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Social Policy Section

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Date introduced: 18 September 2019

House: House of Representatives

Portfolio: Employment, Skills, Small and Family Business

Commencement: 1 January 2020, except Schedule 3 of the Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019, which commences the day the Act receives Royal Assent.

Links: The links to the Bills, Explanatory Memoranda and second reading speeches can be found on the home pages for the Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019, VET Student Loans (VSL Tuition Protection Levy) Bill 2019, and Higher Education Support (HELP Tuition Protection Levy) Bill 2019, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at October 2019.
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The Bills Digest at a glance

**What the Bills do**

- The Bills address the question of how best to protect domestic vocational education and training and higher education students in cases of provider or course closure.
- They propose to replace sector-managed tuition assurance arrangements with two new tuition protection schemes (one for each sector), modelled on the existing Australian Government Tuition Protection Service (TPS), which has been in place for overseas students since 2012.
- Each new scheme will be responsible for managing the process of determining if there are replacement courses for affected students, and, in cases where there are not, making recommendations about re-crediting the student’s VET Student Loan or Higher Education Loan Program (HELP) borrowings related to the course.
- Arrangements for the administration of the new schemes will be taken from the existing TPS. The Director of the TPS will be the Director of each new scheme and the Advisory Board for the TPS will be the Advisory Board for each new scheme. Appointments will be on the same terms.
- Each new scheme will be managed through a special account which will be sector-funded by a levy made up of three components: an administrative fee component; a risk rated premium component and a tuition protection component.
- The administrative fee component will be as determined in a legislative instrument made by the Minister. The risk rated premium component and tuition protection component will be calculated using inputs determined in a legislative instrument made by the Director, with prior approval by the Treasurer.
- TAFE providers and providers that are owned by the Commonwealth or a state or a territory will not be subject to the risk rated premium and special tuition protection components of the levy, while Australian public universities (‘Table A’) will be exempt from the new arrangements entirely. Further exemptions will be possible through legislative instruments. Also, new providers each year will only need to pay an administrative fee as per the relevant instrument, but not the risk rated premium component or tuition protection component.
- The Minister would be required to commence a review of the operation of each new scheme, and the existing TPS (to be conducted at the same time), before 1 July 2021.

**How the Bills work**

- The Bills repeal all tuition assurance provisions from the **VET Student Loans Act 2016** (VSL Act) and **Higher Education Support Act 2003** (HESA).
- They impose participation in tuition protection arrangements and payment of the associated levy on non-exempt providers as a condition of continuing approval as a provider of either VET Student Loans or HELP. Civil and criminal penalties have been included to ensure compliance.
- The Bills create two new Acts imposing, and detailing arrangements for calculating, each levy.

**Why the Bills have been introduced**

- One impact of a stronger provider compliance approach to student loans since 2015 has been increased pressure on existing tuition assurance arrangements.
- Since 1 January 2018, interim tuition assurance arrangements have been in place, administered by the then Department of Education and Training, now Department of Employment, Skills, Small and Family Business, and Department of Education.
- The Bills give effect to a Mid-Year Economic and Fiscal Outlook (MYEFO) 2018–19 announcement that long-term arrangements for tuition assurance would be introduced.
Purpose of the Bills

The purpose of the Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019 (the Main Bill), VET Student Loans (VSL Tuition Protection Levy) Bill 2019 (the VSL Levy Bill), and Higher Education Support (HELP Tuition Protection Levy) Bill 2019 (the HELP Levy Bill) is to give effect to a Mid-Year Economic and Fiscal Outlook (MYEFO) 2018–19 commitment to:

... deliver long term tuition assurance services to support students with VET Student Loans (VSL) and non-university higher education FEE-HELP loans. This measure will ensure students are protected from provider or course closures by identifying alternative providers to allow students to continue their study, or offering a refund of tuition fees if there are no replacement providers.¹

The approach proposed in the Bills is closely based on the Australian Government Tuition Protection Service (TPS)², as set out in the Education Services for Overseas Students Act 2000 (ESOS Act). The TPS assists overseas students if an Australian higher education or vocational education and training (VET) provider is unable to fully deliver a course of study they are enrolled in due to either course or provider closure.

Structure of the Bills

The Main Bill is structured according to three schedules:

• Schedule 1 proposes to amend the VET Student Loans Act 2016 (VSL Act) to replace current tuition assurance arrangements with a new VET Student Loans (VSL) tuition protection scheme,³ and make minor consequential amendments to the ESOS Act
• Schedule 2 proposes to amend the Higher Education Support Act 2003 (HESA) to replace current tuition assurance arrangements with a new Higher Education Loan Program (HELP) tuition protection scheme⁴
• Schedule 3 does not relate specifically to tuition protection. It proposes minor amendments to the VSL Act provisions that require the Secretary to revoke approval as a VSL provider at the request of that provider.

The other two Bills are in near identical terms and relate to the calculation and administration of levies to fund the two new tuition protection schemes:

• the VSL Levy Bill proposes to create the VET Student Loans (VSL Tuition Protection Levy) Act 2019 (the VSL Levy Act) to impose a VSL tuition protection levy
• the HELP Levy Bill proposes to create the Higher Education Support (HELP Tuition Protection Levy) Act 2019 (the HELP Levy Act) to impose a HELP tuition protection levy.

Background

Ongoing efforts to address the impact of VET FEE-HELP

This package of Bills is part of ongoing efforts to address the impact of the program that preceded VSL, VET FEE-HELP, which ran from 2008 to 2016 as part of HELP. VET FEE-HELP has ultimately

¹ J Frydenberg (Treasurer) and M Cormann (Minister for Finance and the Public Service), Mid-Year Economic and Fiscal Outlook 2018–19, p. 173.
² Tuition Protection Service (TPS), TPS website.
³ Department of Education (DoE), ‘VET student loans’, StudyAssist website, n.d.
⁴ DoE, ‘HELP loans’, StudyAssist website, n.d.
become known for enabling increases in course fees and unrecoverable student debt.\textsuperscript{5} The program was described in the 2017 \textit{Review of the National Vocational Education and Training Regulator Act 2011} as ‘an unusually dramatic case of how a policy with poor design and implementation can impact adversely on students and their families, employers, peak bodies, government, and the Australian community.’\textsuperscript{6}

Since 2015, the Parliament has taken a number of steps to address the unintended consequences of the program, including reforms to VET FEE-HELP, such as banning inducements for students to enrol in VET courses, clarifying student rights and obligations, and introducing a stricter compliance regime to address unacceptable and unscrupulous provider conduct.\textsuperscript{7}

In December 2016, the VSL Act was passed by the Parliament.\textsuperscript{8} The VSL Act replaced VET FEE-HELP with VSL from 1 January 2017 (with the exception of some students remaining in the old scheme under grandfathering arrangements until 31 December 2018) and introduced tighter provider eligibility requirements and lending controls for the replacement program.\textsuperscript{9}

A VET Student Loans Ombudsman (VSLO) was then established within the Office of the Commonwealth Ombudsman from 1 July 2017, to investigate complaints about the VET Student Loans and VET FEE-HELP schemes.\textsuperscript{10}

\textbf{Tuition assurance arrangements}

Since the introduction of VSL, the question of how best to support students through course and provider closures has remained open, as the stronger compliance approach from 2015 has intensified pressure on existing arrangements:

Cracking down on abuses of the [VET FEE-HELP] scheme and then shutting down the scheme itself led to bankruptcy among some providers who had built a business model around these loan payments. Genuine students part way through their course were stranded, without recommendation to an alternative RTO [registered training organisation] that would continue their training.

