Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012

Carol Ey
Social Policy Section

Contents

Purpose ................................................................................................................................. 2
Background .......................................................................................................................... 2
  Basis of policy commitment ............................................................................................ 3
  Position of major interest groups .................................................................................. 4
  Committee consideration ................................................................................................. 4
  Senate Education, Employment and Workplace Relations Committee ....................... 4
  Joint Parliamentary Committee on Human Rights ....................................................... 5
Financial implications ......................................................................................................... 5
Key provisions ..................................................................................................................... 6
  Schedule 1—COAG Amendments ................................................................................ 6
  Part 1 of Schedule 1 ....................................................................................................... 6
    Removal of requirement to be a body corporate ......................................................... 6
    Additional information to assess financial viability .................................................... 6
    Transitional arrangements ......................................................................................... 6
  Part 2 of Schedule 1 ....................................................................................................... 7
    Course eligibility ......................................................................................................... 7
  Schedule 2—Approval and revocation of approval ......................................................... 7
  Schedule 3—VET Guidelines ......................................................................................... 9
  Schedule 4—Other amendments .................................................................................... 9
Concluding comments ....................................................................................................... 10
Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012

Date introduced: 19 September 2012
House: House of Representatives
Portfolio: Industry, Innovation, Science, Research and Tertiary Education

Commencement: Sections 1 to 3 commence on the day the Act receives Royal Assent. Schedules 1, 3 and 4 are to commence on a day to be fixed by Proclamation but no longer than six months after the Act receives Royal Assent. Schedule 2 is to commence the day after the Act receives 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

Through amendments to the Higher Education Support Act 2003 (HESA), this Bill seeks to improve the Higher Education Loan Program (HELP) schemes, particularly VET FEE-HELP, by streamlining administration and increasing provider flexibility.

Background

Government income contingent loans (ICLs) for students are well established in the higher education system in Australia, with loans initially made available in 1989 for Commonwealth supported places (through HECS, now HECS-HELP) and extended to full fee paying students in 2005 (FEE-HELP). However, ICLs were only introduced into the vocational education and training (VET) sector in 2008, through the introduction of VET FEE-HELP. VET FEE-HELP provides ICLs to full fee paying, and some subsidised, students undertaking eligible VET diplomas, advanced diplomas, graduate certificates and graduate diplomas.

Implementation of VET FEE-HELP was aligned as much as possible with the FEE-HELP scheme operating in the higher education sector, and a high bar was set to ensure only quality registered training organisations (RTOs) were approved to effectively manage the risks to students and public monies.

As with other schemes in the Higher Education Loan Program (HELP), under VET FEE-HELP the Government pays the student’s tuition fees directly to the approved VET FEE-HELP provider. The student repays the debt through the taxation system when their income exceeds a minimum income

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
threshold ($49 095 for the 2012–13 income year). The legislative provisions for the HELP schemes are contained in HESA.

In 2009 an extension of the VET FEE-HELP scheme was approved in Victoria, following a commitment by the Victorian Government to implement significant VET reforms. Even with this extension there only 44 approved providers in Victoria, and take up of the scheme has continued to be below government expectations in other states. Overall only 112 providers are currently approved to offer VET FEE-HELP, out of approximately 2000 RTOs currently offering VET courses at diploma level and above.¹

In conjunction with the extension of the scheme in Victoria, a Post Implementation Review (PIR) was requested by the then Prime Minister, in part to consider why take up had been lower than expected. The PIR² reported in September 2011, and identified a number of barriers to the uptake of VET FEE-HELP including:

- the application process for approval is long, complex and arduous
- lack of flexibility of certain administrative compliance requirements limits a provider’s ability to be responsive to student and industry needs (particularly the requirements for census dates and publishing tuition fee schedules so far in advance) and
- the high cost and administrative burden of data reporting and compliance requirements, particularly given the broader VET operating and regulatory environment.³

In June 2012, the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) released a discussion paper, VET FEE-HELP Redesign 2012⁴ and conducted a series of stakeholder consultations to consider options to address these issues. These consultations have informed the development of this legislation.

