- (5) In identifying whether there is a suitable replacement course, the provider 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 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 will be primarily delivered;
  - (e) whether the student:
    - (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 Up-front Payments Guidelines.

*Matters relating to whether a unit is a suitable replacement unit*

- (6) In identifying whether there is a suitable replacement unit, the provider must have regard to the following matters:
- (a) whether the student will receive credit under the student's original course for the replacement unit;
  - (b) whether the mode of delivery of the replacement unit is the same as the mode of delivery of the affected unit;
  - (c) the location where the replacement unit will be primarily delivered;
  - (d) whether the student:
    - (i) will incur additional fees that are unreasonable; and
    - (ii) will be able to attend the replacement unit without unreasonable impacts on the student's prior commitments;
  - (e) any other matters prescribed by the Up-front Payments Guidelines.

*Suitable replacement unit or suitable replacement course available*

- (7) If paragraph (4)(a) applies, the provider 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 unit or suitable replacement course;
    - (ii) enrol in another unit of study or course;
    - (iii) elect to receive a refund in accordance with subsection (8);
  - (b) a description of each suitable replacement unit or suitable replacement course, including the qualification that the suitable replacement course leads to;
  - (c) the contact details of the provider of each suitable replacement unit or 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 suitable replacement unit or the replacement unit of a suitable replacement course;

- (e) an explanation that if the student chooses to enrol in another unit of study or course, there is no obligation on the provider of the other unit or course to offer a replacement unit without charge to the student;
- (f) an explanation of the matters the provider must have regard to under subsections (5) and (6);
- (g) any other matters prescribed by the Up-front Payments Guidelines.

*No suitable replacement unit or suitable replacement course or student elects refund*

- (8) If:
  - (a) paragraph (4)(b) applies; or
  - (b) the student elects to receive a refund as referred to in subparagraph (7)(a)(iii);the provider must pay the student a refund of the amount equal to the sum of any up-front payments made for the affected unit.
- (9) The provider must provide the refund under subsection (8) in accordance with any requirements prescribed by the Up-front Payments Guidelines.

*Elections for FEE-HELP or HECS-HELP must be consistent*

- (10) Despite paragraph (7)(a), if the student was entitled to FEE-HELP assistance or HECS-HELP assistance for any affected units of the original course, any elections made under that paragraph in relation to those units must be consistent with any elections made under paragraph 166-25(7)(a) of the *Higher Education Support Act 2003* in relation to those units.

Example: A student who is entitled to FEE-HELP assistance or HECS-HELP assistance for an affected unit of an original course also makes an up-front payment for the same affected unit. The student elects, under subparagraph 166-25(7)(a)(i) of the *Higher Education Support Act 2003*, to enrol in a suitable replacement course. The student must elect to enrol in a suitable replacement course under subparagraph (7)(a)(i) of this section in relation to the affected unit.

- (11) The Up-front Payments Guidelines may prescribe circumstances in which elections are considered to be consistent or inconsistent for the purposes of subsection (10).
-

## **62G Failure to discharge obligations**

### *Civil penalty*

- (1) A registered higher education provider is liable to a civil penalty if:
- (a) the provider defaults in relation to a domestic student; and
  - (b) the provider fails to discharge its obligations to the student in accordance with section 62F.

Civil penalty: 60 penalty units.

### *Offence*

- (2) A registered higher education provider commits an offence of strict liability if:
- (a) the provider defaults in relation to a domestic student; and
  - (b) the provider fails to discharge its obligations to the student in accordance with section 62F.

Penalty: 60 penalty units.

- (3) The maximum penalty for each day that an offence under subsection (2) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (2) is a continuing offence under section 4K of the *Crimes Act 1914*.

## **62H Providers to notify of outcome of discharge of obligations**

- (1) A registered higher education provider that defaults in relation to a domestic student must give a notice to the Higher Education Tuition Protection Director within 7 days after the end of the provider obligation period.
- (2) The notice must include the following:
- (a) whether the provider discharged its obligations to the student in accordance with section 62F;
  - (b) if the provider arranged a replacement unit or replacement course:
    - (i) details of the student; and

- (ii) details of the replacement unit or replacement course; and
  - (iii) evidence of the student's acceptance of an offer of a place in the replacement unit or replacement course;
- (c) if the provider provided a refund to the student under subsection 62F(8):
  - (i) details of the student; and
  - (ii) details of the amount of the refund.
- (3) The notice must comply with any requirements prescribed by the Up-front Payments Guidelines.

*Civil penalty*

- (4) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

*Offence*

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

Penalty: 60 penalty units.

## **Subdivision B—Role of the Higher Education Tuition Protection Director**

### **62J Student placement service**

*Application of section*

- (1) This section applies if the Higher Education Tuition Protection Director determines that:
  - (a) a registered higher education provider has defaulted in relation to a domestic student; and
  - (b) either:
    - (i) the provider has failed to discharge its obligations under section 62F to the student by the end of the provider obligation period; or

- (ii) the provider is unlikely to be able to discharge its obligations under section 62F to the student by the end of the provider obligation period.

*Higher Education Tuition Protection Director must decide*

- (2) The Higher Education 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*

- (3) In deciding whether the Higher Education 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 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 will be primarily delivered;
  - (e) whether the student:
    - (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 Up-front Payments Guidelines.

*Suitable replacement course available*

- (4) If paragraph (2)(a) applies, the Higher Education 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 amount the provider was liable to pay the student under subsection 62F(8) paid to the student;
- (b) a description of each suitable replacement course, including the qualification that the replacement 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 (3);
- (g) any other matters prescribed by the Up-front Payments Guidelines.

*Accepting an offer of a suitable replacement course*

- (5) If the Higher Education Tuition Protection Director arranges for the student to be offered a place in a suitable replacement course, the student may accept the offer.
- (6) An acceptance must:
  - (a) be in writing; and
  - (b) be given to the provider of the suitable replacement course within the period specified in subsection (7).
- (7) For the purposes of subsection (6), the period is:
  - (a) the period of 30 days after the Higher Education Tuition Protection Director gives notice under subsection (4); or
  - (b) if the Director determines that exceptional circumstances apply:

- (i) any shorter period determined in writing by the Director; or
- (ii) any longer period (not exceeding 12 months) determined in writing by the Director, and agreed to by the student.

*No suitable replacement course available*

- (8) If paragraph (2)(b) applies, the Higher Education 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 (3);
  - (b) an explanation of the student's right to request reconsideration, under section 187D, 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 refunds, 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 amount the provider was liable to pay to the student under subsection 62F(8) will be paid to the student.

*Elections for FEE-HELP or HECS-HELP must be consistent*

- (9) Despite paragraph (4)(a), if the student was entitled to FEE-HELP assistance or HECS-HELP assistance for any affected units of the original course, any elections made under that paragraph in relation to those units must be consistent with any elections made under paragraph 166-26B(4)(a) of the *Higher Education Support Act 2003* in relation to those units.

Example: A student who is entitled to FEE-HELP assistance or HECS-HELP assistance for an affected unit of an original course also makes an up-front payment for the same affected unit. The student elects, under subparagraph 166-26B(4)(a)(iii) of the *Higher Education Support Act 2003*, to have an amount re-credited to the student's HELP balance. The student must elect to receive a refund of the up-front payment

under subparagraph (4)(a)(iii) of this section in relation to the affected unit.

- (10) The Up-front Payments Guidelines may prescribe circumstances in which elections are considered to be consistent or inconsistent for the purposes of subsection (9).