... tuition assurance operators have been overwhelmed by the scale of the problem and by the numbers of ‘displaced’ students whom they have found difficult to place with alternate RTOs.\textsuperscript{11}

Tuition assurance is currently available under the VSL Act and HESA to domestic students who defer their course fees through VSL and HELP, in the event that their provider closes, or ceases to provide their course as intended before the student completes.\textsuperscript{12} It provides students with a

\begin{itemize}
  \item \textsuperscript{5} Further background is available in H Ferguson, \textit{Higher Education Support Amendment (VET FEE-HELP Student Protection) Bill 2018}, Bills digest, 39, 2018–19, Parliamentary Library, Canberra, 2018, pp. 2–3.
  \item \textsuperscript{6} V Braithwaite, \textit{All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011 report}, report prepared for the Australian Government, January 2018, p. 82.
  \item \textsuperscript{7} Ferguson, \textit{Higher Education Support Amendment (VET FEE-HELP Student Protection) Bill 2018}, op. cit., p. 3.
  \item \textsuperscript{8} Parliament of Australia, ‘VET Student Loans Bill 2016 homepage’, Australian Parliament website.
  \item \textsuperscript{9} Ibid.
  \item \textsuperscript{10} Parliament of Australia, ‘Education and Other Legislation Amendment Bill (No. 1) 2017 homepage’, Australian Parliament website; VET Student Loans Ombudsman (VSLO), ‘VET Student Loans’, VSLO website, n.d.
  \item \textsuperscript{11} Braithwaite, \textit{All eyes on quality}, op. cit., pp. 81–82.
  \item \textsuperscript{12} Domestic students who pay up-front fees can access a combination of arrangements through state and territory departments of education, the Australian Skills Quality Authority (ASQA), the Tertiary Education Quality and Standards Agency (TEQSA), and the Australian Competition and Consumer Commission, depending on their circumstances. Arrangements for students who pay their fees up front are not the subject of the package of Bills. See Department of Employment, Skills, Small and Family Business (DESSFB), ‘Tuition assurance and provider closures’, DESSFB website, last modified 26 September 2019.
\end{itemize}
means to either undertake a replacement course, or have their course fees refunded. These arrangements are discussed in more detail below, under key issues and provisions.

When VSL first commenced, two sector bodies, the Australian Council for Private Education and Training (ACPET, now the Independent Tertiary Education Council Australia (ITECA)) and TAFE Directors Australia (TDA) were provisionally approved as tuition assurance providers until 31 December 2017.

In December 2017, as part of MYEFO 2017–18, the Government announced the ACPET and TDA tuition assurance schemes would cease, and the then Department of Education and Training would administer interim arrangements from 1 January 2018 while longer term arrangements were developed for 2019 onwards. Those interim arrangements remain in place at the time of writing, administered by the Department of Education (for higher education students) and Department of Employment, Skills, Small and Family Business (for VET students). The Department of Employment, Skills, Small and Family Business lists seven provider closures that have been addressed during this time.

In January 2018, the Review of the National Vocational Education and Training Regulator Act 2011 cited a range of concerns from students about the sector-led tuition assurance arrangements, based on the VSLO submission to the review. These were:

- the complexity of the tuition assurance arrangement process
- the lack of clear, consistent and accurate information regarding tuition assurance
- delays in receiving information from tuition assurance operators
- the record keeping practices of RTOs
- the assessment practices of RTOs, particularly unmarked assessment items and the failure to record assessment outcomes
- delays in obtaining student records from ASQA
- delays in receiving offers from tuition assurance operators
- the lack of transparency around tuition assurance placements
- the apparent lack of oversight of tuition assurance operators
- an apparent lack of recourse for students who are dissatisfied with their tuition assurance offer.

13. Ibid.
15. S Morrison (Treasurer) and M Cormann (Minister for Finance), Mid-Year Economic and Fiscal Outlook 2017–18, p. 147; Australian Government, Tuition assurance: assisting displaced VET FEE-HELP and VET Student Loans students – replacement provider requirements and information, last updated 1 April 2019, p. 4.
17. Ibid.
18. Braithwaite, All eyes on quality, op. cit., p. 91.
The review recommended the Government assume responsibility for the operation of all tuition assurance and protection arrangements, reflecting:

> Given the magnitude of the problems experienced recently and given the churn in the VET system reported by ASQA as RTOs open and close operations, and the ensuing impact on ASQA’s time and resources, there is merit in the Government maintaining control of tuition assurance, though some operational aspects may be undertaken by non-government operators. A levy paid by providers for a new scheme would create the fund for a government-managed scheme. Such a fund could emulate the Overseas Students Tuition Fund which provides the money for refunds or placement in another course to international students.\(^{19}\)

In August 2018, then Assistant Minister for Vocational Education and Skills, Karen Andrews, announced the TPS would be expanded to VET Student Loans (VETSL), and non-university higher education providers’ (NUHEP) FEE-HELP students.\(^{20}\)

The latest available published figures show:

- in 2018, there were 182 approved course providers under the VETSL program — 23 TAFE providers, 13 other public organisations (including Australian public universities), and 146 private providers and
- there are 139 higher education providers registered to provide Commonwealth assistance, including 38 Table A providers (Australian public universities), four Table B providers (Australian private universities), two table C providers (Australian branches of overseas universities), and around 95 NUHEPs approved to provide FEE-HELP.\(^{21}\)

**The Tuition Protection Service**

The TPS has been operating across Australia’s international education sector since 1 July 2012. Under Part 5 of the *ESOS Act*, students of discontinued courses either complete their studies in another course with their original provider, move to complete a course with another provider, or receive a refund of the unused portion of any pre-paid tuition fees. Where the provider cannot fulfil its obligations to the student directly, the TPS acts as a single point of contact for students to manage the transfer or refund process.

**The TPS Director and Advisory Board**

The TPS is governed by a TPS Director appointed by the Minister and an Advisory Board comprising a representative from each of the Department of Education, Department of Finance, Department of Home Affairs, Australian Government Actuary, Australian Prudential Regulation Authority and up to seven other members appointed by the Minister on the basis of skills and experience.\(^{22}\) The TPS Advisory Board is responsible for advising the TPS Director on the annual TPS levy.\(^{23}\)

The primary functions of the TPS Director under the *ESOS Act* are to:

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19. Ibid.
22. *Education Services for Overseas Students Act 2000* (*ESOS Act*), Part 5A.
23. *ESOS Act*, section 55B.
• place and/or provide refunds to international students in accordance with the ESOS Act requirements
• report to the Minister on the operations of the TPS and the Overseas Student Tuition Fund (OSTF)
• manage the TPS to ensure it meets its liabilities and
• make the TPS levy legislative instrument each year.\footnote{24}

The TPS levy
TPS operations are funded by education providers through the TPS levy, which is charged as a condition of registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), the record of all Australian education providers approved to offer courses to people studying in Australia on student visas.\footnote{25}

Levy revenue is paid into the OSTF, which is a special account for the purposes of the \textit{Public Governance, Performance and Accountability Act 2013} (the \textit{PGPA Act}), and is established under section 52A of the \textit{ESOS Act}.\footnote{26} Under section 80 of the \textit{PGPA Act}, if an Act establishes a special account and identifies the purposes of the account, then the \textit{Consolidated Revenue Fund}\footnote{27} is appropriated for expenditure for those purposes, up to the balance of the special account at the time.

Under section 5 of the \textit{Education Services for Overseas Students (TPS Levies) Act 2012} (\textit{TPS Levies Act}), the amount of the TPS levy for a registered provider is the sum of four components: the administrative fee, base fee, risk rated premium and special tuition protection fee for the year. The administrative and base fees components are responsive to fluctuations in student numbers, and are set by legislative instrument by the Minister.\footnote{28} The risk rated premium and special tuition protection components are calculated based on factors set each year by legislative instrument by the TPS Director, in response to provider risk factors and other relevant considerations.\footnote{29}

Exemptions
Under section 12 of the \textit{TPS Levies Act}, the Minister may exempt classes of providers from paying the base fee and/or risk rated premium component of the levy. The \textit{Education Services for Overseas Students (TPS Levies) Act 2012 (Levy exemptions) Determination 2012 (No. 1)} specifies that Table A providers, government schools, and state or territory VET institutions are exempt from the risk-rated premium component of the levy.\footnote{30}

\footnote{24} \textit{ESOS Act}, section 54B. See also Department of Education (DoE), \textit{Tuition Protection Service: post-implementation review: Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012}, DoE, Canberra, December 2014, p. 29.
\footnote{25} \textit{ESOS Act}, sections 50A and 53C; DET, \textit{‘Fees and charges’}, DET website, n.d.
\footnote{26} For general information on special accounts see ANAO, \textit{Agency management of special accounts}, Audit report, 24, 2003–04, ANAO, Barton, ACT, 2004. The Department of Finance (DoF), \textit{‘Special appropriations: special accounts’}, DoF website, last updated 16 July 2019, provides the following definition: ‘A special account is a limited special appropriation that notionally sets aside an amount that can be expended for listed purposes. The amount of appropriation that may be drawn from the CRF [Consolidated Revenue Fund] by means of a special account is limited to the balance of each special account at any given time’.
\footnote{27} DoF, \textit{‘Resource management glossary – Consolidated Revenue Fund (CRF)’}, DoF website, last updated 8 November 2017.
\footnote{28} \textit{Education Services for Overseas Students (TPS Levies) Act 2012 (TPS Levies Act), section 7A}.
\footnote{29} \textit{TPS Levies Act}, sections 9 and 10.
\footnote{30} \textit{Education Services for Overseas Students (TPS Levies) Act 2012 (Levy exemptions) Determination 2012 (No. 1)}, clause 5.
Additionally, the specified percentage, which determines how much special tuition protection component providers must pay, has been set at zero every year since the TPS was introduced in 2012.  