**Basis of policy commitment**

In the Council of Australian Governments (COAG) National Partnership Agreement on Skills Reform signed on 13 April 2012, the Commonwealth committed to review the operational requirements for

---


⁴ Ibid.

**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
ICLs in order to streamline administration requirements. In addition, Schedule 4 of the Agreement specifically commits the Commonwealth to develop a limited trial of extending the eligibility for ICLs under VET FEE-HELP Assistance to students undertaking selected Certificate IV qualifications shown to provide a significant personal return through increased earning potential.\(^5\)

The current legislation restricts VET FEE-HELP to courses at the diploma, advanced diploma, graduate diploma or graduate certificate level. The Bill therefore includes a provision for other specified courses to be eligible for VET FEE-HELP in order to meet this commitment.

Other provisions in the Bill are designed to streamline administration as per the COAG Agreement and the recommendations of the PIR.

**Position of major interest groups**

The major purpose of this Bill is to make it easier for providers to be approved for VET FEE-HELP through relaxing some requirements and streamlining arrangements, and increasing the range of courses for which VET FEE-HELP will apply. These amendments implement recommendations from the PIR which were based on feedback from providers and state and territory governments about limitations of the existing arrangements. Further extensive consultation has also taken place on the redesign proposals.\(^6\) Therefore it is expected that providers and other jurisdictions would support the provisions of this Bill.

The intent of these changes is to substantially increase the number of VET courses for which VET FEE-HELP is available. This will benefit students and potential students who may experience difficulty in paying existing up-front fees for these courses, and is therefore likely to be widely supported as increasing the equity of access to higher level VET courses.

**Committee consideration**

**Senate Education, Employment and Workplace Relations Committee**

The Bill has been referred to the Senate Education, Employment and Workplace Relations Committee for inquiry and report by 19 November 2012. Details of the inquiry are at:

---


**Warning**: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Joint Parliamentary Committee on Human Rights

The Statement of Compatibility with Human Rights is contained in the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011, the Government has assessed the Bill’s compatibility with human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

The Parliamentary Joint Committee on Human Rights has examined the Bill and has sought further information from the Minister on two issues:

- whether the Minister’s enhanced ability to revoke or suspend a provider’s FEE-HELP or VET FEE-HELP status with immediate effect will impact on students and
- the existence of safeguards to protect information that is collected under the information-sharing provisions contained in the Bill.

The Committee also questioned the accuracy of the assertion, in the Bill’s Statement of Compatibility with Human Rights, that the Bill promotes the right to privacy. The Committee felt that ‘the measures in question would appear to limit the right instead’.

It appears that the Minister has not yet responded to the issues raised by the committee.

Financial implications

There are no direct financial impacts associated with this Bill, although some IT changes will be required by both RTOs and government.

---

9. Ibid., p. 11.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Key provisions

Schedule 1—COAG Amendments

Part 1 of Schedule 1

Removal of requirement to be a body corporate

Currently, to be approved as a VET FEE-HELP provider (which enables students to access VET FEE-HELP) a provider must be a body corporate. Part 1 of Schedule 1 to the Bill removes the requirement that a provider has to be a body corporate, and instead item 4 amends clause 6 of Schedule 1A of HESA to allow the Minister to also approve a body as a VET provider if they are of a kind specified in the VET Guidelines (as made by the Minister under clause 99 of Schedule 1A of HESA), and meet other criteria such as being a RTO. This recognises that VET providers have a range of corporate structures. For example, TAFEs in South Australia and Queensland generally do not meet the requirement to be a body corporate and hence are ineligible for approval as VET FEE-HELP providers under the current legislation.

Additional information to assess financial viability

Currently, clause 16 of Schedule 1A of HESA requires the Minister, when determining whether a provider is financially viable, to have regard to any audited annual financial statements supplied by the provider in compliance with clause 15. Item 14 of Schedule 1 to the Bill expands this requirement, so that the Minister must also consider any financial information supplied by the provider in response to a request by the Minister under clause 24 of Schedule 1A of HESA. (Clause 24 allows the Minister to request information from the provider, in relation to the provision of VET services and the provider’s compliance with legislative requirements.)

