2013-2014-2015

The Parliament of the
Commonwealth of Australia

THE SENATE

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

(Government)

(1) Schedule 1, page 3 (after line 6), after item 1, insert:

1A At the end of section 137-18

Add:

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

[freezing total loan amounts]

(2) Schedule 1, item 3, page 3 (lines 9 to 20), omit the item, substitute:

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

Repeal the paragraph, substitute:

(c) the body is a *registered training organisation, as listed on the *National Register, that has been a registered training organisation since at least 1 January 2011; and

(cia) the body has been offering:

(i) at least one *qualifying VET course continuously since at least 1 January 2011; or

(ii) one or more series of qualifying VET courses since at least 1 January 2011, with each course in a series superseding the other without interruption; and

[restricting approvals of new VET providers to experienced providers]

(3) Schedule 1, page 3 (after line 22), after item 4, insert:

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

Insert:

(da) the body has been offering:

(i) at least one *qualifying VET course continuously since at least 1 January 2011; or

(ii) one or more series of qualifying VET courses since at least 1 January 2011, with each course in a series superseding the other without interruption; and
4B After subclause 6(2) of Schedule 1A

Insert:

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

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

[restricting approvals of new VET providers to experienced providers]

(4) Schedule 1, item 7, page 5 (lines 2 to 4), omit subclause 23B(4), substitute:

(4) For the purposes of subclause (3), the "VET Guidelines may empower:

(a) a person or body:

(i) to decide whether to approve a particular tool for use when assessing whether a student is academically suited to undertake a "VET course of study; and
(ii) to charge a fee for making such a decision; and
(b) a person or body to charge a fee for the use of a tool for such an assessment.

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

[student entry procedures]

(5) Schedule 1, page 6 (after line 2), after item 7, insert:

7A Subclause 26(1) of Schedule 1A

Repeal the subclause, substitute:

(1) The Minister may require a "VET provider to be audited:

(a) about compliance with any or all of the following requirements:

(i) the "VET financial viability requirements;
(ii) the "VET fairness requirements;
(iii) the "VET compliance requirements;
(iv) the "VET fee requirements;
(v) other requirements for VET quality and accountability set out in the "VET Guidelines; or

(b) about any or all of the following matters relating to "VET courses of study provided by the VET provider:

(i) the approaches used to recruit or enrol students (or potential students) of those courses who receive (or who could receive) "VET FEE-HELP assistance for "VET units of study forming part of those courses;
(ii) the veracity of enrolments in those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses;
(iii) the level of teaching resources, or the quality of those resources, for any of those courses;
(iv) the level of engagement in any of those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses;
(v) the completion rates for any of those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses.

[pausing payments for poor performance]
(6) Schedule 1, page 6 (after line 4), after item 8, insert:

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

Insert:

*Suspension pending revocation*

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

Add:

*Suspension for poor performance*

(5) The "Secretary may, in writing, suspend a body’s approval as a "VET provider if:

(a) an audit of the body has been conducted about any or all of the matters in paragraph 26(1)(b); and

(b) the audit identified one or more concerns; and

(c) those concerns have yet to be resolved as described in paragraph (6)(b).

(6) The suspension:

(a) starts on the day of the decision under subclause (5); and

(b) ends on the day (if any) that the "Secretary notifies the body, in writing, that the Secretary reasonably believes that those concerns have been satisfactorily resolved by the body in accordance with a plan agreed between the body and the Commonwealth.

(7) Before making a decision under subclause (5), the "Secretary must give the body a notice in writing:

(a) stating that the Secretary is considering making the decision; and

(b) stating the reasons why the Secretary is considering making the decision; and

(c) inviting the body to respond to the Secretary, in writing, within 14 days; and

(d) informing the body that, if no response is received within the 14 day period, the Secretary may proceed to make the decision.

(8) In deciding whether to make the decision under subclause (5), the "Secretary must consider any response received from the body within the 14 day period.

(9) The "Secretary must give written notice of a decision under subclause (5) to the body. The notice must be given within 14 days after the day the decision was made.