This means Australian public universities, government schools, and state or territory VET institutions are only paying the administrative fee and base fee parts of the TPS levy each year, while other providers are also paying a risk-rated premium component.

**TPS operations**

As shown in Table 1 below, from its first year of operation in 2012–13 to 2018–19 (the most recent reporting year), the TPS has responded to 62 provider closures affecting 8,352 students. In 37 cases, the TPS was required to provide active assistance to students with 3,229 calls on the OSTF finalised at a total cost of $8.5 million.

**Table 1: provider closures and resulting financial impact on the OSTF (2012–13 to 2018–19)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Provider closures</th>
<th>Closures requiring TPS assistance</th>
<th>Number of students displaced/assisted</th>
<th>Number of calls on the OSTF finalised</th>
<th>Cost of calls on the OSTF (’000)</th>
<th>OSTF closing balance (’000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012–13</td>
<td>9</td>
<td>6</td>
<td>907</td>
<td>172</td>
<td>$358</td>
<td>$5,982</td>
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<tr>
<td>2013–14</td>
<td>1</td>
<td>1</td>
<td>161</td>
<td>94</td>
<td>$187</td>
<td>$11,989</td>
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<tr>
<td>2014–15</td>
<td>2</td>
<td>1</td>
<td>548</td>
<td>23</td>
<td>$121</td>
<td>$19,869</td>
</tr>
<tr>
<td>2015–16</td>
<td>12</td>
<td>6</td>
<td>1,534</td>
<td>187</td>
<td>$1,059</td>
<td>$28,168</td>
</tr>
<tr>
<td>2016–17</td>
<td>9</td>
<td>9</td>
<td>2,694</td>
<td>1,415</td>
<td>$2,061</td>
<td>$34,579</td>
</tr>
<tr>
<td>2017–18</td>
<td>13</td>
<td>6</td>
<td>1,495</td>
<td>448</td>
<td>$2,707</td>
<td>$36,433</td>
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<tr>
<td>2018–19</td>
<td>16</td>
<td>8</td>
<td>1,013</td>
<td>890</td>
<td>$2,007</td>
<td>$40,635</td>
</tr>
<tr>
<td>Total</td>
<td>62</td>
<td>37</td>
<td>8,352</td>
<td>3,229</td>
<td>$8,500</td>
<td>-</td>
</tr>
</tbody>
</table>


TPS financial viability

As shown in Table 1 above, TPS levy revenue has consistently outstripped OSTF expenditure.

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31. Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2018; Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2017; Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Instrument 2016; Education Services for Overseas Students (TPS Levies—Risk Rated Premium and Special Tuition Protection Components) Instrument 2015; Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Determination 2014; Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Determination 2013; Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Determination 2012.


33. Ibid.
In 2017, the Education Services for Overseas Students (TPS Levies) Amendment Act 2017 was passed by the Parliament with the aim of providing the Minister flexibility to address over-funding of the OSTF, by moving components of the levy that were at that time set in the TPS Levies Act into legislative instruments.\(^\text{34}\)

The ability to shift levy charges in response to changing circumstances is a key component to the TPS design, with calls on the precursor fund (the ESOS Assurance Fund) from 2008 to 2011 having been much larger than has so far been experienced by the TPS ($27.5 million as compared with the $6.5 million so far paid out from the OSTF).\(^\text{35}\)

**Stakeholder views of the TPS**

International education providers have reported that there are significant benefits from the TPS system both in terms of safeguarding students and the reputation of Australia’s international education sector.\(^\text{36}\)

However, some public providers have expressed concern about the calculation of the levy, arguing that their costs exceed their risk of default. Universities Australia stated in its submission to the 2014 Review of the ESOS Framework Discussion Paper that ‘high quality, low risk providers ... continue to offset risk posed by other parts of the industry’.\(^\text{37}\)

**Committee consideration**

**Senate Standing Committee for the Selection of Bills**

At its meeting on 18 September 2019, the Senate Standing Committee for the Selection of Bills deferred consideration of whether to refer the Bills to a committee for inquiry.\(^\text{38}\)

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing, the Senate Standing Committee for the Scrutiny of Bills had not considered the Bills.\(^\text{39}\)

**Policy position of non-government parties/independents**

At the time of writing, no non-government parties or independents had publicly commented on the Bills.

**Position of major interest groups**

ACPET, now ITECA, has been broadly supportive of the changes, stating in 2018 that ‘[m]odelling the scheme on the highly successful international TPS makes sense and will ensure appropriate governance and a focus on both students and the interests of the industry.’\(^\text{40}\)

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\(^\text{35}\). Ibid., p. 6.


\(^\text{37}\). Universities Australia (UA), *Universities Australia response to the review of the ESOS framework discussion paper*, UA, Canberra, October 2014, p. 9.


\(^\text{39}\). Senate Standing Committee for the Scrutiny of Bills, *Index of Bills considered by the committee*, The Senate, Canberra, 18 September 2019.
Financial implications
According to the Explanatory Memorandum to the Main Bill, the measure is expected to raise $3 million over the forward estimates, as a result of the revenue collected through the levy system. 41

Statement of Compatibility with Human Rights
As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bills are compatible. 42

Parliamentary Joint Committee on Human Rights
At the time of writing, the Parliamentary Joint Committee on Human Rights had not considered the Bills. 43

Key issues and provisions

Schedule 1 of the Main Bill—changes relating to VSL

Current tuition assurance arrangements
Currently, to be an approved course provider to offer VSL under the VSL Act, a body must be party to an approved tuition assurance arrangement. 44 The Secretary can exempt a provider from this requirement. 45

An approved tuition assurance arrangement:
• meets any requirements set out in the VET Student Loans Rules 2016 (the rules)
• provides for students whose tuition fees are covered by VSL to be able to finish their course or an equivalent course and
• repays a student’s tuition fees that were paid using VSL if it is impractical for a student to finish the course or equivalent course. 46

Assistance from the tuition assurance operator will take one of two forms:
• the student is provided with a way to finish the course, or an equivalent course or

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40. Australian Council for Private Education and Training (ACPET), ACPET Welcomes changes to student tuition assurance arrangements, media release, 17 August 2018.
41. Explanatory Memorandum, Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019 (the Main Bill), p. 3.
42. The Statements of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to the Main Bill; page 3 of the Explanatory Memorandum to the VSL Levy Bill and page 3 of the Explanatory Memorandum to the HELP Levy Bill.
43. Parliamentary Joint Committee on Human Rights, Index of Bills and instruments considered by the committee, 19 September 2019.
44. VET Student Loans Act 2016 (VSL Act), paragraph 25(2)(g).
45. VSL Act, paragraph 25(3)(a).
46. VSL Act, section 40.
• if it is impractical for the student to finish the course or equivalent course, the operator repays the student’s tuition fees.\textsuperscript{47}

If the second of these occurs, the course provider is required to re-credit a student’s FEE-HELP balance for the amount used to pay tuition fees for the course.\textsuperscript{48} The FEE-HELP balance is the amount the student has available as possible borrowings, up to the FEE-HELP limit. For 2019, the FEE-HELP limit is $104,440.\textsuperscript{49} Re-crediting means the VSL debt is reduced by the relevant amount.\textsuperscript{50} As VSL debt decreases, the FEE-HELP balance (the amount the student is able to borrow) increases.

If the course provider re-credits a student’s FEE-HELP balance, they must notify the student and the tuition assurance scheme operator as soon as possible.\textsuperscript{51} They must also repay the Commonwealth for the re-credited amount.\textsuperscript{52}

While not absolving the provider of their responsibilities, the tuition assurance scheme operator can also be required to repay the re-credited FEE-HELP balance to the Commonwealth.\textsuperscript{53}

A large proportion of the detailed requirements for tuition assurance arrangements are contained in the rules, including requirements for tuition assurance providers, information that must be provided to students and the Secretary, notice periods, and rights to review.

