2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

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

No.  , 2015

(Education and Training)

A Bill for an Act to amend the law relating to
higher education, and for related purposes
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Higher Education Support Act 2003 29
A Bill for an Act to amend the law relating to higher education, and for related purposes

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
## Commencement information

<table>
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<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>2. Schedule 1</td>
<td>Immediately before 1 January 2016.</td>
<td>31 December 2015</td>
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<td>3. Schedule 2</td>
<td>Immediately after the start of a single day to be fixed by Proclamation. However, if the commencement of the provisions is not fixed by a Proclamation registered on the Federal Register of Legislative Instruments established under the <em>Legislative Instruments Act 2003</em>, within the period of 12 months beginning on the day this Act receives the Royal Assent, the provisions are repealed on the day after the end of that period.</td>
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</table>

### Note:

This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—VET FEE-HELP Reform amendments

Part 1—Main amendments

Higher Education Support Act 2003

1 Subsection 137-18(4)

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

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

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

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

Repeal the paragraph, substitute:

(c) the body is a *registered training organisation, as listed on the *National Register, that:

(i) has been a registered training organisation for at least the length of time specified in the *VET Guidelines for the purposes of this subparagraph; and

(ii) has been providing courses leading to awards of qualifications in the *Australian Qualifications Framework for at least the length of time specified in the VET Guidelines for the purposes of this subparagraph; and

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

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

5 At the end of clause 9 of Schedule 1A

Add:

(3) If:

(a) a body applies to the Minister for approval as a *VET provider; and

(b) the Minister decides, under clause 6, not to approve the body as a VET provider;
Schedule 1  VET FEE-HELP Reform amendments  

Part 1  Main amendments  

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the body cannot make a subsequent application for approval as a VET provider during the 6-month period starting on the date of the notice given to the applicant under paragraph 11(1)(b) about the decision.

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

Repeal the paragraph, substitute:

(b) must be provided with a report, on the statement, by:

(i) the Auditor-General of a State, of the Australian Capital Territory or of the Northern Territory; or

(ii) a registered company auditor (within the meaning of section 9 of the Corporations Act 2001), who is independent of the VET provider; or

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

7  After clause 23A of Schedule 1A  

Insert:

23B  Entry procedure for students  

(1) A VET provider must make and publish a student entry procedure in accordance with the VET Guidelines.

(2) A VET provider must comply with its student entry procedure.

(3) A student entry procedure is a written procedure that specifies, in accordance with the VET Guidelines:

(a) when a student is academically suited to undertake a VET course of study; and

(b) how to assess whether a student is so suited; and

(c) how to report to the Secretary about the results of such assessments; and

(d) how long the VET provider must retain those results.

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

(a) set out the literacy, numeracy and general academic skills needed by a student to undertake a VET course of study; and

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4  Higher Education Support Amendment (VET FEE-HELP Reform) Bill, No. 5, 2015
(b) provide for assessments of those skills to be conducted online.

(4) For the purposes of subclause (3), the "VET Guidelines" may empower a person or body to approve a particular test for when a student is academically suited to undertake a "VET" course of study.

23C Receiving requests for Commonwealth assistance

(1) A "VET" provider must not treat a student as being entitled to "VET FEE-HELP" assistance for a "VET" unit of study if:

(a) the student gives an "appropriate officer of the VET provider:

(i) a "request for Commonwealth assistance relating to the unit or a "VET" course of study of which the unit forms a part; or

(ii) a form that would be such a request if it were signed by a "responsible parent of the student; and

(b) the student is not entitled to that assistance for that unit or course.

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

(2) Before a "VET" provider enrols a student in a "VET" unit of study less than 2 business days before the "census date for the unit, the VET provider must advise the student that the student will not be able to receive "VET FEE-HELP" assistance for the unit.

(3) Before a "VET" provider enrols a student in a "VET" unit of study, the VET provider must advise the student that any "request for Commonwealth assistance by the student in relation to the unit must be given:

(a) at least 2 business days after the student enrols in:

(i) if the "VET" course of study of which the unit forms a part is undertaken with the provider—the course; or

(ii) otherwise—the unit; and

(b) on or before the "census date for the unit;

if the student has not already given an "appropriate officer of the VET provider such a request relating to the course.

(4) A "VET" provider must not encourage a student to give a "request for Commonwealth assistance relating to a "VET" unit of study so
Schedule 1 VET FEE-HELP Reform amendments

Part 1 Main amendments

that the request is given less than 2 business days after the student enrols in the unit.