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

Insert:

*Suspension pending revocation*

8D Subclause 37(1) of Schedule 1A

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

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

Add:
Suspension for poor performance—no impact on existing students

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

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

[pausing payments for poor performance]

(7) Schedule 1, page 6 (before line 5), before item 9, insert:

8F Subclause 39(1) of Schedule 1A
Omit “may revoke”, substitute “must revoke”.

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

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

[freezing total loan amounts]

(8) Schedule 1, page 6 (after line 12), after item 10, insert:

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

(fa) in a case where the student is not already entitled to VET FEE-HELP assistance for another VET unit of study forming part of the course—the body with whom the student is enrolled is approved as a "VET provider:
(i) for the day of the enrolment; or
(ii) if that day falls within a period when the body’s approval as a VET provider is suspended under subclause 36(5)—for a later day because that suspension has ended; and

[pausing payments for poor performance]

(9) Schedule 1, page 6 (before line 13), before item 11, insert:

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

(fb) if the VET provider was approved as a VET provider after 2015, the course is:
(i) one of the "qualifying VET courses that enabled paragraph 6(1)(ca) or (1A)(da) to be satisfied for the purposes of that approval; or
(ii) a qualifying VET course that superseded such a course directly or indirectly without interruption; and

[restricting approvals of new VET providers to experienced providers]

(10) Schedule 1, page 6 (after line 16), after item 11, insert:

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

Repeal the note, substitute:

Note 1: For the purposes of paragraph (e), clause 45A affects whether a person undertakes a VET unit of study as part of a VET course of study.

Note 2: For the purposes of paragraph (fa), a body’s approval as a VET provider ceases while the approval is suspended (see clause 29). If this approval is suspended when the student first enrols in units forming part of the course, the student can only become entitled to VET FEE-HELP assistance when that suspension ends.

[pausing payments for poor performance]

(11) Schedule 1, item 12, page 7 (after line 8), after paragraph 45C(1)(b), insert:

(ba) if the student enrols in the course after the day the Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015 receives the Royal Assent—the student being entitled to the VET FEE-HELP assistance for the unit:

(i) would not cause the VET provider’s VET FEE-HELP account to be in deficit at the end of that census date (see subclause 45D(7)); and

(ii) would not cause or contribute to that account being in deficit at the end of 2016 or a later calendar year; and

[freezing total loan amounts]

(12) Schedule 1, item 12, page 7 (lines 11 to 24), omit subclause 45C(2), substitute:

If VET provider incorrectly treats student as being entitled

(2) However, for the purposes of this Act (other than clause 39DH), if:

(a) either or both of the following things happen:

(i) the student fails to comply with paragraph (1)(a) of this clause by not giving the request at least 2 business days after the enrolment referred to in that paragraph;

(ii) paragraph (1)(ba) of this clause is not complied with; and

(b) the VET provider treats the student as being entitled to VET FEE-HELP assistance for the unit;

those paragraphs of this clause are taken to have been complied with.

Note 1: The VET provider should not treat the student as being entitled to VET FEE-HELP assistance:

(a) if the student requests the assistance during the 2 business day cooling-off period after the enrolment; or

(b) if being entitled would cause or contribute to the provider’s VET FEE-HELP account being in deficit.

Note 2: However, if the provider does treat the student as being entitled, the provider will contravene subclause 39DH(1) (a civil penalty provision), and the student may still be able to receive the assistance.

[freezing total loan amounts]

(13) Schedule 1, item 12, page 7 (after line 24), after clause 45C, insert:
45D Notional VET FEE-HELP accounts

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

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

Note 2: This account applies in relation to all students entitled to VET FEE-HELP assistance for VET units of study with census dates on or after 1 January 2016 (whether or not the student received VET FEE-HELP assistance for earlier units before that day). See subclause (7).

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

(2) A credit arises in the "VET" provider’s VET FEE-HELP account as follows:

(a) if the VET provider is already a VET provider on 1 January 2015, a credit arises on the first day of each later calendar year that is equal to the amount worked out under subclause (3);

(b) if the VET provider becomes a VET provider during 2015, a credit arises on the first day of each later calendar year that is equal to the amount worked out under subclause (4);

(c) if the VET provider becomes a VET provider on a day after 2015, a credit arises on that day that is equal to the amount worked out under subclause (5);

(d) if the VET provider pays on a particular day any part of any amount that becomes due under subclause 45E(2), a credit arises on that day that is equal to the amount of that payment;

(e) if another body ceases to be a VET provider, a credit may arise in accordance with a determination under subclause (6).