**Items 3, 5, 7, 8, 9, 11, 12, 13, 15, 21 and 31** repeal all of the tuition assurance provisions of the **VSL Act**, with, where relevant, replacement references to tuition protection, with the effect that there would no longer be any legal basis to require providers seeking approval to offer VSL to be party to an approved tuition assurance arrangement.

However, under the application and transitional provisions at **item 42**, the repeal of tuition assurance requirements related to becoming an approved course provider will not apply to providers that are already approved at the time the changes come into effect. Courses that were not provided to completion prior to the commencement of the proposed changes are to be dealt with under the tuition assurance arrangements as if these repeals had not happened. The effect of this is to ensure providers are not relieved of their responsibilities to students who may have experienced course or provider closure prior to the introduction of the new arrangements. This does not exempt existing approved course providers from participation in the new tuition protection scheme.

**New definitions**

**Items 2, 4, 6 and 10** propose a number of new definitions be inserted into section 6 (definitions) of the **VSL Act** as outlined in Table 2 below, to support the administration of the proposed new VSL tuition protection scheme.

\begin{table}
\caption{New Definitions for VSL Act}
\begin{tabular}{|l|}
\hline
\textbf{Definition} & \textbf{VSL Act} \\
\hline
Tuition assurance & section 41. \\
\hline
Tuition protection & subsection 69(1); subsection 69(2). \\
\hline
FEE-HELP & DoE, ‘FEE-HELP’, StudyAssist website, n.d. \\
\hline
VSL & subsection 23BA(4). \\
\hline
Commonwealth & subsection 69(3). \\
\hline
VSL & subsection 22(1). \\
\hline
VSL Act & section 23. \\
\hline
\end{tabular}
\end{table}
Table 2: new definitions inserted into the VSL Act by Schedule 1

<table>
<thead>
<tr>
<th>Item reference</th>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>affected part</td>
<td>A part of the course that a student was enrolled in when an approved course provider defaulted in relation to the student.</td>
</tr>
<tr>
<td>4</td>
<td>default</td>
<td>See section 66B (discussed below).</td>
</tr>
<tr>
<td>4</td>
<td>Education Minister</td>
<td>The Minister who administers the Education Services for Overseas Students Act 2000.</td>
</tr>
<tr>
<td>4</td>
<td>eligible student</td>
<td>See section 9.</td>
</tr>
<tr>
<td>4</td>
<td>listed course provider</td>
<td>See subsection 27(2).</td>
</tr>
<tr>
<td>6</td>
<td>original course</td>
<td>An approved course in relation to which an approved course provider has defaulted.</td>
</tr>
<tr>
<td>6</td>
<td>replacement component</td>
<td>A part of a replacement course that replaces an affected part of an original course.</td>
</tr>
<tr>
<td>6</td>
<td>replacement course</td>
<td>An approved course that enables a student to finish:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) an original course; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) a course that is equivalent to an original course.</td>
</tr>
<tr>
<td>10</td>
<td>VSL Tuition Protection Director</td>
<td>The person referred to in section 66M.</td>
</tr>
<tr>
<td>10</td>
<td>VSL Tuition Protection Fund</td>
<td>The VSL Tuition Protection Fund established by section 66J.</td>
</tr>
<tr>
<td>10</td>
<td>VSL Tuition Protection Fund Advisory Board</td>
<td>The VSL Tuition Protection Fund Advisory Board established by section 66Q.</td>
</tr>
<tr>
<td>10</td>
<td>VSL tuition protection levy</td>
<td>The levy imposed by the VET Student Loans (VSL Tuition Protection Levy) Act 2019.</td>
</tr>
</tbody>
</table>

Source: Explanatory Memorandum to the Main Bill.

Establishing VET Student Loans Tuition Protection

**Item 1** proposes to insert into the outline of the VSL Act at section 5, a description of:

- proposed part 5A, which sets out arrangements relating to tuition protection and
- proposed part 5B, which establishes the VSL Tuition Protection Fund, the office of the VSL Tuition Protection Director and the VSL Tuition Protection Fund Advisory Board.

**Item 20** inserts part 5A and part 5B. The details of the proposed parts are set out below.

Proposed Part 5A—tuition protection

Proposed section 66A, at the beginning of Part 5A, specifies that the tuition protection arrangements are to apply to providers other than Table A providers and providers prescribed by
the rules. Like the existing TPS then, particular providers, or classes of providers, can be exempt from the tuition protection arrangements.

Proposed section 66B sets out a new definition of provider default in relation to a student, covering circumstances where:

• the course the student is enrolled in does not start as scheduled, providing the student has not withdrawn from the course before that day or
• the course, or part of the course, the student is enrolled in, ceases after starting but before completion or
• in circumstances prescribed by the rules.

In both the two former cases, either VSL must have been approved on or before the relevant day, or on that day the student must have been eligible to have VSL approved in relation to the course. Section 9 of the VSL Act includes having applied for VSL among the requirements to be considered an eligible student, so this provision does not apply to a student who could have used VSL to pay their course fees but chose instead to pay up-front.

Proposed section 66C introduces requirements for the approved provider to notify the VSL Tuition Protection Director (the VSL Director) of a default. The course provider:

• must provide written notice to the VSL Director, within 24 hours, of the circumstances of the default
• must provide written notice, within three business days, to the VSL Director, specifying, in relation to each student impacted by the default:
  – the student’s full name and contact details
  – the course, or part or parts of the course, that the student was enrolled in at the time of the default
  – the amount of the tuition fees for each course, or part of the course, that student was enrolled in at the time of the default
  – details about the payment of those tuition fees
  – any other matter prescribed by the rules.
• if requested in writing by the VSL Director, give the VSL Director either of the following for a student in relation to whom the default has occurred:
  – a copy of a statement of attainment or other Australian Qualifications Framework (AQF) certification document issued by the course provider or an authorised issuing organisation for the parts of the course the student has completed or
  – a copy of an authenticated VET transcript prepared by the Registrar for the parts of the course the student has completed.

Proposed subsection 66C(5) allows other requirements for the purposes of notices given under this section to be prescribed by the rules.

Proposed section 66D would also require approved course providers to give notice of default to affected students (that is, the students in relation to whom the provider has defaulted) within 24 hours of the default occurring. This notice must comply with any requirements prescribed by the rules.

54. Rules may be made by the Minister, by legislative instrument, under section 116 of the VSL Act.
55. Registrar has the meaning given by the Student Identifiers Act 2014: the ‘Student Identifiers Registrar’, Unique Student Identifier website, last modified 1 October 2019.
**Proposed section 66E** requires the VSL Director to decide, if an approved course provider defaults in relation to a student, whether or not they are satisfied there are one or more suitable replacement courses for the student.

In making this decision, the VSL Director must have regard to:

- whether the replacement course leads to the same or a comparable qualification as the original course
- whether the mode of delivery of the replacement course is the same as that of the original course
- the location where the replacement course for a student will be primarily delivered
- whether a student who enrolls in the replacement course:
  - will incur additional fees that are unreasonable and
  - will be able to attend the course without unreasonable impacts on the student’s prior commitments and
- any other matters prescribed by the rules.

**Proposed section 66F** requires providers to provide information about replacement courses, to enable the VSL Director to make a decision under **proposed section 66E** about whether or not there are one or more suitable replacement courses for a student, if advised in writing that they must do so by the VSL Director. The information must be provided in a form (if any) approved by the VSL Director for the information, and in accordance with any other requirements the VSL Director makes.

If the VSL Director decides there are one or more suitable replacement courses for the student, under **proposed subsection 66E(3)** they must give written notice to the student that includes:

- a description of each suitable replacement course, including the qualification that the course leads to
- the contact details of the provider of each suitable replacement course
- an explanation that, if tuition fees have been paid for the affected part of the original course, tuition fees would not be payable for the replacement component of the replacement course
- an explanation that, if the student chooses to enrol in another course, there is no obligation on the provider of the other course to offer a replacement component without charge to the student
- an explanation of the matters the VSL Director must have regard to in making the decision about the availability of one or more suitable replacement courses, as mentioned above
- an explanation of the student’s right to request reconsideration of the VSL Director’s decision within 28 days, or longer if the VSL Director allows
- an explanation that if, upon reconsideration, it is determined there is no suitable replacement course for the student, an amount equal to the student’s loan amount that has been used to pay tuition fees for the student for the affected part will be re-credited to the student’s HELP balance and
- any other matters prescribed in the rules.