8 Subclause 27(2) of Schedule 1A

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

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

Insert:

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

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

Repeal the subparagraph, substitute:

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

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

Repeal the paragraph, substitute:

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

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

Add:

45B Entry procedure requirements

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

45C Request for Commonwealth assistance requirements

(1) The request for Commonwealth assistance requirements for VET FEE-HELP assistance for a VET unit of study are that:

(a) the student completes, signs and gives an appropriate officer of the VET provider a request for Commonwealth assistance that:
(i) if the "VET course of study of which the unit forms a part is undertaken with the provider—relates to the course, and is so given at least 2 business days after the student enrols in the course; or
(ii) otherwise—relates to the unit, and is so given at least 2 business days after the student enrols in the unit; and
(b) the request is so given on or before the *census date for the unit; and
(c) the request is not withdrawn before the end of that census date.

If request is given during the 2 business day cooling-off period

(2) However, for the purposes of this Act (other than clause 39DH), if:
(a) 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; and
(b) the "VET provider treats the student as being entitled to "VET FEE-HELP assistance for the unit;
the student is taken to have complied with that paragraph.

Note 1: The VET provider should not treat the student as being entitled to VET FEE-HELP assistance if the student requests the assistance during the 2 business day cooling-off period after the enrolment.

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.

13 Subclause 46(1) of Schedule 1A
Omit “clause 51”, substitute “clause 46A or 51”.

14 After clause 46 of Schedule 1A
Insert:

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

Decision to re-credit due to unacceptable conduct

(1) The "Secretary must re-credit a person’s "FEE-HELP balance with an amount equal to the amounts of "VET FEE-HELP assistance
that the person received for a "VET unit of study if the Secretary is satisfied that:

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

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

(2) If:

(a) the person received the "VET FEE-HELP assistance as a result of giving an "appropriate officer of the "VET provider a form; and
(b) the form would have been a "request for Commonwealth assistance relating to the unit if it had been signed by a "responsible parent of the person;
paragraph (1)(c) applies as if the form were the person’s request for Commonwealth assistance relating to the unit.
Note: To be a request for Commonwealth assistance, a responsible parent must sign the form if the student is under 18 years old and subclause 88(3A) applies (see paragraph 88(3)(aa)).

Inviting submissions before making a decision

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

(4) In deciding whether to make the decision under subclause (1), the *Secretary must consider any submissions received from the applicant, and from the *VET provider, within the 28 day period.

Notice of a decision

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

15 Subclause 56(1) of Schedule 1A

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

16 After subclause 64(2) of Schedule 1A

Insert:
Schedule 1  VET FEE-HELP  Reform amendments

Part 1  Main amendments

Manner in which notice to be given

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

17  After paragraph 75(ca) of Schedule 1A

Insert:

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

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

Insert:

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

19  After subclause 88(3) of Schedule 1A

Insert:

(3A) This subclause applies to the person if the person:

(a) is under 18 years old; and

(b) has at least one *responsible parent;

unless the person is receiving, or has received, youth allowance (within the meaning of the Social Security Act 1991) on the basis that the person is independent (within the meaning of Part 2.11 of that Act).

20  Subclause 88(4) of Schedule 1A

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

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

Add:

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>2</td>
<td>Refusal to re-credit a person’s *FEE-HELP balance subclause 46A(1) the *Secretary</td>
</tr>
<tr>
<td>3</td>
<td>Re-crediting a person’s *FEE-HELP balance subclause 46A(1) the *Secretary</td>
</tr>
</tbody>
</table>
22 Subclause 1(1) of Schedule 1

Insert:

- responsible parent has the same meaning as in the Australian Citizenship Act 2007.
- State or Territory VET regulator means an agency or authority of a State or Territory responsible for regulating vocational education or vocational training in the State or Territory.
- student entry procedure has the meaning given by subclause 23B(3) of Schedule 1A.

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

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

24 Application of amendments

(1) The amendments of clause 6 of Schedule 1A to the Higher Education Support Act 2003 made by this Schedule apply in relation to applications for approval as a VET provider made on or after 1 January 2016.

(2) The amendment of clause 9 of Schedule 1A to the Higher Education Support Act 2003 made by this Schedule applies in relation to decisions not to approve bodies as VET providers made on or after 1 January 2016.

(3) The amendment of clause 15 of Schedule 1A to the Higher Education Support Act 2003 made by this Schedule applies in relation to annual financial reporting periods ending on or after 1 January 2016.

(4) Paragraph 43(1)(ea) and clause 45B of Schedule 1A to the Higher Education Support Act 2003 (as inserted by this Schedule) apply in relation to VET courses of study enrolled in on or after 1 January 2016.