**62K When payments must be made from the Higher Education Tuition Protection Fund**

- (1) If a domestic student accepts an offer of a replacement course in accordance with subsections 62J(5), (6) and (7), the Higher Education Tuition Protection Director must pay to the provider of the replacement course an amount equal to the amount the defaulting provider was liable to pay to the student under subsection 62F(8).
- (2) The Higher Education Tuition Protection Director must pay a domestic student an amount equal to the amount the defaulting provider was liable to pay to the student under subsection 62F(8) if:
- (a) the provider has failed to discharge its obligations under section 62F to the student by the end of the provider obligation period; and
  - (b) either:
    - (i) the Director decides, under paragraph 62J(2)(b), that the Director is not satisfied that there is a suitable replacement course for the student; or
    - (ii) the student elects, under subparagraph 62J(4)(a)(iii), to have an amount equal to the amount the provider was liable to pay the student under subsection 62F(8) paid to them.
- (3) Despite subsection (2), the Higher Education Tuition Protection Director is not required to pay an amount under that subsection if:
- (a) the Director becomes aware of the circumstances referred to in paragraph (2)(a) more than 12 months after the day the provider defaulted in relation to the student; or
  - (b) the Director becomes aware of the circumstances referred to in subparagraph (2)(b)(ii) more than 12 months after the day

the Director gives notice to the student under subsection 62J(4).

- (4) Despite subsection (1), the Higher Education Tuition Protection Director may pay a greater amount than the amount required to be paid under that subsection to the provider of the replacement course if the Director considers that to do so:
- (a) would best protect the interests of the student; and
  - (b) would not jeopardise the sustainability of the Higher Education Tuition Protection Fund.
- (5) Despite subsection (1), if:
- (a) the Higher Education Tuition Protection Director is required under that subsection to pay an amount to the provider of the replacement course; and
  - (b) the amount required to be paid is more than the cost of the replacement course;
- the Higher Education Tuition Protection Director must pay the difference to the student.
- (6) A payment under this section must be made in accordance with any requirements prescribed by the Up-front Payments Guidelines.

## **62L Consequences of payments being made from the Higher Education Tuition Protection Fund**

### *Cessation of claim*

- (1) If:
- (a) a registered higher education provider defaults in relation to a domestic student; and
  - (b) the Higher Education Tuition Protection Director pays an amount in accordance with section 62K in relation to the student;
- the student ceases to have any claim against the provider in respect of the up-front payments made for the affected unit.

*Provider must pay back Higher Education Tuition Protection Director*

- (2) Instead, the provider must pay the Higher Education Tuition Protection Director an amount equal to the amount that the Higher Education Tuition Protection Director paid in relation to the student under section 62K.
- (3) The Higher Education Tuition Protection Director may, on behalf of the Commonwealth, recover that amount from the provider as a debt due to the Commonwealth by action in a court of competent jurisdiction.

*Higher Education Tuition Protection Director may enforce security*

- (4) If the provider had granted the Higher Education Tuition Protection Director a charge or other security over any of its assets, the Director may enforce the charge or security in satisfaction, or partial satisfaction, of the debt.

#### **62M Notification obligations for payments made from the Higher Education Tuition Protection Fund**

- (1) This section applies if:
  - (a) a registered higher education provider defaults in relation to a domestic student; and
  - (b) the Higher Education Tuition Protection Director makes a payment to the registered higher education provider who provides the replacement course, or to the student, under section 62K.
- (2) The Higher Education Tuition Protection Director must give a written notice to the defaulting provider stating the amounts of any such payments.

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## Subdivision C—Obligations on replacement providers

### 62N Obligations of providers to provide information about replacement courses

- (1) The Higher Education Tuition Protection Director may, by written notice, require a registered higher education provider to provide such information that the Director reasonably requires to enable the Director to make a decision under subsection 62J(2) regarding suitable replacement courses for a domestic student in relation to whom a provider has defaulted.
- (2) The information must be provided:
  - (a) in a form (if any) approved by the Higher Education Tuition Protection Director for the information; and
  - (b) in accordance with such other requirements as the Director makes.

#### *Civil penalty*

- (3) A registered higher education provider is liable to a civil penalty 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 registered 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.

### 62P Obligations of replacement providers

- (1) This section applies if a domestic student accepts an offer of a place in a replacement unit or replacement course as referred to in paragraph 62F(3)(a) or subsection 62J(5).

- (2) The registered higher education provider who provides the replacement course or replacement unit must give written notice of the acceptance to the Higher Education Tuition Protection Director within 14 days of the acceptance.
- (3) The registered higher education provider who provides the replacement unit or replacement course must ensure that the student:
  - (a) for a replacement course—is granted credits for units of study of the original course successfully completed by the student; and
  - (b) if the student has paid tuition fees for an affected unit of the original course—is not charged tuition fees for the replacement unit or the replacement unit of the replacement course; and
  - (c) is enrolled in the replacement unit or replacement course as soon as practicable.

*Civil penalty*

- (4) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

*Offence*

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

Penalty: 60 penalty units.

**62Q Obligations of replacement providers regarding enrolment information**

- (1) A registered higher education provider who provides a replacement unit or replacement course to a domestic 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 unit or the replacement course (and units of study) that the student is currently enrolled in;

- (c) any tuition fees paid (or incurred) by the student for the replacement unit or for any units of study of the replacement course;
- (d) any payments made by the Director under section 62K to the provider in relation to the replacement course;
- (e) details of the replacement unit or units of study of the replacement course successfully completed by the student;
- (f) details of the credits granted to the student for the replacement unit or for the units of study of the original course successfully completed by the student.

*Civil penalty*

- (2) A registered higher education provider is liable to a civil penalty if the provider contravenes this section.

Civil penalty: 60 penalty units.

*Offence*

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

Penalty: 60 penalty units.

## **Subdivision D—Miscellaneous**

### **62R Arrangements for payments between providers**

- (1) If a registered higher education provider (the *original provider*) for a unit of study or an Australian course of study enters into an arrangement with one or more other registered higher education providers to provide the unit or course jointly to one or more domestic students, the arrangement must:
    - (a) be such that the students pay their tuition fees directly to the original provider; or
    - (b) both:
      - (i) be in writing; and
      - (ii) provide for the receipt and disbursement of any tuition fees paid by students directly to any of the other providers.
-

- (2) However, for the purpose of determining the original provider's obligations under the tuition protection requirements, any tuition fees paid by students directly to any of the other providers are taken to have been paid directly to the original provider.

*Civil penalty*

- (3) A registered higher education provider is liable to a civil penalty if the provider contravenes subsection (1).

Civil penalty: 60 penalty units.

*Offence*

- (4) A registered higher education provider commits an offence of strict liability if the provider contravenes subsection (1).

Penalty: 60 penalty units.

**62S Other tuition protection information must be provided**

- (1) This section applies to a registered higher education provider if:
- (a) the Higher Education Tuition Protection Director believes on reasonable grounds that the provider has information relevant to the Director's functions under this Act; and
  - (b) the Director, by written notice given to the provider, requests the provider to give the Director the information:
    - (i) within the period (not shorter than 14 days after the notice is given) specified in the notice; and
    - (ii) in the manner specified in the notice.
- (2) The provider must comply with the notice within the period specified in the notice.

*Civil penalty*

- (3) A registered higher education provider is liable to a civil penalty if the provider contravenes subsection (2).

Civil penalty: 60 penalty units.

*Offence*

- (4) A registered higher education provider commits an offence of strict liability if the provider contravenes subsection (2).

Penalty: 60 penalty units.

**62T Right to refund may be cancelled etc. without compensation**

A right to be paid an amount under section 62K is granted on the basis that:

- (a) the right may be cancelled, revoked, terminated or varied by or under later legislation; and  
(b) no compensation is payable if the right is so cancelled, revoked, terminated or varied.

**62U Continuing application of Part to certain persons**

- (1) This Part continues to apply in relation to a person that was a registered higher education provider as if the person were still a registered higher education provider.  
(2) Subsection (1) applies for the purposes of dealing with or resolving any matter that arose during, or that relates to, the period when the person was a registered higher education provider.