The Bills refer to HELP balance, rather than FEE-HELP balance throughout. Under Schedule 3 of the [Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018](https://www.comlaw.gov.au/_act/acts/Roll200600640) (Student Loan Sustainability Act) from 1 January 2020, the lifetime FEE-HELP limit will be replaced by a HELP
limit, and it will be possible for borrowers to replenish their HELP balance through repayments on the loan (that is, it will no longer be a ‘lifetime limit’).

**Proposed section 66G** applies to replacement providers if a student accepts an offer of a place in a replacement course. The approved course provider who provides the *replacement course* must give written notice of the acceptance to the VSL Director within 14 days. The replacement provider must also ensure that the student:

- is granted course credits for parts of the original course successfully completed by the student, as evidenced by:
  - a statement of attainment or other AQF certification documentation issued in accordance with the AQF
  - an authenticated VET transcript prepared by the Registrar
- is not charged tuition fees for the replacement component of the replacement course, if tuition fees have been paid for the affected part of the original course and
- is enrolled in the replacement course as soon as practicable.

If the VSL Director decides **there are not** one or more suitable replacement courses for the student, under **proposed subsection 66E(4)** they must give written notice to the student that includes:

- an explanation of the matters the VSL Director must have regard to in making the decision about the availability of one or more suitable replacement courses, as mentioned above
- an explanation of the student’s right to request reconsideration of the VSL Director’s decision within 28 days, or longer if the VSL Director allows
- a statement that, to facilitate early re-crediting, the student may, at any time during the 28 days, give the VSL Director notice in writing that the student will not seek reconsideration of the decision
- a statement that, if the decision is not reconsidered or is confirmed, an amount equal to the student’s loan amount that has been used to pay tuition fees for the student for the affected part will be re-credited to the student’s HELP balance.

**Proposed section 66H** sets out obligations where the VSL Director has decided there is no suitable replacement course for a student who has been subject to provider default. It requires the VSL Director to give the Secretary written notice of the decision. Written notice must also be given to the provider:

- stating an amount equal to the loan amount that has been used to pay tuition fees for the student for the affected part will be re-credited to the student’s HELP balance, and will be required to be paid by the provider to the Commonwealth and
- inviting the provider to make written submission to the VSL Director about the amount of the re-credit within 28 days.

A note to this section clarifies that the Secretary must consider submissions before re-crediting the student’s HELP balance.

**Proposed Part 5B— the VSL Tuition Protection Fund, VSL Tuition Protection Director, and VSL Tuition Protection Advisory Board**

**The VSL Tuition Protection Fund**

**Proposed section 66J** establishes the VSL Tuition Protection Fund (VSL Fund) as a special account for the purposes of the *PGPA Act*. 

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Proposed section 66K provides that the following credits must be made to the VSL Fund:

- each amount of VSL tuition protection levy received from an approved course provider
- each amount paid by a course provider to the Commonwealth that relates to a re-credited amount if the balance of the VSL Fund had previously been reduced as part of the Secretary re-crediting a student’s HELP balance as part of VSL tuition protection arrangements
- any money appropriated by the Parliament for the purposes of the VSL Fund
- any penalties for late payment of the VSL levy and
- each amount received by the Commonwealth for the purposes of the VSL Fund.

The section does not specify any specific amount to be credited to the VSL Fund on its creation or on a regular basis thereafter.

Proposed section 66L specifies the purposes of the VSL Fund:

- making payments in connection with tuition protection
- paying or discharging costs, expenses and other obligations incurred by the Commonwealth in the performance of the VSL Director’s functions, including managing the VSL Fund
- paying any remuneration and allowances payable to the VSL Director
- paying any remuneration and allowances payable to the members of the VSL Tuition Protection Fund Advisory Board
- paying any amount that is required or permitted to be repaid and
- reducing the balance of the VSL Fund (and therefore the available appropriation for the Fund) without making any real or notional payment.

It also provides that the rules may, for the purposes of making payments in connection with tuition protection, make provision in relation to such payments, including in relation to:

- the circumstances in which payments may be made
- amounts of different kinds of payments
- methods for calculating different kinds of payments.

It also disallows using the VSL Fund to pay expenses or other obligations associated with services provided to the VSL Director by an employee or officer of a Commonwealth entity. This means, for example, that staffing costs for an Office of the VSL Director would not be covered. However, the remuneration and allowances payable to the VSL Director and VSL Tuition Protection Fund Advisory Board would be covered by the VSL Fund, as would costs associated with assisting in the performance of these functions. The Explanatory Memorandum cites examples of anticipated allowable costs:

... a service provider to provide case management and student placement services for students affected by a provider default... paying premiums for insurance coverage for the tuition protection arrangements where the VSL Tuition Protection Fund is below its target size [and] paying for actuarial advice to inform the setting of levy components.36

36. Explanatory Memorandum, the Main Bill, op. cit., p. 24.
The VSL Tuition Protection Director

**Proposed section 66M** establishes that there is to be a VSL Director, and that the office is to be held by the person who holds the office of TPS Director under section 54A of the *ESOS Act*, including an acting appointment under section 54K of the *ESOS Act*. That is, the office of the VSL Director will function as an additional responsibility for the existing TPS Director.

**Proposed section 66N** sets out the functions of the VSL Director:

- facilitating and monitoring the placement of the students in relation to whom an approved course provider has defaulted
- paying amounts out of, or reducing the balance of, the VSL Fund
- reporting to the Minister on:
  - the operation of tuition protection
  - the financial status of the VSL Fund
- managing the VSL Fund in a way that ensures it is able to meet all its liabilities, including entering into a loan agreement for the benefit of the VSL Fund
- making the legislative instrument each year for the purposes of the proposed *VSL Tuition Protection Levy Act 2019*
- recommending that the Secretary take action against an approved course provider that has defaulted in relation to a student or has otherwise not complied with the *VSL Act*
- any other function conferred by the *VSL Act* or any other Commonwealth law and
- any function that is incidental or conducive to the performance of the other functions outlined above.

**Proposed section 66P** sets out the administrative provisions relating to the VSL Director, partly by reference to the *ESOS Act*. It specifies that the following provisions from the *ESOS Act* apply in relation to the VSL Director:

- the TPS Director is to be paid the remuneration as determined by the Remuneration Tribunal, or in the absence of such a determination, the remuneration is to be as prescribed by the Regulations, which will also prescribe any allowances payable to the TPS Director (section 54C of the *ESOS Act*)
- the TPS Director has the recreation leave entitlements that are determined by the Remuneration Tribunal, and the Minister may grant the TPS Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines (section 54D of the *ESOS Act*)
- the TPS Director must not engage in paid employment outside the duties of his or her office without the Minister’s approval (section 54E of the *ESOS Act*)
- the TPS Director must give written notice to the Minister of all interests, pecuniary or otherwise, that the TPS Director has or acquires that could conflict with the proper performance of the TPS Director’s functions (section 54F of the *ESOS Act*)
- the TPS Director holds office on the terms and conditions (if any) in relation to matters not covered by this Division that are determined by the Minister (section 54J of the *ESOS Act*).

It also specifies that:

- for the purposes of the *ESOS Act*, the Education Minister is taken to have given approval to the TPS Director to engage in paid employment as the VSL Director and
• the Education Minister may terminate the appointment of the VSL Director if they engage, except with the Education Minister’s approval, in paid employment outside the duties of their office, or fail, without reasonable excuse, to comply with the disclosure of interests requirements set out in section 54F of the ESOS Act (specified above).

Items 28, 29 and 30 insert provisions to give the VSL Director powers under the Regulatory Powers (Standard Provisions) Act 2014 (the Regulatory Powers Act) which are consistent with those already in place for the Secretary.  

Item 41 inserts proposed subsection 114(3), which would allow the VSL Director to, in writing, delegate any or all of their powers under the VSL Act (other than making the legislative instrument related to the calculation of the Levy) to an APS 6 or above employee of the Department, or the Department administered by the Education Minister.

The VSL Tuition Protection Fund Advisory Board

Proposed section 66Q establishes the VSL Tuition Protection Fund Advisory Board (VSL Fund Advisory Board). Membership is to be the same membership as the TPS Advisory Board appointed under section 55D of the ESOS Act, which requires the Minister to appoint members by legislative instrument, on a part-time basis, for a period not exceeding two years (but eligible for reappointment).