(5) Subparagraph 43(1)(f)(i) of Schedule 1A to the Higher Education Support Act 2003 (as inserted by this Schedule) applies in relation to VET units of study enrolled in on or after 1 January 2016.

(6) Paragraph 43(1)(h) and clause 45C of Schedule 1A to the Higher Education Support Act 2003 (as inserted by this Schedule) apply in
Schedule 1 VET FEE-HELP Reform amendments

Part 1 Main amendments

1 relation to requests for Commonwealth assistance given on or after
2 1 January 2016.

3 (7) Clause 46A of Schedule 1A to the Higher Education Support Act 2003
4 (as inserted by this Schedule) applies in relation to unacceptable
5 conduct engaged in on or after 1 January 2016.
Part 2—Civil penalties and enforcement

Higher Education Support Act 2003

25 Paragraph 180-20(b)
Repeal the paragraph, substitute:
(b) a "NVETR staff member;

26 At the end of Part 1 of Schedule 1A
Add:

Division 5A—Civil penalty provisions and enforcement
Subdivision 5A-A—Civil penalty provisions

39DA Civil penalty provisions

Enforceable civil penalty provisions

(1) Each "civil penalty provision of this Division is enforceable under

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

Authorised applicant

(2) For the purposes of Part 4 of the "Regulatory Powers Act, each of
the following persons is an authorised applicant in relation to the
"civil penalty provisions:
(a) the "Secretary;
(b) an SES employee, or an acting SES employee, in the
Department.

Relevant court

(3) For the purposes of Part 4 of the "Regulatory Powers Act, each
"applicable court is a relevant court in relation to the "civil penalty
provisions.
39DB Civil penalty—publishing information that suggests VET FEE-HELP assistance is not a loan etc.

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

Civil penalty: 60 penalty units.

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

Civil penalty: 60 penalty units.

39DC Civil penalty—inappropriate inducements

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

Civil penalty: 60 penalty units.

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

Civil penalty: 60 penalty units.

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

39DD Appropriate and inappropriate inducements

(1) Subclauses 39DC(1) and (2), and subclause (2) of this clause, do not apply in relation to any of the following benefits:
   (a) the content and quality of the *VET unit of study or *VET course of study;
   (b) the amount of *tuition fees of the unit or course (other than so much of the fees as is conditional on a person identifying other persons as prospective students for a unit or course); and
   (c) *VET FEE-HELP assistance for the unit or course;
(d) the use of a thing if:
   (i) the use is limited to the period the student is participating in the unit or course; and
   (ii) the use is required or necessary for the completion of the unit or course (having regard to the learning objectives and outcomes of the unit or course); and
   (iii) the use of such a thing is available on the same terms to all students, of a kind specified in the *VET Guidelines for the purposes of this subparagraph, who are participating in the unit or course.

(2) Without limiting subclauses 39DC(1) and (2), those subclauses apply in relation to the following benefits:
   (a) the use of an electronic device outside the period the student is participating in the *VET unit of study or *VET course of study;
   (b) internet use, or the use of software, outside that period;
   (c) travel, entertainment, hospitality or accommodation services;
   (d) vouchers redeemable for goods or services;
   (e) money (other than amounts covered by paragraph (1)(b) or (c)).

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

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

Civil penalty: 60 penalty units.

### 39DF Civil penalty—failure to comply with student requests

(1) A person contravenes this subclause if:
   (a) the person is a *VET provider; and
   (b) the VET provider enrolls another person (the student) in a *VET unit of study; and
   (c) the student is entitled to *VET FEE-HELP assistance for the unit; and
[d] before the end of the *census date for the unit, the student requests, in writing, the VET provider to:

(i) cancel the enrolment; or

(ii) withdraw the student’s *request for Commonwealth assistance relating to the unit or the *VET course of study of which the unit forms a part; and

(e) the VET provider fails to comply with the request before the end of that census date.

Civil penalty: 60 penalty units.

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

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

(1) A person contravenes this subclause if:

(a) the person is a *VET provider; and

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

(c) the student is entitled to *VET FEE-HELP assistance for the unit; and

(d) before the end of the *census date for the unit, the student requests, in writing, the VET provider to:

(i) cancel that enrolment; or

(ii) withdraw the student’s *request for Commonwealth assistance relating to the unit or the *VET course of study of which the unit forms a part; and

(e) the VET provider charges the student a fee, or imposes a penalty, (however described) in order to do so.

Civil penalty: 60 penalty units.

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

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

(1) A person contravenes this subclause if:
Schedule 1  VET FEE-HELP Reform amendments

Part 2  Civil penalties and enforcement

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

Civil penalty: 60 penalty units.

(2) A person contravenes this subclause if:

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

Civil penalty: 60 penalty units.