**9 Subdivision A of Division 2 of Part 7 (after the heading)**

Insert:

Note: There are offence and civil penalty provisions in Part 5A also.

**10 Section 104**

Repeal the section.

**11 At the end of subsection 115(1)**

Add:

Note: Civil penalty provisions under Part 5A (which deals with tuition protection) are enforceable under the Regulatory Powers Act: see section 131C.

## **12 After subsection 125(1)**

Insert:

- (1A) However, subsection (1) does not apply in relation to a provision of Part 5A of this Act or to the associated provisions of Part 5A of this Act.

Note: Enforceable undertakings in relation to Part 5A (which deals with tuition protection) are obtained under the Regulatory Powers Act: see section 131E.

## **13 Paragraphs 127(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) this Act (other than Part 5A); or  
(b) this Act's (other than Part 5A's) associated provisions;

## **14 At the end of subsection 127(1)**

Add:

Note: Injunctions in relation to Part 5A (which deals with tuition protection) are obtained under the Regulatory Powers Act: see section 131F.

## **15 At the end of Part 7**

Add:

# **Division 5—Enforcement in relation to tuition protection**

## **131A Monitoring powers**

- (1) The provisions of Part 5A of this Act are subject to monitoring under Part 2 of the Regulatory Powers Act.

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

- (2) Information given in compliance or purported compliance with a provision mentioned in subsection (1) is subject to monitoring under Part 2 of the Regulatory Powers Act.

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

- (3) For the purposes of Part 2 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) each HESA investigator and authorised officer is an authorised applicant; and
  - (b) each HESA investigator and authorised officer is an authorised person; and
  - (c) a judicial officer is an issuing officer; and
  - (d) for an authorised person who is a HESA investigator, the Secretary is the relevant chief executive; and
  - (e) for an authorised person who is an authorised officer, the Chief Executive Officer of TEQSA is the relevant chief executive; and
  - (f) each applicable court is a relevant court.
- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions of Part 5A of this Act.

### **131B Investigation powers**

- (1) A provision of Part 5A of this Act is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) a civil penalty provision; or
  - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

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

- (2) For the purposes of Part 3 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) each HESA investigator and authorised officer is an authorised applicant; and
  - (b) each HESA investigator and authorised officer is an authorised person; and
  - (c) a judicial officer is an issuing officer; and
  - (d) for an authorised person who is a HESA investigator, the Secretary is the relevant chief executive; and

- (e) for an authorised person who is an authorised officer, the Chief Executive Officer of TEQSA is the relevant chief executive; and
  - (f) each applicable court is a relevant court.
- (3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to the provisions of Part 5A of this Act.

### **131C Civil penalty provisions**

- (1) Each civil penalty provision in Part 5A of this Act is enforceable under Part 4 of the Regulatory Powers Act.

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

- (2) For the purposes of Part 4 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
- (a) the Higher Education Tuition Protection Director is an authorised applicant; and
  - (b) each applicable court is a relevant court.

### **131D Infringement notices**

- (1) A civil penalty provision under Part 5A of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

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

- (2) For the purposes of Part 5 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1), the Higher Education Tuition Protection Director:
- (a) is an infringement officer; and
  - (b) is the relevant chief executive.

### **131E Enforceable undertakings**

- (1) The provisions of Part 5A of this Act are enforceable under Part 6 of the Regulatory Powers Act.
-

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

- (2) For the purposes of Part 6 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
  - (a) the Secretary is an authorised person; and
  - (b) each applicable court is a relevant court.

### **131F Injunctions**

- (1) The provisions of Part 5A are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

- (2) For the purposes of Part 7 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1):
  - (a) the Secretary is an authorised person; and
  - (b) each applicable court is a relevant court.

### **16 Subsection 154L(1)**

After “this Act”, insert “(other than the functions and powers referred to in subsection (2))”.

### **17 Subsection 154L(2)**

Repeal the subsection, substitute:

- (2) The Chief Executive Officer may, in writing, delegate the Chief Executive Officer’s powers and functions under the Regulatory Powers Act as it applies in relation to Part 5A of this Act, to a member of the staff of TEQSA who is:
  - (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
- (3) Before delegating a function or power under subsection (1) or (2), the Chief Executive Officer must have regard to:
  - (a) if the function or power is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is

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sufficiently senior for the employee to perform the function or exercise the power; or

(b) otherwise—whether the employee has appropriate qualifications or expertise to perform the function or duty or exercise the power.

(4) A delegate must comply with any written directions of the Chief Executive Officer.

## 18 After the heading to Division 1 of Part 10

Insert:

### Subdivision A—Review of TEQSA decisions

## 19 Section 183 (at the end of the heading)

Add “of TEQSA”.

## 20 At the end of Division 1 of Part 10

Add:

### Subdivision B—Review of tuition protection decisions

## 187A Reviewable decisions relating to tuition protection

The table sets out:

- (a) the *reviewable decisions* in relation to tuition protection; and
- (b) the *decision-maker* for each of those decisions.

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| Reviewable decisions |   |  |                |
|----------------------|---|--|----------------|
| Item                 | Decision  | Provision under which decision is made | Decision-maker |
| 1                    | A decision that Part 5A applies to a registered higher education provider | Paragraph 62B(2)(a)                    | The Minister   |
| 2                    | A decision that Part 5A does not apply to a                               | Paragraph 62B(2)(b)                    | The Minister   |

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| <b>Reviewable decisions</b> |   |   |  |
|-----------------------------|---|---|--|
| <b>Item</b>                 | <b>Decision</b>   | <b>Provision under which decision is made</b> | <b>Decision-maker</b>                            |
|                             | registered higher education provider  |   |  |
| 3                           | A decision that the Higher Education Tuition Protection Director is satisfied that there are one or more suitable replacement courses for a student | Paragraph 62J(2)(a)                           | The Higher Education Tuition Protection Director |
| 4                           | A decision that the Higher Education Tuition Protection Director is not satisfied that there is a suitable replacement course for a student         | Paragraph 62J(2)(b)                           | The Higher Education Tuition Protection Director |

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### **187B Reviewer of decisions**

- (1) The *reviewer* of a reviewable decision relating to tuition protection is the decision-maker unless subsection (2) applies.
- (2) If:
  - (a) a reviewable decision relating to tuition protection was made by a delegate of a decision-maker; and
  - (b) the decision is to be reconsidered by a delegate of the decision-maker;then the delegate who reconsiders the decision must be a person who:
  - (c) was not involved in making the decision; and
  - (d) occupies a position that is senior to that occupied by any person involved in making the decision.

### **187C Reviewer may reconsider reviewable decisions**

- (1) The reviewer of a reviewable decision relating to tuition protection may reconsider the decision if the reviewer is satisfied that there is sufficient reason to do so.
- (2) The reviewer may reconsider the decision even if:
  - (a) an application for reconsideration of the decision has been made under section 187D; or
  - (b) the decision has been confirmed, varied or set aside under section 187D and an application has been made under section 187E for review of the decision.
- (3) After reconsidering the decision, the decision-maker must:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (4) The reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
  - (a) on the day specified in the decision on review; or
  - (b) if a day is not specified—on the day on which the decision on review was made.
- (5) The reviewer must give written notice of the decision on review to the person to whom that decision relates.
- (6) The notice:
  - (a) must be given within a reasonable period after the decision on review is made; and
  - (b) must contain a statement of the reasons for the reviewer's decision on review.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