Proposed section 66R specifies that the VSL Advisory Board is to be responsible for, either on its own initiative or at the request of the VSL Director, providing advice and making recommendations to the VSL Director in relation to the levy under the proposed VSL Levy Act 2019.

Arrangements for the Board’s operations will also be drawn by reference from the ESOS Act under this section and proposed sections 66Q and 66S:

• the Chair and members may undertake their roles in an acting capacity (see subsections 55N(1) and 55N(2) of the ESOS Act)
• the Chair and Deputy Chair are to be the Chair and Deputy Chair of the TPS Advisory Board appointed in writing by the Minister (see subsection 55C(3) of the ESOS Act)
• a person is eligible for appointment if the Education Minister is satisfied the person has qualifications or experience that the Education Minister considers relevant to the performance of the VSL Advisory Board’s functions (see subsection 55C(2) of the ESOS Act)
• remuneration for Advisory Board members is to be determined by the Remuneration Tribunal, or in the absence of that determination, as prescribed by the Regulations, while allowances for Advisory Board members are to be as prescribed by the Regulations—these provisions are subject to the Remuneration Tribunal Act 1973 (see subsection 55E of the ESOS Act)
• a Board member’s appointment can be terminated if they fail to disclose to the Minister all interests, pecuniary or otherwise, that they have or acquire that could conflict with their duties as an Advisory Board member, and/or fail to disclose to the Advisory Board such interests if they relate to a matter being considered by the Advisory Board (see paragraph 55L(2)(d) and sections 55H and 55J of the ESOS Act) and
• if an Advisory Board member discloses an interest to the Advisory Board relating to a matter under consideration, unless the Advisory Board determines otherwise, that member must not

57. VSL Act, Part 8.
be present for deliberations on the matter, or take part in any decision on the matter—if this occurs and the meeting goes from having a quorum (six members) to not having a quorum as a consequence, providing the Chair or Deputy Chair is still present, the remaining members are considered to constitute a quorum for the purposes of any deliberation or decision at the meeting with respect to that matter (see section 55J and subsection 56C(2) of the ESOS Act).

Requirements for the Secretary to re-credit a student’s HELP balance

As outlined above, requirements for a course provider to re-credit a student’s FEE-HELP balance if a course is not provided to completion are currently in section 69. **Item 21** would repeal that section.

**Item 22** inserts proposed section 72A, which would require the Secretary to re-credit a student’s HELP balance if the student has not completed the requirements of the course, or part of the course, because the provider defaulted, and the VSL Director decides there is not a suitable replacement course for the student.

Consistent with the current tuition assurance arrangements under section 69, the amount to be re-credited would be equal to the loan amount used to pay tuition fees for the student for the affected part.

In determining the amount, the Secretary would be required to take into account any submissions by the provider received by the VSL Director in relation to the amount, and once the decision is made, the Secretary would be required to give the student and provider written notice as soon as practicable.

The note to proposed subsection 72A(1) specifies that the course provider may be required to pay an amount to the Commonwealth as a result of re-crediting under this section. Under section 22, a course provider must repay a loan amount to the Commonwealth if that amount is re-credited.

Requirements for a course provider to re-credit a student’s FEE-HELP balance in **special circumstances** at section 68, and allowances for the Secretary to act in place of the provider for those purposes at section 70, are unchanged. 58

**Item 23** inserts an exception to section 73, which currently requires the Secretary to invite submissions from the provider before re-crediting a student’s FEE-HELP balance, to the effect that if the re-credit related to a provider default, the Secretary would not be required to invite submissions. This prevents the Secretary from duplicating work the VSL Director would already be required to undertake.

Review of decisions about replacement courses

**Item 24** adds the VSL Director’s decisions about whether or not there is a suitable replacement course to the table of reviewable decisions in section 74.

**Item 26** inserts proposed section 78A, which would have the effect of preventing a delegate of the VSL Director from reviewing their own decisions, and ensuring that delegates of the VSL Director

58. **Special circumstances** are defined in subsection 68(3) as being: beyond the student’s control; not making their full impact on the student until on or after the census day for the course, or the part of the course; and making it impracticable for the student to complete the requirements for the course, or the part of the course, during the student’s enrolment in the course, or the part of the course.
only review decisions of other delegates if they were not involved in making the original decision, and are not at a lower level than the delegate who made the decision.

**Item 27** adds an exception to section 80, to the effect that decisions about replacement courses made under proposed paragraphs 66E(1)(a) or (b) cannot be appealed to the Administrative Appeals Tribunal.

**Making payment of the VSL tuition protection levy a requirement for approval**

An addition to the general requirements imposed on providers is made by **item 18** (inserting proposed section 49A), which requires providers covered by Part 5A of the **VSL Act** to pay the VSL tuition protection levy, which will be imposed by the **VSL Levy Act**, discussed below. While most of the administrative arrangements for this levy will be prescribed under rules, proposed section 49A would require an approved course provider to pay the VSL tuition protection levy, and any penalty for late payment of the levy, when it is payable and due.

**Proposed subsection 49A(2)** would allow the following matters to be dealt with in the rules:

- (a) the issue of notices setting out the amount of VSL tuition protection levy payable by a provider;
- (b) when VSL tuition protection levy is due and payable;
- (c) the issue of notices extending the time for payment of VSL tuition protection levy;
- (d) penalties for late payment of VSL tuition protection levy;
- (e) to whom VSL tuition protection levy and any penalties for late payment are payable;
- (f) the refund, remission or waiver of VSL tuition protection levy or penalties for late payment;
- (g) the notional liability of the Commonwealth to pay VSL tuition protection levy;
- (h) the review of decisions made under the rules in relation to the collection or recovery of VSL tuition protection levy;
- (i) any other matters relating to the collection or recovery of VSL tuition protection levy.

**Information sharing and cooperation provisions**

A number of amendments are proposed to include VSL tuition protection amongst other relevant information sharing and coordination provisions currently in the **VSL Act**.

**Item 14** repeals section 39, which currently requires the Secretary to give notice to ASQA if the approval of a course provider is revoked or suspended, and replaces it with proposed section 39, which requires both ASQA and the VSL Director to be notified.

**Item 16** adds a requirement for an approved course provider to cooperate with the VSL Director to section 46, at proposed paragraph 46(ba). This is consistent with the current provisions of section 46, which include cooperation with ASQA, the Secretary, an APS employee of the Department, a consultant engaged by the Commonwealth to perform work in relation to the **VSL Act**, and the operator of the approved external dispute resolution scheme of which the provider is a member.

**Item 19** proposes to insert proposed subparagraph 52(2)(b)(x), listing tuition protection, into paragraph 52(2)(b), which deals with the ongoing information requirements the approved course provider may be required to meet to ensure the Secretary has access to information and
documents for the purposes of the VSL Act. This is consistent with the current provisions of paragraph 52(2)(b), which list the provider’s financial position, courses of study, and students, among information requirements the provider may be required to meet.

**Item 33** inserts **proposed subsection 94(2)**, allowing the VSL Director to disclose VET information to a department, agency, or authority of the Commonwealth, a state or territory, or an enforcement body, if they believe on reasonable grounds that the disclosure of that information is necessary for an enforcement related activity.

**Item 34** inserts **proposed section 104A**, which would allow the VSL Director to require a person to provide information or documents if the VSL Director gives written notice and they believe on reasonable grounds that the person has information or documents relevant to determining if tuition protection requirements have been complied with. The VSL Director would be able to specify the form and other requirements for the information to be provided. No limitations are applied in relation to the identity of the person who would be subject to these requirements.

**Review of the operation of VSL tuition protection and the TPS**

**Item 38** inserts **proposed section 113A**, which would require the Minister to commence a review of the operation of tuition protection, the VSL Fund and related matters before 1 July 2021. This would be conducted at the same time as a review of the existing TPS, proposed as an amendment to the ESOS Act at **item 50**, and a review of the proposed higher education version of the tuition protection scheme under HESA, at Schedule 2. The review would be required to include a report to be tabled in both Houses of Parliament within 15 sitting days after completion of the report.