Transitional arrangements

Division 2 of Part 1 of Schedule 1 to the Bill sets out how the amendments made by items 1 to 19 of Schedule 1 to the Bill will apply to approved providers and those whose applications are currently being considered. The operation of these application provisions are explained in the Explanatory Memorandum.

10. See clauses 4 and 6 of Schedule 1A of HESA.
11. Clause 99 of Schedule 1A of HESA is amended by items 42 to 44 of Schedule 3 to the Bill.
12. DEEWR, op. cit., p. 15.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Part 2 of Schedule 1

Course eligibility

The requirements that must be met for a course to be covered by VET FEE-HELP are set out at clause 45 of Schedule 1A to HESA. Currently, subclause 45(2) allows the Minister to determine, by legislative instrument, that VET FEE-HELP is unavailable for a specified course provided by a specified VET provider, or for all courses provided by a specified VET provider. Item 26, in Part 2 of Schedule 1 to the Bill, repeals and replaces subclause 45(2) to provide that courses for which VET FEE-HELP is unavailable may be set out in the VET Guidelines rather than through legislative instrument.

Currently, a course may only be eligible for VET FEE-HELP if it is a ‘VET course of study’, which is defined in the Dictionary at clause 1 of Schedule 1 to HESA as study leading to the award of a VET diploma, a VET advanced diploma, a VET graduate diploma or a VET graduate certificate. Item 31 of Schedule 1 to the Bill amends the definition of ‘VET course of study’ to provide that such a course of study must lead to the award of a ‘VET qualification’.

Item 32 of Schedule 1 to the Bill inserts a definition of ‘VET qualification’ into the Dictionary at clause 1 of Schedule 1 to HESA. In addition to the awards already recognised under HESA, a qualification specified by the VET Guidelines will also be a ‘VET qualification’. This will allow the Minister to specify additional courses that may be eligible for VET FEE-HELP. This definition, in combination with amended clause 45 of Schedule 1A to HESA, will allow specified Certificate IV courses offered by specified providers to be eligible for VET FEE-HELP, to give effect to the Commonwealth’s commitment under the COAG National Partnership Agreement on Skills Reform to trial an extension of VET FEE-HELP to students undertaking selected Certificate IV qualifications, as well as providing flexibility to extend eligibility to other courses as may be agreed in future.

Schedule 2—Approval and revocation of approval

The Minister is able to revoke a body’s approval as a higher education provider or a VET provider in circumstances set out in HESA. Currently, revocation of the approval of a higher education or VET provider takes effect on the day following the last day on which a motion to disallow the instrument can be moved in either House of Parliament. Depending on parliamentary sitting schedules, this can mean a considerable delay between when the Minister decides to revoke a provider’s approval and the date that revocation takes effect, during which time the organisation can continue to offer students FEE-HELP or VET FEE-HELP, despite being aware that their approval is to be revoked.

13. These terms are also defined in the Dictionary at Schedule 1 to HESA.
14. That is, a VET diploma, a VET advanced diploma, a VET graduate diploma and a VET graduate certificate.
15. See section 22-35 in relation to higher education providers and clause 38 of Schedule 1A to HESA in relation to VET providers.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Part 1 of Schedule 2 to the Bill changes the arrangements for revocation in two ways. Items 1 and 9 respectively make amendments that would clarify that a body ceases to be approved as a higher education provider or VET provider for FEE-HELP when a decision to revoke the body’s approval is in effect. Proposed subsection 22-20(5) of HESA, inserted at item 4 of Schedule 2 to the Bill, and proposed subclause 34(5) of Schedule 1A of HESA, inserted at item 12 of Schedule 2, provide that the Minister’s decision to revoke the approval of, respectively, a higher education provider or a VET provider takes effect on the date that the notice is registered on the Federal Register of Legislative Instruments. These amendments will ensure that notices of revocation will take effect in a more timely manner, and also give the provider greater clarity about the date the revocation will take effect. However, it should be noted there is still provision for disallowance by Parliament under the Legislative Instruments Act 2003, which would overturn the Minister’s decision to revoke approval. Items 8 and 16 clarify the arrangements in this event. The operation of these provisions is explained in the Explanatory Memorandum.

