Higher Education Support Amendment (VET FEE-HELP and Other Measures) Bill 2011

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Higher Education Support Amendment (VET FEE-HELP and Other Measures) Bill 2011

Date introduced: 24 November 2011
House: Senate
Portfolio: Education, Employment and Workplace Relations.

Commencement: Sections 1 to 3 and others not specified on the day of Royal Assent, Schedule 1 Parts 1, 3, 4 and 5, and Schedule 2 on the day after Royal Assent, and Schedule 1 Part 2 on a day to be fixed by Proclamation or the day after six months from the day of Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Bill seeks to amend the Higher Education Support Act 2003 (HESA) to strengthen the administration of the FEE-HELP and VET FEE-HELP Assistance Schemes, and to reflect the establishment of new national regulators in the Vocational Educational and Training (VET) and higher education sectors.

Background

Income-contingent loans were initially made available in 1989 for Commonwealth supported places in higher education institutions (HECS, now HECS-HELP). In 2005 they were extended to full fee-paying students in higher education courses through FEE-HELP. VET FEE-HELP was introduced in 2009 for full fee-paying students in Diploma and Advanced Diploma courses offered by Vocational Education and Training (VET) providers. The legislative provisions for these schemes are contained in HESA.

During 2011 legislation was passed establishing national regulatory bodies for both the higher education and VET sectors. The Tertiary Education Quality and Standards Agency (TEQSA) was established as the national regulatory and quality assurance agency for higher education, while the National Vocational Education and Training Regulator covers the VET sector. The powers of the latter are contingent on the transfer of regulatory responsibility from the states. Legislation for the referral of these powers has been passed in New South Wales and Tasmania, and is currently before the parliaments of Queensland and South Australia. Victoria and Western Australia have declined to
join the national accreditation arrangements but have agreed to introduce mirror legislation to ensure national standards.¹

Committee consideration

On 25 November 2011 the Selection of Bills Committee resolved not to refer this Bill to a Committee for consideration.

Main issues

Together with some proposed administrative changes, the Higher Education Support Amendment (VET FEE-HELP and Other Measures) Bill 2011 seeks to strengthen the compliance provisions for approved VET providers. The rapid increase in both the number and diversity of providers in the VET sector since the 1990s has led to concerns about standards, which was one of the main drivers behind the establishment of a national regulator. The provision of income-contingent loans for students has also led to disquiet about the potential for rorting through unjustified fee increases.²

Approval as a VET provider is given in perpetuity and there is currently no renewal system. While the current Act provides that a VET provider must inform the Minister of any events that may significantly affect the provider’s capacity to meet the VET quality and accountability requirements, the Bill proposes to strengthen this provision to include notification of any event where there may be a ground for revoking the approval of the VET provider.

In addition, the Bill proposes new subclauses to allow the responsible Secretary to revoke or vary a determination to pay an advance to a VET provider, and stating the grounds under which such action can be taken. These include where the provider has not complied with relevant regulations or there is information suggesting the provider may not remain financially viable.

The Bill also seeks to amend the provisions concerning the timeframe for the Minister to decide on an application to become an approved higher education or VET provider. Currently the Minister must decide on an application within 90 days of the receipt of an application, or where further information is requested, within 60 days after end of the period within which the information was required to be provided.


² J Hare, ‘Vocational training loans are open to rorting, HECS creator warns’, The Australian, 24 January 2012, p. 4, viewed 3 February 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1366589%22

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**Part 1** of the Bill includes additional clauses to provide that even if these time limits are not complied with, this does not affect the Minister’s power to decide the application.

This allows for an application to be considered even where there have been delays in the provision of information by applicants or in the Minister’s considerations which extend beyond the current deadlines. Under the current provisions, these timeframes are mandatory and if consideration of the application is not completed in time the Minister is unable to decide the application. Presumably this would mean the application would need to be resubmitted. While this provision will allow for a decision to be made where processes have been extended for some reason, the lack of a definitive timeframe does raise the risk of unacceptable delays in decisions for approval as a higher education or VET provider. It is not known how common delays beyond the current legislated periods are, or the typical length of such delays.

Amendments providing for improved congruity with tax-related legislation regarding HELP debts are also included.

**Key provisions**

**Schedule 1**

**Part 1** provides additional subclauses to provide that expiry of the timeframes for consideration of an application for approval as a higher education *(Item 1)* or VET *(Item 2)* provider does not affect the Minister’s power to decide the application.

**Part 2** inserts new subclauses 25(2) and (3) covering the circumstances under which a VET provider has to inform the Minister of events which may affect their approval as a provider.

**Part 3—Use and disclosure of information** provides for the use of information collected as part of the application for approval as a provider to be used by Commonwealth officers in the course of their employment. The information may also be provided to the national regulatory agencies in relation to the performance of their functions.

**Part 4** allows the Secretary to vary or revoke a determination that an advance is to be made to a VET provider, the circumstances under which this may occur and the matters that may be considered in this decision.

**Schedule 2**

**Schedule 2** provides for Tax Commissioner to have general administration of the aspects of the Act relating to the administration of HECS-HELP, FEE-HELP and VET FEE-HELP debts. The note explains that HESA is to this extent a tax law for the purposes of the Taxation Administration Act.

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Part 3 amends the time period in which a person may apply for the amendment of an assessment of their accumulated HELP debt and the amount required to be repaid from ‘no later than two years after the end of the income year to which the assessment relates’ to ‘within two years after the day on which the Commissioner gives notice of the assessment to the person’.

Concluding comments

The Bill appears to strengthen compliance provisions for VET providers thus seeking to address some of the concerns expressed by commentators regarding the extension of income contingent loans to the VET sector.

The provisions allowing the Minister to make a decision on an application for approval as a provider despite the expiry of the specified timeframes will allow for a decision to be made where there have been delays in the process, rather than causing the application to lapse, but may be of concern if this leads to extensive delays in the decision process.
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