### **187D Reconsideration of reviewable decisions on request**

- (1) A person whose interests are affected by a reviewable decision relating to tuition protection may request the reviewer to reconsider the decision.
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- (2) The person's request must be made by written notice given to the reviewer within 28 days, or such longer period as the reviewer allows, after the day on which the person first received notice of the decision.
- (3) The notice must set out the reasons for making the request.
- (4) After receiving the request, the reviewer must reconsider the decision and:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set the decision aside and substitute a new decision.
- (5) Despite subsection (4), the reviewer is not required to reconsider the decision if:
  - (a) the decision was made under paragraph 62J(2)(b); and
  - (b) the person gave notice in writing, under paragraph 62J(8)(c), that the person would not seek reconsideration of the decision.
- (6) The reviewer's decision (the *decision on review*) to confirm, vary or set aside the decision takes effect:
  - (a) on the day specified in the decision on review; or
  - (b) if a day is not specified—on the day on which the decision on review was made.
- (7) The reviewer must give the person written notice of the decision on review.
- (8) The notice:
  - (a) must be given within a reasonable period after the decision on review is made; and
  - (b) must contain a statement of the reasons for the reviewer's decision on review.
- (9) The reviewer is taken to have confirmed the decision if the reviewer does not give notice of a decision to the person within 45 days after receiving the person's request.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

### **187E AAT review of reviewable decisions**

- (1) An application may be made to the Administrative Appeals Tribunal for the review of a reviewable decision relating to tuition protection that has been confirmed, varied or set aside under section 187C or 187D.
- (2) Despite subsection (1), an application cannot be made for the review of a decision made under paragraph 62J(2)(a) or (b) (about suitable replacement courses).

### **21 After paragraph 192(1)(c)**

Insert:

- (ca) the Higher Education Tuition Protection Director; or

### **22 After section 201**

Insert:

### **201A Delegation by Secretary**

- (1) The Secretary may, in writing, delegate all or any of the Secretary's functions or powers under this Act (other than paragraph 134(1)(i) or Division 5 of Part 7) 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.
- (2) The Secretary may, in writing, delegate the Secretary's functions or powers under the Regulatory Powers Act as it applies in relation to Part 5A of this Act, to an SES employee, or an acting SES employee, in the Department.
- (3) Before delegating a function or power under subsection (1) or (2), the Secretary must have regard to:
  - (a) if the function or power is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the employee to perform the function or exercise the power; or

- (b) otherwise—whether the employee has appropriate qualifications or expertise to perform the function or duty or exercise the power.
- (4) In performing functions or exercising powers under a delegation under subsection (1) or (2), the delegate must comply with any directions of the Secretary.

### **201B Delegation by the Minister**

- (1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under Part 5A to the Secretary.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing functions or exercising powers under a delegation under subsection (1), the Secretary must comply with any directions of the Minister.

### **23 After section 203**

Insert:

#### **203A Review of operation of tuition protection**

- (1) Before 1 July 2021, the Minister must commence a review of the operation of Part 5A (about tuition protection).

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*, 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*.

- (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.

## **24 Application of amendments**

The amendments made by this Schedule apply in relation to provider defaults that occur on or after the commencement of this Act.

## **25 Saving provision**

An instrument made under section 154L of the *Tertiary Education Quality and Standards Agency Act 2011* that was in force immediately before the commencement of this Act continues in force (and may be dealt with) as if it had been made under that section as amended by this Act.

## **Schedule 2—Amendment of the Higher Education Support Act 2003**

### **Part 1—Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board**

#### *Higher Education Support Act 2003*

##### **1 Section 159-1**

Omit:

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

substitute:

- the Higher Education Tuition Protection Fund, the Higher Education Tuition Protection Director and the Higher Education Tuition Protection Fund Advisory Board (see Part 5-1B);

##### **2 Section 166-15 (heading)**

Repeal the heading, substitute:

#### **166-15 Higher education providers must give notice of default to Higher Education Tuition Protection Director**

##### **3 Subsection 166-15(2) (heading)**

Repeal the heading, substitute:

**Schedule 2** Amendment of the Higher Education Support Act 2003

**Part 1** Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board

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*Notifying the Higher Education Tuition Protection Director of default*

**4 Subsection 166-15(2)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**5 Subsection 166-15(3) (heading)**

Repeal the heading, substitute:

*Notifying the Higher Education Tuition Protection Director of details of default*

**6 Subsections 166-15(3) and (4)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**7 Subsection 166-27(1)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**8 Paragraph 166-27(2)(a)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**9 Subsection 166-30(2)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**10 Subsections 166-35(2) and (3)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**11 Part 5-1B of Chapter 5 (heading)**

Repeal the heading, substitute:

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**Part 5-1B—Higher Education Tuition Protection  
Fund, Higher Education Tuition Protection  
Director and Higher Education Tuition  
Protection Fund Advisory Board**

**12 Division 1 of Part 5-1B of Chapter 5 (heading)**

Repeal the heading, substitute:

**Division 1—Higher Education Tuition Protection Fund**

**13 Subsection 167-1(1)**

Repeal the subsection, substitute:

- (1) The HELP Tuition Protection Fund is continued in existence with the new name \*Higher Education Tuition Protection Fund.

**14 Subsection 167-1(2)**

Omit “\*HELP Tuition Protection Fund”, substitute “\*Higher Education Tuition Protection Fund”.

**15 Section 167-5 (heading)**

Repeal the heading, substitute:

**167-5 Credits to the Higher Education Tuition Protection Fund**

**16 Section 167-5**

Omit “\*HELP Tuition Protection Fund”, substitute “\*Higher Education Tuition Protection Fund”.

**17 After paragraph 167-5(a)**

Insert:

- (aa) each amount of \*up-front payments tuition protection levy received from a \*registered higher education provider;

**Schedule 2** Amendment of the Higher Education Support Act 2003

**Part 1** Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board

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**18 Paragraph 167-5(b)**

Omit “paragraph 167-10(1)(f)”, substitute “paragraph 167-10(1)(g)”.

**19 After paragraph 167-5(b)**

Insert:

- (ba) each amount paid by a \*registered higher education provider to the \*Higher Education Tuition Protection Director under subsection 62L(2) of the \*TEQSA Act;

**20 Paragraph 167-5(c)**

Omit “HELP Tuition Protection Fund”, substitute “Higher Education Tuition Protection Fund”.

**21 After paragraph 167-5(d)**

Insert:

- (da) any penalties for late payment of up-front payments tuition protection levy;

**22 Paragraph 167-5(e)**

Omit “HELP Tuition Protection Fund”, substitute “Higher Education Tuition Protection Fund”.

**23 At the end of section 167-5**

Add:

- Note 3: Up-front payments tuition protection levy is imposed by the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*. The Up-front Payments Guidelines deal with collection of the levy: see subsection 26A(5) of the TEQSA Act.

**24 Section 167-10 (heading)**

Repeal the heading, substitute:

**167-10 Purposes of the Higher Education Tuition Protection Fund**

**25 Subsection 167-10(1)**

Repeal the subsection, substitute:

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

Note 1: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

Note 2: Part 5A of the TEQSA Act deals with tuition protection for students that make an up-front payment for a unit of study.

## **26 Subsection 167-10(2) (note)**

Repeal the note, substitute:

Note 1: 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.

Note 2: For the purposes of paragraph (1)(b), subsection 26A(6) of the TEQSA Act provides that the Up-front Payments Guidelines may make provision in relation to the making of payments for the purposes of that paragraph.

## **27 Subsection 167-10(3)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**Schedule 2** Amendment of the Higher Education Support Act 2003

**Part 1** Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board

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**28 Division 2 of Part 5-1B of Chapter 5 (heading)**

Repeal the heading, substitute:

**Division 2—Higher Education Tuition Protection Director**

**29 Section 167-15**

Repeal the section, substitute:

**167-15 Higher Education Tuition Protection Director**

- (1) There is to be a \*Higher Education Tuition Protection Director.
- (2) The office of \*Higher Education 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*.