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

(1) A person contravenes this subclause if:

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

Civil penalty: 60 penalty units.

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

Civil penalty: 60 penalty units.

39DJ Civil penalty—failure to apportion fees appropriately

A person contravenes this clause if:
   (a) the person is a *VET provider; and
   (b) the VET provider enrolls another person (the student) in a
       *VET unit of study; and
Part 2 Civil penalties and enforcement

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

Civil penalty: 60 penalty units.

**39DK Civil penalty—failure to publish fees**

A person contravenes this clause if:

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

Civil penalty: 60 penalty units.

**39DL Civil penalty—failure to report data**

A person contravenes this clause if:

(a) the person is a *VET provider*; and
(b) the VET provider enrolls another person (the *student*) in a *
VET unit of study*; and
(c) the student receives *VET FEE-HELP* assistance for the unit; and
(d) the VET provider is subject to a requirement under subclause 24(1) or (2) to provide information relating to the VET FEE-HELP assistance; and
(e) the VET provider fails to comply with the requirement.
Subdivision 5A-B—Infringement notices

39EA Infringement notices

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


39EB Infringement officers

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

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

(b) each SES employee, or an acting SES employee, in the Department.

39EC Relevant chief executive

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

(a) for an infringement notice given by an infringement officer covered by paragraph 39EB(a)—each NVETR Commissioner; and

(b) for an infringement notice given by an infringement officer covered by paragraph 39EB(b)—the Secretary.

Subdivision 5A-C—Monitoring and investigation powers

39FA Monitoring powers

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

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

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

39FB Monitoring powers—persons exercising relevant roles etc.

(1) For the purposes of Part 2 of the *Regulatory Powers Act, as it applies in relation to Subdivision 5A-A of this Schedule:

(a) each *civil penalty provision of this Division is related to Subdivision 5A-A of this Schedule; and
(b) each *Departmental investigator and *NVETR investigator is an authorised applicant; and
(c) each Departmental investigator and NVETR investigator is an authorised person; and
(d) a *judicial officer is an issuing officer; and
(e) for an authorised person who is a Departmental investigator, the *Secretary is the relevant chief executive; and
(f) for an authorised person who is a NVETR investigator, each *NVETR Commissioner is the relevant chief executive; and
(g) each *applicable court is the relevant court.

Person assisting

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

39FC Investigation powers

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

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.
39FD Investigation powers—persons exercising relevant roles etc.

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

Person assisting

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

Subdivision 5A-D—Other matters

39GA Appointment of investigators

(1) The "Secretary may, in writing, appoint an APS employee in the Department as a Departmental investigator for the purposes of this Division.

(2) A "NVETR Commissioner may, in writing, appoint a "NVETR staff member as a NVETR investigator for the purposes of this Division.

(3) A person must not be appointed as a "Departmental investigator, or a "NVETR investigator, unless the appointer is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of such an investigator.
(4) A "Departmental investigator," and a "NVETR investigator," must, in exercising powers as such, comply with any directions of the appointer.

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

39GB Functions and powers

The functions and powers of a person referred to in:

(a) subclause 39DA(2) (about authorised applicants); or

(b) clause 39EB or 39EC (about infringement notices); or

(c) paragraph 39FB(1)(b), (c), (d), (e) or (f) (about monitoring powers); or

(d) paragraph 39FD(1)(a), (b), (c), (d) or (e) (about investigation powers);

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

39GC Delegation by relevant chief executive etc.

(1) The "Secretary may, in writing, delegate his or her powers and functions that:

(a) arise under the "Regulatory Powers Act as the relevant chief executive; and

(b) relate to this Division;

to an SES employee, or an acting SES employee, in the Department.

(2) A "NVETR Commissioner may, in writing, delegate his or her powers and functions that:

(a) arise under the "Regulatory Powers Act as the relevant chief executive and relate to this Division; or

(b) arise under clause 39GA of this Schedule;

to an "NVETR staff member who is:

(c) an SES employee or an acting SES employee; or

(d) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
(3) A person exercising powers or performing functions under a
delegation under subclause (1) or (2) must comply with any
directions of the delegator.