**Civil and criminal penalties**

Civil and criminal penalties have also been included in the main Bill to ensure compliance. A penalty of 60 penalty units applies to each of the following civil penalties and criminal offences in relation to VSL tuition protection:

- failure of an approved provider to notify the VSL Director of a default (**proposed section 66C** at **item 20**)
- failure of an approved provider to give notice of default to affected students (that is, the students in relation to whom the provider has defaulted) within 24 hours of the default occurring (**proposed section 66D** at **item 20**)
- failure of an approved provider to provide information about replacement courses to enable the VSL Director to make a decision about whether or not there are one or more suitable replacement courses for a student, if advised in writing that they must do so by the VSL Director (**proposed section 66F** at **item 20**)

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59. ‘Enforcement body’ is defined at section 6 of the Privacy Act 1988 to include the Australian Federal Police and state and territory police forces, the Department of Home Affairs, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and Commonwealth, state and territory Offices of the Director or Public Prosecutions, among others.

60. ‘Enforcement related activity’ is defined at section 6 of the Privacy Act 1988 to include the prevention, detection, investigation, prosecution or punishment of criminal offences or other breaches of law imposing a penalty; the protection of public revenue; and the prevention, detection, investigation or remedying of misconduct of a serious nature.

61. One penalty unit is currently $210, as per section 4AA of the Crimes Act 1914.
• failure of an approved course provider who provides the replacement course to give written notice of the acceptance to the VSL Director within 14 days, and advise the student of the details of the course arrangements as specified in proposed section 66G (at item 20) and
• a person who fails to provide information or documents in accordance with written notice given by the VSL Director, who believes on reasonable grounds that the information or documents are relevant to determining if the tuition protection requirements have been complied with (proposed section 104A at item 34).

Schedule 2 of the Main Bill—changes relating to HELP

Current tuition assurance arrangements

Currently, to be approved by the Minister as a higher education provider under HESA, a body corporate must fulfil the tuition assurance requirements, unless exempt. The tuition assurance requirements that must be adhered to are set out in the Higher Education Provider Guidelines 2012 (the Guidelines).

Table A providers are exempt from the tuition assurance requirements. Other providers may also be exempt from these requirements with written approval from the Minister, either at the time of approval or after. Non-exempt providers face a civil penalty of 60 penalty units if they are not exempt and do not comply with the tuition assurance requirements.

Students who are enrolled in a course of study which the provider ceases to provide as planned are able to choose between:

• an offer of a place in a similar course of study with a second provider, without any requirement to pay the second provider or
• a refund of their payments for any unit of study that they commenced but did not complete because their provider ceased to provide the course of study of which the unit forms a part (if they choose this option their HECS-HELP debt or FEE-HELP balance will be re-credited a corresponding amount).

Although these arrangements are broadly similar to the arrangements for VSL students outlined above, the VET tuition assurance arrangements, and proposed VET tuition protection scheme, give priority to replacement courses, with the refund of course fees only in the event that a suitable replacement course is not available.

Items 2, 3, 4, 6, 7, 8, 10, 11, 13, 14, 17, 18 and 32 repeal all of the tuition assurance provisions, with, where relevant, replacement references to tuition protection. The effect of these changes is to remove the legal basis to require bodies making an application for approval as a higher education provider under HESA to be party to an approved tuition assurance arrangement as described above in order to be approved.

However, under the application and transitional provisions at item 34, the same arrangements as apply to the commencement of VSL tuition protection apply to the commencement of HELP

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62. HESA, section 16-25(c).
63. HESA, section 16-30.
64. HESA, section 19-40.
66. HESA, section 19-40.
67. The Guidelines, Chapter 2.20.15.
tuition protection. That is, the repeal of tuition assurance requirements related to becoming an approved course provider will not apply to providers that are already approved at the time the changes come into effect. Courses that were not provided to completion prior to commencement of the proposed changes are to be dealt with under the tuition assurance arrangements as if these repeals had never happened.

**New definitions**

**Items 31 and 33** propose a number of new definitions be inserted into Schedule 1 of *HESA* (the dictionary), as outlined in Table 3 below, to support the administration of the proposed new HELP tuition protection scheme.

**Table 3: new definitions inserted into HESA by Schedule 2**

<table>
<thead>
<tr>
<th>Item reference</th>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>affected unit</td>
<td><em>affected unit</em>, of an original course, means a unit of study that a student was undertaking as part of a course of study when a higher education provider defaulted in relation to the student.</td>
</tr>
<tr>
<td>31</td>
<td>default</td>
<td>See section 166-10.</td>
</tr>
<tr>
<td>31</td>
<td>HELP Tuition Protection Director</td>
<td>The person referred to in section 167-15.</td>
</tr>
<tr>
<td>31</td>
<td>HELP Tuition Protection Fund</td>
<td>The HELP Tuition Protection Fund established by section 167-1.</td>
</tr>
<tr>
<td>31</td>
<td>HELP Tuition Protection Fund Advisory Board</td>
<td>The HELP Tuition Protection Fund Advisory Board established by section 167-30.</td>
</tr>
<tr>
<td>31</td>
<td>HELP tuition protection levy</td>
<td>The levy imposed by the <em>Higher Education Support (HELP Tuition Protection Levy) Act 2019</em>.</td>
</tr>
<tr>
<td>31</td>
<td>original course</td>
<td>A course of study in relation to which a higher education provider has defaulted.</td>
</tr>
<tr>
<td>31</td>
<td>replacement course</td>
<td>A course of study that enables a student to finish:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) an original course; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) a course that is equivalent to an original course.</td>
</tr>
<tr>
<td>31</td>
<td>replacement unit</td>
<td>A unit of study of a replacement course that replaces an affected unit of an original course.</td>
</tr>
<tr>
<td>33</td>
<td>tuition protection requirements</td>
<td>Has the meaning given by section 16-30.</td>
</tr>
</tbody>
</table>

Source: [Explanatory Memorandum to the Main Bill.](#)
Establishing HELP Tuition Protection

According to proposed paragraph 16-25(1)(c) at item 2, all approved higher education providers under HESA will be required to meet tuition protection requirements, unless they are exempt. As outlined below at item 16, Table A providers (Australian public universities) will be exempt.

Other universities and NUHEPs will be required to meet the tuition protection requirements, although they may be exempt by the Minister through the Guidelines.68 The Explanatory Memorandum to the Bill states:

This [provision for the Guidelines to be used to exempt providers] is to provide for additional flexibility should it become apparent that the risk of a particular provider defaulting is low, and in circumstances where that provider has demonstrated that it has adequate processes and procedures in place to provide tuition protection to their students. For example, currently one Table B provider is exempt from the tuition assurance requirements.69

Item 16 inserts Part 5-1A, which sets out the proposed HELP tuition protection arrangements, and Part 5-1B, which sets out arrangements for the HELP Tuition Protection Fund, HELP Tuition Protection Director and the HELP Tuition Protection Fund Advisory Board. The details of the proposed parts are set out below.

Proposed Part 5-1A—tuition protection

Proposed section 166-5 specifies that tuition protection arrangements are to apply to providers other than Table A providers, and those prescribed in the Guidelines, or by written notice by the Minister. This arrangement mirrors that for VSL Tuition Protection.

Proposed section 166-10 sets out a new definition of when a course provider defaults in relation to a student. While it is not in the same terms as the equivalent proposed section 66B of the VSL Act, discussed above, it covers similar circumstances. That is, where:

• the unit of study the student is enrolled in does not start as scheduled, providing the student has not withdrawn from the course before that day (proposed subsection 166-10(1)) or
• the unit of study the student is enrolled in ceases after starting but before completion (proposed subsection 166-10(2)).

In both cases, the student must have been entitled to FEE-HELP or HECS-HELP for the unit of study.

Proposed subsection 166-10(3) provides that the Guidelines may also prescribe circumstances in which a course provider defaults. The Explanatory Memorandum to the Main Bill states:

This provision is not intended to extend the broad circumstances described in subsections 166-10(1) and (2) but rather allow for greater precision and clarity in respect of what situations will, in practice, give rise to a default. For example, the Guidelines may provide that if the provider enters into liquidation, the provider is taken to be in default, since this is a circumstance which inevitably means the provider can no longer be delivering the unit of study to a student.70

68. Table B providers are listed in section 16-20 of HESA. They are Bond University, The University of Notre Dame Australia, MCD University of Divinity, and Torrens University Australia. Table C providers are listed in section 16-22 of HES. They are the Australian branches of Carnegie Mellon University and University College London. A list of all providers approved to offer Commonwealth assistance under HESA (the universities and NUHEPs that will be subject to the tuition protection arrangements) is available from DoE, ‘Providers that offer Commonwealth assistance’, StudyAssist website, n.d.