**30 Section 167-20 (heading)**

Repeal the heading, substitute:

**167-20 Functions of the Higher Education Tuition Protection Director**

**31 Subsection 167-20(1)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**32 After paragraph 167-20(1)(a)**

Insert:

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- (aa) facilitating and monitoring the placement of students under Part 5A of the \*TEQSA Act, in relation to whom a \*registered higher education provider has defaulted (within the meaning of that Act);

**33 Paragraph 167-20(1)(b)**

Omit “\*HELP Tuition Protection Fund”, substitute “\*Higher Education Tuition Protection Fund”.

**34 Subparagraph 167-20(1)(c)(i)**

Repeal the subparagraph, substitute:

- (i) the operation of Part 5-1A of this Act and Part 5A of the TEQSA Act (both of which deal with tuition protection); and

**35 Subparagraph 167-20(1)(c)(ii)**

Omit “HELP Tuition Protection Fund”, substitute “Higher Education Tuition Protection Fund”.

**36 Paragraph 167-20(1)(d)**

Repeal the paragraph, substitute:

- (d) managing the Higher Education Tuition Protection Fund in a way that ensures that it is able to meet all its liabilities from time to time;

**37 Paragraph 167-20(1)(e)**

Omit “for the purposes of section 12”, substitute “under section 13”.

**38 After paragraph 167-20(1)(e)**

Insert:

- (ea) making the legislative instrument each year under section 13 of the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*;

**39 After paragraph 167-20(1)(f)**

Insert:

**Schedule 2** Amendment of the Higher Education Support Act 2003

**Part 1** Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board

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- (fa) recommending that \*TEQSA take action against a registered higher education provider that has defaulted in relation to a student (within the meaning of the TEQSA Act);

**40 Subsection 167-20(2)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**41 At the end of section 167-20**

Add:

- (3) The \*Higher Education Tuition Protection Director must, in performing a function, or exercising a power, under this section, have regard to how the performance of that function, or exercise of that power, will affect the \*tuition protection requirements under this Act and the tuition protection requirements within the meaning of the \*TEQSA Act.

**42 Section 167-25 (heading)**

Repeal the heading, substitute:

**167-25 Administrative provisions relating to the Higher Education Tuition Protection Director**

**43 Subsection 167-25(1)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**44 Subsection 167-25(1) (table heading)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**45 Subsection 167-25(1) (table, heading to column 2)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

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**46 Subsection 167-25(1) (table item 1)**

Repeal the item, substitute:

- |   |   |              |  |
|---|---|--------------|--|
| 1 | A provision covered by<br>subsection (2) of this<br>section | TPS Director | Higher Education<br>Tuition Protection<br>Director |
|---|---|--------------|--|

**47 Paragraph 167-25(3)(a)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**48 Paragraph 167-25(3)(b)**

Omit “HELP Tuition Protection Director”, substitute “Higher Education Tuition Protection Director”.

**49 Paragraph 167-25(4)(a)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**50 Paragraph 167-25(4)(b)**

Omit “HELP Tuition Protection Director” (wherever occurring), substitute “Higher Education Tuition Protection Director”.

**51 Subsection 167-25(5)**

Repeal the subsection, substitute:

- (5) The \*Higher Education 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 the Director’s powers or functions.

**52 Division 3 of Part 5-1B of Chapter 5 (heading)**

Repeal the heading, substitute:

### **Division 3—Higher Education Tuition Protection Fund Advisory Board**

#### **53 Subsections 167-30(1), (2), (4) and (6)**

Omit “\*HELP Tuition Protection Fund Advisory Board”, substitute “\*Higher Education Tuition Protection Fund Advisory Board”.

#### **54 Subsection 167-30(7)**

Omit “\*HELP Tuition Protection Fund Advisory Board’s”, substitute “\*Higher Education Tuition Protection Fund Advisory Board’s”.

#### **55 Section 167-35**

Repeal the section, substitute:

#### **167-35 Function of the Higher Education Tuition Protection Fund Advisory Board**

- (1) The \*Higher Education Tuition Protection Fund Advisory Board’s functions are to provide advice and make recommendations to the \*Higher Education Tuition Protection Director in relation to:
  - (a) the making of a legislative instrument each year under section 13 of the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*; and
  - (b) the making of a legislative instrument each year under section 13 of the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*.
- (2) The advice and recommendations may be made either on the \*Higher Education Tuition Protection Fund Advisory Board’s own initiative or at the request of the \*Higher Education Tuition Protection Director.

#### **56 Section 167-40 (heading)**

Repeal the heading, substitute:

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**167-40 Administrative provisions relating to the Higher Education  
Tuition Protection Fund Advisory Board**

**57 Subsection 167-40(1)**

Omit “\*HELP Tuition Protection Fund Advisory Board”, substitute  
“\*Higher Education Tuition Protection Fund Advisory Board”.

**58 Subsection 167-40(1) (table)**

Omit “HELP Tuition Protection Fund Advisory Board” (wherever  
occurring), substitute “Higher Education Tuition Protection Fund  
Advisory Board”.

**59 Subsection 167-40(3)**

Repeal the subsection, substitute:

- (3) A member of the \*Higher Education 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 the Board’s powers or functions.

**60 Section 206-1 (table items 6 and 7)**

Repeal the items, substitute:

|   |  |                             |  |
|---|--|-----------------------------|--|
| 6 | A decision that the<br>*Higher Education<br>Tuition Protection<br>Director is satisfied<br>that there are one or<br>more suitable<br>*replacement courses<br>for a student | paragraph 166-26B(2)(<br>a) | the Higher Education<br>Tuition Protection<br>Director |
| 7 | A decision that the<br>*Higher Education<br>Tuition Protection<br>Director is not satisfied<br>that there is a suitable<br>*replacement course<br>for a student            | paragraph 166-26B(2)(<br>b) | the Higher Education<br>Tuition Protection<br>Director |

**Schedule 2** Amendment of the Higher Education Support Act 2003

**Part 1** Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board

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**61 Subsection 215-15(3)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**62 Subsection 215-20(3)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**63 Subsection 215-40(1A)**

Repeal the subsection, substitute:

- (1A) The \*Higher Education Tuition Protection Director may, in writing, delegate the following functions and powers to an SES employee, or an acting SES employee, in the Department:
- (a) the Director’s functions and powers under the \*Regulatory Powers Act as it applies in relation to Part 5-1A of this Act;
  - (b) the Director’s functions and powers under the Regulatory Powers Act as it applies in relation to Part 5A of the \*TEQSA Act.

**64 Paragraph 238-5(1)(aa)**

Omit “\*HELP Tuition Protection Director”, substitute “\*Higher Education Tuition Protection Director”.

**65 Subsection 238-6**

Repeal the section, substitute:

**238-6 Delegations by Higher Education Tuition Protection Director**

- (1) The \*Higher Education Tuition Protection Director may, in writing, delegate all or any of the Director’s functions or powers under this Act (other than paragraphs 167-20(1)(e) and (ea) and Part 5-8) or the \*TEQSA Act (other than Division 5 of Part 7 of that Act) 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.

Note 1: Paragraphs 167-20(1)(e) and (ea) give the Higher Education Tuition Protection Director the functions of making a legislative instrument under section 13 of the *Higher Education Support (HELP Tuition*

*Protection Levy) Act 2020 and section 13 of the Higher Education  
(Up-front Payments Tuition Protection Levy) Act 2020.*

Note 2: Paragraph 167-20(1)(g) of this Act gives the Higher Education Tuition Protection Director certain functions in relation to tuition protection under the TEQSA Act.

- (2) Before delegating a function or power under subsection (1), the Higher Education Tuition Protection Director must have regard to:
- (a) if the function or power is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the employee to perform the function or exercise the power; or
  - (b) otherwise—whether the employee has appropriate qualifications or expertise to perform the function or duty or exercise the power.
- (3) In performing functions or exercising powers under the delegation, the delegate must comply with any directions of the \*Higher Education Tuition Protection Director.