Part 2 of Schedule 2 to the Bill allows the Minister to seek information from the Tertiary Education Quality and Standards Agency (TEQSA) or the relevant VET regulator for the purposes of approving or revoking the approval of a provider for FEE-HELP or VET FEE-HELP.

The processes for approval and revocation of approval as a FEE-HELP or VET FEE-HELP provider are separate from the processes for approval and revocation of approval as an RTO. For the latter, TEQSA is the national regulatory and quality assurance agency for higher education, while the National VET Regulator covers the VET sector for those states which have transferred regulatory responsibility to the Commonwealth. Victoria and Western Australia continue to operate their own VET regulators.

The amendments made by Part 2 of Schedule 2 to the Bill will allow for increased information sharing between the various regulatory agencies, which is expected to result in improved decision making and, in particular, enhance the capacity to identify low quality providers.16

Section 16-25 of HESA sets out the requirements that must be met by a body before it can be approved as a higher education provider. The equivalent provision for VET providers is clause 6 of Schedule 1A to HESA. One of the requirements imposed on bodies seeking approval as VET providers is that they comply with the VET Guidelines (see existing paragraph 6(1)(g) and proposed paragraph 6(1A)(i) of Schedule 1A to HESA). To align the requirements imposed on higher education providers with those imposed on VET providers, item 19 of Schedule 2 to the Bill amends section 16-25 of HESA to provide that, in order to be approved as a higher education provider, a body must comply with any requirements set out in the Higher Education Provider Guidelines. This is designed to ensure consistency between the provisions for VET FEE-HELP and FEE-HELP.


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Schedule 3—VET Guidelines

Part 1 of Schedule 3 to the Bill provides for the consolidation of the following existing four guidelines into one instrument, to be called the VET Guidelines:

- VET Provider Guidelines
- VET FEE-HELP Guidelines
- VET Tuition Fee Guidelines and
- VET Administration Guidelines.

This is expected to reduce duplication of requirements and improve the accessibility, clarity and transparency of the obligations of approved providers.17

Schedule 4—Other amendments

The census date for courses determines the point at which students are deemed to be enrolled in the course for the purposes of FEE-HELP or VET FEE-HELP. The current provisions are based on the higher education arrangements, whereby the census date is deemed to be not less than 20 per cent of the way through the unit. This is to allow students to withdraw from courses early in their study without incurring a HELP debt. However the PIR noted that given the flexible nature of VET courses, the 20 per cent rule meant that providers may have multiple census dates resulting in considerable administrative burden.18 The inclusion of the census date provisions in the legislation also limits flexibility. Hence items 1 and 4 of Schedule 4 to the Bill remove the current 20 per cent restriction and provide for a census date for each unit of study to be determined in accordance with the Administration Guidelines under FEE-HELP, and in accordance with the VET Guidelines under VET FEE-HELP.

Items 2, 3 and 5 of Schedule 4 are technical amendments to the arrangements for Ministerial and Secretarial delegations to allow for delegations to an officer of another department. This is to prevent a repeat of the situation that arose in December 2011 when responsibility for administration of HESA transferred from the Department of Education, Employment and Workplace Relations to DIISRTE under the Administrative Arrangements Orders, but the staff administering the Act were not transferred until some time later, and so were unable to be delegated authority under the Act to perform their duties. The existing arrangements concerning the level of delegation will remain unchanged.19

18. DIISRTE, op. cit., p. 9.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Concluding comments

The Bill seeks to address a number of concerns about the VET FEE-HELP scheme which have limited its take up by providers, and hence its ability to support increased access to VET courses by disadvantaged students. The proposals have been developed following considerable involvement by stakeholders both through a PIR of the scheme and consultations on a discussion paper proposing redesign options.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.