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

39GD Other enforcement action

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

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

27 Paragraph 72(b) of Schedule 1A

Repeal the paragraph, substitute:

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

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

Repeal the paragraph, substitute:

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

29 After paragraph 75(aa) of Schedule 1A

Insert:

(ab) disclosure by a Commonwealth officer of VET personal
   information relating to a *civil penalty provision for purposes
   relating to:
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Part 2 Civil penalties and enforcement

(i) monitoring or investigating compliance with the civil penalty provision; or
(ii) enforcing the civil penalty provision; or
(iii) issuing an infringement notice in relation to the civil penalty provision;

30 Subclause 1(1) of Schedule 1

Insert:

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

civil penalty provision means each of the following clauses or subclauses of Schedule 1A:
(a) subclauses 39DB(1) and (2);
(b) subclauses 39DC(1) and (2);
(c) clause 39DE;
(d) subclause 39DF(1);
(e) subclause 39DG(1);
(f) subclauses 39DH(1) and (2);
(g) subclauses 39DI(1) and (2);
(h) clauses 39DJ, 39DK and 39DL.

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

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

NVETR Commissioner means:
(a) the Chief Commissioner; or
(b) a Commissioner;
within the meaning of the *National Vocational Education and Training Regulator Act 2011*.

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

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


### 31 Application of amendments

1. Subclause 39DC(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to conduct referred to in paragraph (b) of that subclause that happens on or after 1 January 2016.

2. Subclause 39DC(2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to conduct referred to in paragraph (a) of that subclause that happens on or after 1 January 2016.

3. Subclause 39DF(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to requests referred to in paragraph (d) of that subclause that are given on or after 1 January 2016.

4. Subclause 39DG(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to requests referred to in paragraph (d) of that subclause that are given on or after 1 January 2016.

5. Subclause 39DH(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to requests referred to in paragraph (b) of that subclause that are given on or after 1 January 2016.

6. Subclause 39DH(2) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to forms referred to in paragraph (b) of that subclause that are given on or after 1 January 2016.
Schedule 1 VET FEE-HELP Reform amendments

Part 2 Civil penalties and enforcement

(7) Subclauses 39DI(1) and (2) of Schedule 1A to the Higher Education Support Act 2003 (as inserted by this Schedule) apply in relation to enrolments on or after 1 January 2016.

(8) Clause 39DJ of Schedule 1A to the Higher Education Support Act 2003 (as inserted by this Schedule) applies in relation to VET courses of study that commence on or after 1 January 2016.

(9) Clauses 39DK and 39DL of Schedule 1A to the Higher Education Support Act 2003 (as inserted by this Schedule) apply in relation to enrolments on or after 1 January 2016.
Schedule 2—Other amendments

Higher Education Support Act 2003

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

Insert:

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

2 Paragraph 39GD(d) of Schedule 1A

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

3 Clause 46A of Schedule 1A (heading)

Repeal the heading, substitute:

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

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

Repeal the heading, substitute:

Decision that this subclause applies

5 Subclause 46A(1) of Schedule 1A

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

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

Repeal the paragraph, substitute:

(a) the person has been enrolled in a VET unit of study with a VET provider; and

(aa) the person received VET FEE-HELP assistance for the unit; and
Schedule 2  Other amendments

7 Paragraph 46A(1)(d) of Schedule 1A
Repeal the paragraph, substitute:
(d) the person applies in writing to the provider for the remission of the person’s "VET FEE-HELP" debt in relation to the unit;

8 Subclause 46A(1) of Schedule 1A (note)
Repeal the note, substitute:
Note 1: If this subclause applies, the VET FEE-HELP debt of the person is remitted (see subsection 137-18(4)) and the provider must repay the amount of the VET FEE-HELP assistance to the Commonwealth (see clause 56).
Note 2: A decision that this subclause does not apply to a person is reviewable under Division 16.

9 Subclause 46A(3) of Schedule 1A
Omit “decision under subclause (1)”, substitute “decision that subclause (1) applies”.

10 Paragraph 46A(3)(c) of Schedule 1A
Repeal the paragraph, substitute:
(c) inviting the applicant and the VET provider to each make written submissions to the Secretary within 28 days on why that decision should not be made; and

11 Subclauses 46A(4) and (5) of Schedule 1A
Omit “decision under subclause (1)”, substitute “decision that subclause (1) applies”.

12 After paragraph 56(1)(a) of Schedule 1A
Insert:
(aa) subclause 46A(1) (unacceptable conduct);

13 Clause 91 of Schedule 1A (table items 2 and 3)
Repeal the items, substitute:

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

Higher Education Support Amendment (VET FEE-HELP Reform) Bill No. 2015
3 A decision that subclause 46A(1) applies to a person in relation to a unit of study

14 Application of amendments

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

15 Transitional

(1) In this item:

- **new law** means the *Higher Education Support Act 2003* as amended by this Schedule.
- **old law** means the *Higher Education Support Act 2003* as amended by Schedule 1 to this Act.
- **transitional period** means the period starting on 1 January 2016 and ending on the day before this Schedule commences.

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

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

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

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

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