#### **66 Subsection 238-7(1)**

Omit “\*HELP Tuition Protection Fund”, substitute “\*Higher Education Tuition Protection Fund”.

#### **67 Subclause 1(1) of Schedule 1**

Repeal the following definitions:

- (a) definition of *HELP Tuition Protection Director*;
- (b) definition of *HELP Tuition Protection Fund*;
- (c) definition of *HELP Tuition Protection Fund Advisory Board*.

#### **68 Subclause 1(1) of Schedule 1**

Insert:

*Higher Education Tuition Protection Director* means the person referred to in section 167-15.

**Schedule 2** Amendment of the Higher Education Support Act 2003

**Part 1** Amendments relating to the Higher Education Tuition Protection Fund, Higher Education Tuition Protection Director and Higher Education Tuition Protection Fund Advisory Board

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

***Higher Education Tuition Protection Fund Advisory Board*** means the Board established by section 167-30.

***Up-front Payments Guidelines*** means the guidelines made under section 26B of the \*TEQSA Act.

***up-front payments tuition protection levy*** means levy imposed by the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*.

## **69 Transitional provision**

A review under section 238-7 of the *Higher Education Support Act 2003* that has commenced but has not been completed before the commencement of this item is taken to be a review that commenced under that section as amended by this Act.

## **70 Saving provision**

An instrument made under subsection 215-40(1A), or section 238-6, of the *Higher Education Support Act 2003* that was in force immediately before the commencement of this Act continues in force (and may be dealt with) as if it had been made under that subsection, or section, as amended by this Act.

## **Part 2—Amendments relating to information collection and sharing**

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

#### **71 Subsection 19-66A(2) (note)**

Repeal the note, substitute:

Note: HELP tuition protection levy is imposed by the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*.

#### **72 Paragraph 179-5(b)**

Repeal the paragraph, substitute:

- (b) obtained or created by an \*officer for the purposes of any of the following:
  - (i) Chapter 2;
  - (ii) Chapters 3 and 4;
  - (iii) Part 5-1A;
  - (iv) section 26A or Part 5A of the \*TEQSA Act.

#### **73 After paragraph 179-15(1)(b)**

Insert:

- (ba) the person is or was an \*officer of a registered higher education provider (see subsection (3AA)); or

#### **74 After subsection 179-15(3)**

Insert:

- (3AA) A person is an *officer of a registered higher education provider* if the person is:
- (a) an officer or employee of the provider; or
  - (b) a person who, although not an officer or employee of the provider, performs services for or on behalf of the provider.

#### **75 Paragraph 179-15(4)(a)**

Repeal the paragraph, substitute:

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- (a) for a \*Commonwealth officer—the performance of duties or functions, or the exercise of powers under, or for the purposes of:
  - (i) this Act; or
  - (ii) the *Higher Education Support (HELP Tuition Protection Levy) Act 2020*; or
  - (iii) the *Higher Education (Up-front Payments Tuition Protection Levy) Act 2020*; or
  - (iv) the \*TEQSA Act; or
  - (v) the *VET Student Loans Act 2016*; or

**76 After paragraph 179-15(4)(b)**

Insert:

- (ba) for an \*officer of a registered higher education provider—service as such an officer; or

**77 After paragraph 179-20(a)**

Insert:

- (aa) disclosure by a Commonwealth officer of personal information to a person in connection with the provision of actuarial services for the purposes of assisting the officer to perform duties or functions or exercise powers mentioned in paragraph 179-15(4)(a);

**78 After paragraph 179-20(c)**

Insert:

- (caa) disclosure by a Commonwealth officer of personal information to an \*officer of a registered higher education provider to assist the provider's officer in performing duties or functions, or in exercising powers, under, or for the purposes of, this Act or the \*TEQSA Act;

**79 After paragraph 179-20(d)**

Insert:

- (da) disclosure by an officer of a registered higher education provider of personal information to a Commonwealth officer to assist the Commonwealth officer in the Commonwealth officer's official employment;

**80 Subclause 1(1) of Schedule 1**

Insert:

*officer of a registered higher education provider* has the meaning given by subsection 179-15(3AA).

## Part 3—Other amendments

### *Higher Education Support Act 2003*

#### **81 Paragraph 36-24A(1)(e)**

Repeal the paragraph, substitute:

- (e) any of the following apply:
  - (i) the provider identifies, under paragraph 166-25(4)(b) that there is no suitable \*replacement unit or \*replacement course for the person;
  - (ii) the person elects, under subparagraph 166-25(7)(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;
  - (iii) the \*Higher Education Tuition Protection Director decides, under paragraph 166-26B(2)(b) that the Director is not satisfied that there is a suitable replacement course for the person;
  - (iv) the person elects, under subparagraph 166-26B(4)(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.

#### **82 Subsection 36-24A(2)**

Repeal the subsection, substitute:

- (2) The provider must pay to the Commonwealth an amount equal to any \*HECS-HELP assistance to which the person was entitled for the unit.

#### **83 Paragraph 97-42(1)(d)**

Repeal the paragraph, substitute:

- (d) any of the following apply:
  - (i) the provider identifies, under paragraph 166-25(4)(b) that there is no suitable \*replacement unit or \*replacement course for the person;

- (ii) the person elects, under subparagraph 166-25(7)(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;
- (iii) the \*Higher Education Tuition Protection Director decides, under paragraph 166-26B(2)(b) that the Director is not satisfied that there is a suitable replacement course for the person;
- (iv) the person elects, under subparagraph 166-26B(4)(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.

#### **84 Paragraph 104-42(1)(d)**

Repeal the paragraph, substitute:

- (d) any of the following apply:
  - (i) the provider identifies, under paragraph 166-25(4)(b), that there is no suitable \*replacement unit or \*replacement course for the person;
  - (ii) the person elects, under subparagraph 166-25(7)(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 student's HELP balance;
  - (iii) the \*Higher Education Tuition Protection Director decides, under paragraph 166-26B(2)(b), that the Director is not satisfied that there is a suitable replacement course for the person;
  - (iv) the person elects, under subparagraph 166-26B(4)(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 student's HELP balance.

#### **85 Section 166-1**

Repeal the section, substitute:

### 166-1 What this Part is about

Certain higher education providers who default in delivering a unit of study to a student receiving or entitled to FEE-HELP assistance or HECS-HELP assistance for the unit must give information about the default to the Higher Education Tuition Protection Director and to the student. If the student has made an up-front payment for the unit the provider may also have obligations under Part 5A of the *Tertiary Education Quality and Standards Agency Act 2011* in relation to the default.

The provider must assist the student to find a replacement unit or replacement course, or the provider must re-credit the student's HELP balance (and offer the student a choice about this). If the provider fails to discharge this obligation, the Director must offer the student a suitable replacement course. If the Director is not satisfied that there is a suitable replacement course, or if the student elects re-crediting, the student's HELP balance is re-credited.

### 86 Subsection 166-5(2)

Repeal the subsection, substitute:

- (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;
- if the Minister considers it appropriate that this Part applies, or does not apply, to the provider.
- (2A) In deciding whether it is appropriate that this Part applies, or does not apply, to a specified higher education provider, the Minister must have regard to the following:
- (a) the risk of the provider \*defaulting in relation to one or more students;
  - (b) whether the provider is financially viable and likely to remain financially viable;
  - (c) any non-compliance, or risk of future non-compliance, with this Act or legislative instruments made under this Act;

- (d) any advice given to the Minister by the \*Secretary, \*TEQSA or the \*Higher Education Tuition Protection Director in relation to any of the matters referred to in paragraphs (a) to (c);
- (e) any other matter the Minister considers appropriate.

### **87 Subsection 166-5(5)**

Repeal the subsection (including the note), substitute:

- (5) Despite subsection (1), sections 166-27, 166-30 and 166-32 apply to all higher education providers.