A credit that arises as described in paragraph (e) arises at the time of the cessation, and is equal to the amount worked out under that determination.

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

\[
\frac{3}{2} \times \text{VET provider’s adjusted 2015 total loan amount}
\]

where:

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

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

(a) the "VET" provider’s fee revenue for the period:
   (i) starting on 1 January 2015; and
   (ii) ending on the day before the VET provider was approved as a VET provider;
   for "domestic" students undertaking "qualifying" VET courses in that period; and

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

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

(6) The Minister may, by legislative instrument, determine:
   (a) whether credits arise in the *VET FEE-HELP accounts of specified *VET providers when another body ceases to be a VET provider; and
   (b) the amounts of such credits.

Debits to the VET FEE-HELP account

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

The debit arises at the end of that census date, and is equal to the amount of that assistance.

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

(1) If:
   (a) a *VET provider’s *VET FEE-HELP account is in deficit at the end of a calendar year; and
   (b) the *Secretary gives the VET provider a written notice about the deficit;

the VET provider must pay to the Commonwealth an amount equal to the amount of the deficit (the excess loan amount).

(2) The excess loan amount is due on the seventh day (the due day) after the day the notice is given.

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

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

(4) The general interest charge for a particular day is worked out by multiplying the *general interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
   (a) the general interest charge from previous days;
   (b) the excess loan amount.

(5) The general interest charge for a day is due and payable to the Commonwealth at the end of that day.

(6) The *Secretary may give written notice to the *VET provider of the amount of the general interest charge for a particular day or days. A notice given under this subclause is prima facie evidence of the matters stated in the notice.
(7) The "Secretary may remit all or a part of the general interest charge payable by the "VET provider if the Secretary is satisfied:
   (a) that:
      (i) the circumstances that contributed to the delay in payment were not due to, or caused directly or indirectly by, an act or omission of the VET provider; and
      (ii) the VET provider has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
   (b) that it is otherwise appropriate to do so.

(8) An amount payable under this clause may be recovered by the Commonwealth from the "VET provider as a debt due to the Commonwealth.

[freezing total loan amounts]

(14) Schedule 1, page 9 (before line 28), before item 15, insert:

14A Before clause 47 of Schedule 1A

Insert:

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

Main case

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

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

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

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

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

(4) If the deficit exceeds the total amount able to be re-credited under subclauses (1) and (3) for all of the "VET provider’s students who received "VET FEE-HELP assistance in the calendar year for "VET units of study undertaken with the VET provider, the "Secretary may re-credit the "FEE-HELP balance of each of those students with the amount equal to:

That excess \times \text{Student’s percentage of the total assistance}
student’s percentage of the total assistance means the percentage equal to the percentage that the student’s VET FEE-HELP assistance referred to in paragraph (1)(a) is of the total VET FEE-HELP assistance received by students of the VET provider in the calendar year for VET units of study undertaken with the VET provider.

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

51A Implications for the student’s liability to the VET provider for the VET tuition fee
If a student’s FEE-HELP balance is re-credited in accordance with this Subdivision with an amount for a VET unit of study, the student is discharged from all liability to pay or account for so much of the student’s VET tuition fee for the unit as is equal to that amount.

[freezing total loan amounts]

(15) Schedule 1, page 9 (after line 30), after item 15, insert:

15A Clause 60 of Schedule 1A
Repeal the clause, substitute:

60 Time and manner of payments

(1) Amounts payable by the Commonwealth to a VET provider under this Schedule are to be paid in accordance with an applicable determination under subclause (2) or (3).

(2) The Minister may, by legislative instrument, determine the way (including payment in instalments or in arrears), and the times when, amounts payable by the Commonwealth under this Schedule are to be paid to specified kinds of VET providers.

(3) The Minister may, in writing, determine the way (including payment in instalments or in arrears), and the times when, amounts payable by the Commonwealth under this Schedule are to be paid to a particular VET provider.

(4) A determination under subclause (3) is not a legislative instrument.