Note: Section 166-27 deals with provider obligations to provide information about replacement courses, section 166-30 deals with obligations of providers who provide replacement courses and section 166-32 deals with the requirement of providers who provide replacement courses to keep up-to-date enrolment information.

### **88 At the end of subsection 166-10(1)**

Add:

Note: If the student has made any up-front payments in relation to the unit of study or any other affected units of the original course the provider may also have defaulted in relation to the student under the TEQSA Act: see section 62C of that Act.

### **89 After paragraph 166-15(3)(a)**

Insert:

- (aa) advice as to:
  - (i) whether the provider intends to discharge its obligations to the student under section 166-25; and
  - (ii) (if appropriate) how the provider intends to discharge those obligations; and

### **90 Section 166-25**

Repeal the section, substitute:

## 166-25 Obligation on providers in case of default

### *Application of section*

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

### *Provider obligations*

- (2) The provider must discharge its obligations to the student in accordance with this section, within the period (the ***provider obligation period***) of 14 days after the day the provider \*defaulted in relation to the student.
- (3) The provider discharges its obligations to the student if:
- (a) the provider arranges for the student to be offered a place in a suitable \*replacement unit or suitable \*replacement course and the student accepts the offer in writing; or
  - (b) the provider:
    - (i) re-credits the student's \*HELP balance in accordance with subsection 97-42(1) or 104-42(1) (as the case requires); and
    - (ii) pays an amount to the Commonwealth in accordance with subsection 36-24A(2) or 110-5(1) (as the case requires).

### *Suitable replacement units or suitable replacement courses*

- (4) The provider must identify whether:
- (a) there are one or more suitable \*replacement units or suitable \*replacement courses for the student; or
  - (b) there is no suitable replacement unit or suitable replacement course for the student.

### *Matters relating to whether a course is a suitable replacement course*

- (5) In identifying whether there is a suitable \*replacement course, the provider 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 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 will be primarily delivered;
- (e) whether the student:
  - (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.

*Matters relating to whether a unit is a suitable replacement unit*

- (6) In identifying whether there is a suitable \*replacement unit, the provider must have regard to the following matters:
  - (a) whether the student will receive credit under the student's \*original course for the replacement unit;
  - (b) whether the mode of delivery of the replacement unit is the same as the mode of delivery of the \*affected unit;
  - (c) the location where the replacement unit will be primarily delivered;
  - (d) whether the student:
    - (i) will incur additional fees that are unreasonable; and
    - (ii) will be able to attend the replacement unit without unreasonable impacts on the student's prior commitments;
  - (e) any other matters prescribed by the Higher Education Provider Guidelines.

*Suitable replacement unit or suitable replacement course available*

- (7) If paragraph (4)(a) applies, the provider 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 unit or suitable \*replacement course;

- (ii) enrol in another unit of study or 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 unit or suitable replacement course, including the qualification that the suitable replacement course leads to;
- (c) the contact details of the provider of each suitable replacement unit or suitable replacement course;
- (d) an explanation that, if \*tuition fees or the student's \*student contribution amount have been paid for the affected unit of the \*original course, tuition fees or the student contribution amount would not be payable for a suitable replacement unit or a replacement unit of a suitable replacement course;
- (e) an explanation that if the student chooses to enrol in another unit of study or course, there is no obligation on the provider of the other unit or course to offer a replacement unit without charge to the student;
- (f) an explanation of the matters the provider must have regard to under subsections (5) and (6);
- (g) any other matters prescribed by the Higher Education Provider Guidelines.

*Elections for up-front payments must be consistent*

- (8) Despite paragraph (7)(a), if an \*up-front payment was made for any \*affected units of the \*original course, any elections made under that paragraph in relation to those units must be consistent with any elections made under paragraph 62F(7)(a) of the \*TEQSA Act in relation to those units.

Example: A student who is entitled to FEE-HELP assistance or HECS-HELP assistance for an affected unit of an original course also makes an up-front payment for the same affected unit. The student elects, under subparagraph (7)(a)(i), to enrol in a suitable replacement course. The student must elect to enrol in a suitable replacement course under subparagraph 62F(7)(a)(i) of the TEQSA Act in relation to the affected unit.

- (9) The Higher Education Provider Guidelines may prescribe circumstances in which elections are considered to be consistent or inconsistent for the purposes of subsection (8).

### **166-26 Failure to discharge obligations**

#### *Civil penalty*

- (1) A higher education provider is liable to a civil penalty if:
- (a) the provider \*defaults in relation to a student; and
  - (b) the provider fails to discharge its obligations to the student in accordance with section 166-25.

Civil penalty: 60 penalty units.

#### *Offence*

- (2) A higher education provider commits an offence of strict liability if:
- (a) the provider \*defaults in relation to a student; and
  - (b) the provider fails to discharge its obligations to the student in accordance with section 166-25.

Penalty: 60 penalty units.

- (3) The maximum penalty for each day that an offence under subsection (2) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (2) is a continuing offence under section 4K of the *Crimes Act 1914*.

### **166-26A Providers to notify of outcome of discharge of obligations**

- (1) A higher education provider that \*defaults in relation to a student must give a notice to the \*Higher Education Tuition Protection Director within 7 days after the end of the \*provider obligation period.
- (2) The notice must include the following:
- (a) whether the provider discharged its obligations to the student in accordance with section 166-25;

- (b) if the provider arranged a suitable \*replacement unit or a suitable \*replacement course:
    - (i) details of the student; and
    - (ii) details of the replacement unit or the replacement course; and
    - (iii) evidence of the student's acceptance of an offer of a place in the replacement unit or replacement course;
  - (c) if the provider re-credited the student's \*HELP balance and paid an amount to the Commonwealth as referred to in paragraph 166-25(3)(b):
    - (i) details of the student; and
    - (ii) details of the amount re-credited and the amount paid.
- (3) The notice 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) A higher education provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

**166-26B Student placement service**

*Application of section*

- (1) This section applies if the \*Higher Education Tuition Protection Director determines that:
- (a) a higher education provider has \*defaulted in relation to a student; and
  - (b) either:

- (i) the provider has failed to discharge its obligations under section 166-25 to the student by the end of the \*provider obligation period; or
- (ii) the provider is unlikely to be able to discharge its obligations under section 166-25 to the student by the end of the provider obligation period.

*Higher Education Tuition Protection Director must decide*

- (2) The \*Higher Education 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*

- (3) In deciding whether the \*Higher Education 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 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 will be primarily delivered;
  - (e) whether the student:
    - (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*

- (4) If paragraph (2)(a) applies, the \*Higher Education 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 suitable replacement course leads to;
  - (c) the contact details of the provider of each suitable replacement course;
  - (d) an explanation that, if \*tuition fees or the student's \*student contribution amount have been paid for the affected unit of the original course, tuition fees or the student contribution amount 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 (3);
  - (g) any other matters prescribed by the Higher Education Provider Guidelines.

*Accepting an offer of a suitable replacement course*

- (5) If the \*Higher Education Tuition Protection Director arranges for the student to be offered a place in a \*replacement course, the student may accept the offer.
- (6) An acceptance must:
- (a) be in writing; and

- (b) be given to the provider of the suitable replacement course within the period specified in subsection (7).
- (7) For the purposes of subsection (6), the period is:
- (a) the period of 30 days after the day the \*Higher Education Tuition Protection Director gives notice under subsection (4);  
or
  - (b) if the Director determines that exceptional circumstances apply:
    - (i) any shorter period determined in writing by the Director; or
    - (ii) any longer period (not exceeding 12 months) determined in writing by the Director, and agreed to by the student.

*No suitable replacement course available*

- (8) If paragraph (2)(b) applies, the \*Higher Education 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 (3);
  - (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.