[timing and manner of assistance payments]

(16) Schedule 1, page 10 (after line 25), after item 20, insert:

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

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<td>1E</td>
<td>Refusal to remit the general interest charge</td>
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1F Remitting part of the general interest charge subclause 45E(7) the "Secretary

[freezing total loan amounts]

(17) Schedule 1, page 11 (before line 1), before item 22, insert:

21A Before clause 98 of Schedule 1A

Insert:

97A Compensation for acquisition of property

(1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this clause:

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

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

[constitutional protection]

(18) Schedule 1, item 22, page 11 (before line 3), before the definition of responsible parent, insert:

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

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

[related definitions]

(19) Schedule 1, item 22, page 11 (after line 9), after the definition of student entry procedure, insert:

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

[freezing total loan amounts]

(20) Schedule 1, item 24, page 11 (lines 13 to 16), omit subitem (1), substitute:

(1) The amendments of clause 6 of Schedule 1A to the Higher Education Support Act 2003 made by this Schedule apply in relation to decisions whether to approve bodies as VET providers made on or after 1 January 2016.

[restricting approvals of new VET providers to experienced providers]

(21) Schedule 1, item 24, page 11 (after line 23), after subitem (3), insert:
Paragraph 26(1)(b) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies to matters happening before, on or after 1 January 2016, to the extent that those matters are relevant to VET courses of study provided wholly or partly on or after 1 January 2016.

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

(a) any approaches used in 2015 for recruiting students to the 2016 course; or
(b) teaching resources, student engagement or completion rates for the corresponding course provided in 2015.

The amendments made by this Schedule of clause 39 of Schedule 1A to the *Higher Education Support Act 2003* apply in relation to requests for revocation made on or after 1 January 2016.

[pausing payments for poor performance; freezing total loan amounts]

Schedule 1, item 24, page 12 (after line 2), after subitem (6), insert:

6A Subclause 45E(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to the 2016 calendar year and later calendar years.

[freezing total loan amounts]

Schedule 1, item 24, page 12 (after line 5), at the end of the item, add:

8 Clause 51A of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to the re-crediting of FEE-HELP balances on or after 1 July 2016.

9 Clause 60 of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to amounts payable on or after 1 January 2016.

[freezing total loan amounts; timing and manner of assistance payments]

Schedule 1, Part 1, page 12 (after line 5), at the end of the Part, add:

24A Transitional—pending applications

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

[restricting approvals of new VET providers to experienced providers]

Schedule 1, item 26, page 23 (lines 22 and 23), omit “an APS employee in the Department”, substitute “a person”.

[investigators]
Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015
GZ155

Statement of reasons: why certain amendments should be moved as requests

Section 53 of the Constitution is as follows:

Powers of the Houses in respect of legislation

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Amendment (14)

The effect of this amendment is to provide for the re-setting of the cap on the total amount of VET FEE-HELP assistance payable for a student. It is covered by section 53 because it will allow further payments of assistance to be made for the student from the Consolidated Revenue Fund under the standing appropriation in section 238-12 of the Higher Education Support Act 2003, and so will increase a “proposed charge or burden on the people”.

Amendment (14)

The effect of this amendment is to provide for the re-setting of the cap on the total amount of VET FEE-HELP assistance payable for a student. It is covered by section 53 because it will allow further payments of assistance to be made for the student from the Consolidated Revenue Fund under the standing appropriation in section 238-12 of the Higher Education Support Act 2003, and so will increase a “proposed charge or burden on the people”.
Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015
SHEET GZ155

Statement by the Clerk of the Senate pursuant
to the order of the Senate of 26 June 2000

Amendment (14)

The effect of this amendment is to allow a student’s VET FEE-HELP assistance to be re-credited in certain circumstances. Although the assistance is capped, the re-crediting is a further payment of assistance available to students. If such a further payment of assistance is made, the increased expenditure would be met directly from the standing appropriation in section 238-12 of the Higher Education Support Act 2003.

The Senate has long followed the practice that amendments which “clearly, necessarily and directly” affects an appropriation is regarded as an increase in a charge or burden on the people within the meaning of section 53 of the Constitution (Odgars’ Australian Senate Practice, 13th edition, p. 394). On the basis that this amendment would result in increased expenditure under the standing appropriation in the Act, it is in accordance with the precedents of the Senate that this amendment be moved as a request.