*Elections for up-front payments must be consistent*

- (9) Despite paragraph (4)(a), if an \*up-front payment was made for any \*affected units of the \*original course, any elections made under

that paragraph in relation to those units must be consistent with any elections made under paragraph 62J(4)(a) of the \*TEQSA Act in relation to those units.

Example: A student who is entitled to FEE-HELP assistance or HECS-HELP assistance for an affected unit of an original course also makes an up-front payment for the same affected unit. The student elects, under subparagraph (4)(a)(iii), to have an amount re-credited to the student's HELP balance. The student must elect to receive a refund of the up-front payment under subparagraph 62J(4)(a)(iii) of the TEQSA Act in relation to the affected unit.

- (10) The Higher Education Provider Guidelines may prescribe circumstances in which elections are considered to be consistent or inconsistent for the purposes of subsection (9).

**91 Subsection 166-27(1)**

Omit “subsection 166-25(1)”, substitute “subsection 166-26B(2)”.

**92 Subsection 166-30(1)**

After “place in a”, insert “\*replacement unit or”.

**93 Subsection 166-30(2)**

After “who provides the”, insert “\*replacement unit or”.

**94 Subsection 166-30(3)**

Repeal the subsection, substitute:

- (3) The higher education provider who provides the \*replacement unit or \*replacement course must ensure that the student:
- (a) for a replacement course—is granted credits for units of study of the \*original course successfully completed by the student; and
  - (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 the replacement unit or the replacement unit of the replacement course; and
  - (c) is enrolled in the replacement unit or replacement course as soon as practicable.

### **95 Subsection 166-32(1)**

Repeal the subsection, substitute:

- (1) A higher education provider who provides a \*replacement unit or 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 unit or replacement course (and \*units of study) that the student is currently enrolled in;
  - (c) any \*student contribution amounts or \*tuition fees charged to the student for the replacement unit or for any units of study of the replacement course;
  - (d) details of the replacement unit or units of study of the replacement course successfully completed by the student;
  - (e) details of the credits granted to the student for the replacement unit or for units of study of the \*original course successfully completed by the student.

### **96 Paragraph 166-35(1)(b)**

Repeal the paragraph, substitute:

- (b) either of the following apply:
  - (i) the Director decides, under paragraph 166-26B(2)(b), that the Director is not satisfied that there is a suitable \*replacement course for the person;
  - (ii) the person elects, under subparagraph 166-26B(4)(a)(iii), to have an amount equal to the amounts of \*FEE-HELP assistance or \*HECS-HELP assistance that the person received for the unit re-credited to the student's \*HELP balance.

### **97 At the end of Division 2 of Part 5-1A**

Add:

#### **166-40 Other tuition protection information must be provided**

- (1) This section applies to a higher education provider if:

- (a) the \*Higher Education Tuition Protection Director believes on reasonable grounds that the provider has information relevant to the Director's functions under this Act; and
  - (b) the Director, by written notice given to the provider, requests the provider to give the Director the information:
    - (i) within the period (not shorter than 14 days after the notice is given) specified in the notice; and
    - (ii) in the manner specified in the notice.
- (2) The provider must comply with the notice within the period specified in the notice.

*Civil penalty*

- (3) A higher education provider is liable to a civil penalty if the provider contravenes subsection (2).

Civil penalty: 60 penalty units.

*Offence*

- (4) A higher education provider commits an offence of strict liability if the provider contravenes subsection (2).

Penalty: 60 penalty units.

**166-45 Continuing application of Part to certain persons**

- (1) This Part continues to apply in relation to a person that was a higher education provider as if the person were still a higher education provider.
- (2) Subsection (1) applies for the purposes of dealing with or resolving any matter that arose during, or that relates to, the period when the person was a higher education provider.

**98 Paragraph 167-5(b)**

Omit "paragraph 36-24A(2)(b)", substitute "subsection 36-24A(2)".

**99 Paragraph 169-15(4)(b)**

After "place in a", insert "\*replacement unit or".

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**100 Paragraph 209-10(4A)(a)**

Omit “paragraph 166-25(1)(b)”, substitute “paragraph 166-26B(2)(b)”.

**101 Paragraph 209-10(4A)(b)**

Omit “paragraph 166-25(4)(c)”, substitute “paragraph 166-26B(8)(c)”.

**102 Subsection 212-1(2)**

Omit “paragraph 166-25(1)(a) or (b)”, substitute  
“paragraph 166-26B(2)(a) or (b)”.

**103 Subclause 1(1) of Schedule 1**

Insert:

*provider obligation period*: see subsection 166-25(2).

**104 Subclause 1(1) of Schedule 1 (definition of *replacement unit*)**

Omit “of a \*replacement course”.

**105 Application of amendments**

The amendments made by this Part apply in relation to provider defaults that occur on or after the commencement of this Act.

**106 Saving provision**

An instrument made under subsection 166-5(2) of the *Higher Education Support Act 2003* that was in force immediately before the commencement of this Act continues in force (and may be dealt with) as if it had been made under that subsection as amended by this Act.

## Schedule 3—Amendments of other Acts

### *Education Services for Overseas Students Act 2000*

#### **1 Subsection 54A(1) (note 2)**

Omit “HELP Tuition Protection Director”, substitute “Higher Education Tuition Protection Director”.

#### **2 Paragraph 54B(e)**

Omit “(including entering into a loan agreement for the benefit of the OSTF)”.

#### **3 Section 55A (note)**

Omit “HELP Tuition Protection Fund Advisory Board”, substitute “Higher Education Tuition Protection Fund Advisory Board”.

### *Higher Education Support (HELP Tuition Protection Levy) Act 2020*

#### **4 Subsection 9(4)**

Omit “HELP Tuition Protection Fund”, substitute “Higher Education Tuition Protection Fund”.

#### **5 Subsection 13(1)**

Omit “HELP Tuition Protection Director”, substitute “Higher Education Tuition Protection Director”.

#### **6 Subparagraph 13(1)(c)(i)**

Omit “HELP Tuition Protection Fund”, substitute “Higher Education Tuition Protection Fund”.

#### **7 Subsection 13(4)**

Omit “HELP Tuition Protection Director”, substitute “Higher Education Tuition Protection Director”.

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**8 Paragraph 13(4)(a)**

Omit “HELP Tuition Protection Fund Advisory Board”, substitute “Higher Education Tuition Protection Fund Advisory Board”.

**9 Paragraph 13(4)(b)**

Omit “HELP Tuition Protection Fund”, substitute “Higher Education Tuition Protection Fund”.

**10 Subsections 13(5) and (6)**

Omit “HELP Tuition Protection Director”, substitute “Higher Education Tuition Protection Director”.

***Student Identifiers Act 2014*****11 Subsection 4(1) (definition of *HELP Tuition Protection Director*)**

Repeal the definition.

**12 Subsection 4(1)**

Insert:

***Higher Education Tuition Protection Director*** has the same meaning as in the *Higher Education Support Act 2003*.

**13 Paragraph 14(1)(nb)**

Repeal the paragraph, substitute:

(nb) the Higher Education Tuition Protection Director;

**14 Paragraph 18B(2)(ba)**

Repeal the paragraph, substitute:

(ba) the Higher Education Tuition Protection Director;

**15 After paragraph 18B(4)(b)**

Insert:

(ba) the Higher Education Tuition Protection Director;

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***VET Student Loans Act 2016***

**16 Subsection 66M(2) (note)**

Omit “HELP Tuition Protection Director”, substitute “Higher Education Tuition Protection Director”.

**17 Paragraph 66N(1)(d)**

Omit “(including entering into a loan agreement for the benefit of the VSL Tuition Protection Fund)”.

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*[Minister’s second reading speech made in—  
House of Representatives on 26 August 2020  
Senate on 10 November 2020]*

(97/20)

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