69. Explanatory Memorandum, the Main Bill, op. cit., p. 42.

70. Ibid., p. 43.
Proposed section 166-15 would require HELP providers to give the same notice, with the same notice periods, to the HELP Tuition Protection Director (the HELP Director) as VSL providers are required to give the VSL Director (essentially, initial advice within 24 hours and then details of students affected within three business days), albeit with reference to the administrative arrangements relevant to higher education rather than VET:

- requirements are in relation to higher education units of study rather than VET courses
- a copy of the student’s records may be required, rather than the statement of attainment or authenticated VET transcript
- requirements can be prescribed in the Guidelines, rather than the rules.

Proposed section 166-20 would require HELP providers to give notice within the same period (24 hours) to students affected by a default, as VSL providers, albeit with requirements set out in the Guidelines rather than the rules.

Proposed section 166-25 would require the HELP Director to make a decision about whether or not there are one or more suitable replacement courses for the student.

In making this decision, the HELP Director must have regard to the same matters the VSL Director is required to consider at proposed section 66E of the VSL Act, discussed above, with the exception that additional matters are to be prescribed in the Guidelines, rather than the rules, and the HELP Director must also consider what course credits the student may receive for the units of study of the original course successfully completed by the student.

Proposed section 166-27 requires providers to provide information about replacement courses, if advised in writing that they must do so by the HELP Director, to enable the HELP Director to make a decision about whether or not there are one or more suitable courses for the student. The information must be provided in a form (if any) prescribed by the HELP Director. This is the same requirement that applies to VET providers under proposed section 66F of the VSL Act.

If the HELP Director decides that there are one or more suitable replacement courses, they are required under proposed subsection 166-25(3) to give written notice to the student that includes:

- a statement that the student may choose to enrol in a replacement course, enrol in another course, or receive an equivalent amount as a re-credit to their HELP balance
- a description of each suitable replacement course, including the qualification the course leads to
- the contact details of the provider for each suitable replacement course
- an explanation that, if tuition fees have been paid for the affected unit for the original course, tuition fees would not need to be paid for the replacement unit
- an explanation that if the student chooses to enrol in another course, there is no obligation on the provider of the other course to offer a replacement unit without charge to the student
- an explanation of the matters the HELP Director must have regard to in making the decision about whether or not there is a suitable course available
- any other matters prescribed by the Guidelines.

This information for the most part reflects the requirements set out in proposed section 66E of the VSL Act. The important difference is that, in retaining the rights students have to choose a replacement course or refund under the existing tuition assurance arrangements (discussed
above) these provisions give HELP students more choice than VSL students, who may only elect a refund if the VSL Director determines that no suitable replacement course is available.

**Proposed section 166-30** applies to replacement providers if a student accepts an offer of a place in a replacement course. It requires the same of HELP replacement providers as **proposed section 66G** of the VSL Act requires of VSL replacement providers in terms of advising the (in this case HELP) Director within 14 days, and ensuring the student is granted appropriate credit, is charged appropriately, and is enrolled in the replacement course as soon as practicable.

**Proposed section 166-32** requires replacement providers to keep the following enrolment records in relation to a student in a replacement course:

(a) the student’s full name and contact details;

(b) the name of the replacement course and the units of study the student is currently enrolled in;

(c) any student contribution amounts or tuition fees charged to the student for any units of the replacement course;

(d) details of the units of study successfully completed by the student;

(e) details of the course credits for units of study of the original course successfully completed by the student granted to the student.

If the HELP Director decides that there are not any suitable replacement courses available, the HELP Director is required under **proposed subsection 166-25(4)** to give written notice to the student that includes the same information as required of the VSL Director at **proposed section 66E** of the VSL Act at item 20 of Schedule 1, covering matters considered, right to request reconsideration within 28 days, right to indicate reconsideration will not be sought, to facilitate early re-crediting, and arrangements for re-crediting.

**Proposed section 166-35** sets out the obligations where the HELP Director has decided there is no suitable replacement course for a student who has been subject to provider default, or where the student elects to have their HELP balance re-credited. In these cases, the HELP Director must give written notice of that fact to the Secretary, and to the provider, specifying the amount that will be re-credited to the student’s HELP balance.

**Proposed Part 5-1B—the HELP Tuition Protection Fund, HELP Tuition Protection Director and HELP Tuition Protection Fund Advisory Board**

**The HELP Tuition Protection Fund**

**Proposed sections 167-1 and 167-5** establish the HELP Tuition Protection Fund (HELP Fund) as a special account for the purposes of the PGPA Act, with requirements to credit the HELP Fund that reflect those set out for the VSL Fund under **proposed section 66J** of the VSL Act at item 20 of Schedule 1. The most important of the sources for these credits is the HELP tuition protection levy amounts paid by higher education providers.

**Proposed section 167-10** sets out the purposes of the HELP Fund, which are equivalent to those set out for the VSL Fund under **proposed section 66L** of the VSL Act at item 20 of Schedule 1, albeit in relation to HELP. Provisions for circumstances in which payments may be made, amounts of different kinds of payments, and methods for calculating different kinds of payments will be set out in the Guidelines, rather than the rules.
The HELP Tuition Protection Director

**Proposed section 167-15** establishes that there is to be a HELP Director and, as with the VSL Director, the office is to be held by the person who holds the office of the TPS Director under section 54A of the *ESOS Act*, including an acting appointment under section 54K of the *ESOS Act*.

**Proposed section 167-20** sets out the functions of the HELP Director, which are the same as the functions of the VSL Director set out in **proposed section 66N** of the *VSL Act* at **item 20** of Schedule 1, albeit with references to responsibility for the HELP Fund, proposed *HELP Levy Act*, and recommending action against higher education providers rather than VET providers.

**Proposed section 167-25** sets out administrative provisions related to the HELP Director, partly by reference to the *ESOS Act*. Arrangements are as for the TPS Director in **proposed section 66P** of the *VSL Act*, at **item 20** of Schedule 1.

**Items 23, 24, and 25** insert **proposed subsections 215-15(3), 215-20(3), and 215-40(1A)** to give the HELP Director powers under the *Regulatory Powers Act*, which are consistent with the powers to apply to a court for enforcement of a civil penalty provision and issue, extend the time to pay, or withdraw an infringement notice currently held by the Secretary and those afforded to the VSL Director at **items 28, 29, and 30** of Schedule 1.

**Item 27** inserts **proposed section 238-6**, which would allow the HELP Director to, in writing, delegate any or all of their powers under *HESA* (other than making the legislative instrument related to the calculation of the levy) to an APS 6 or above employee, or equivalent or higher, of the Department. These arrangements are equivalent to the delegations allowed for the VSL Director in **proposed subsection 114(3)** at **item 41** of Schedule 1. However, while the HELP Director’s delegates are to be in the Department administered by the Education Minister only, the VSL Director’s delegates can be in that department, or the department administered by the Minister with responsibility for the *VSL Act* (currently the Department of Employment, Skills, Small and Family Business). This means that under current administrative arrangements, support for the HELP Director and VSL Director could either be consolidated into the Department of Education or split between two departments. The latter is the case for the interim tuition assurance arrangements currently in place.

The HELP Tuition Protection Fund Advisory Board

**Proposed section 167-30** establishes the HELP Tuition Protection Fund Advisory Board (HELP Fund Advisory Board). Arrangements are as for the VSL Fund Advisory Board in **proposed section 66Q** at **item 20** of Schedule 1. As for the VSL Fund Advisory Board, membership of the HELP Fund Advisory Board is the same as the TPS Advisory Board.

**Proposed section 167-25** specifies that the HELP Fund Advisory Board is to be responsible for, either on its own initiative or at the request of the HELP Director, providing advice and making recommendations to the HELP Director in relation to the levy under the proposed *HELP Levy Act*. Administrative provisions are set out at **proposed section 167-40**. The arrangements in **proposed sections 167-25** and **167-40** reflect those for the VSL Fund Advisory Board in **proposed sections 66R** and **66S** at **item 20** of Schedule 1.

Requirements to re-credit a student’s HELP balance

Currently, when a provider ceases to provide a course to a Commonwealth supported student, providers must repay the amount of a student’s HECS-HELP debt remitted under tuition assurance
arrangements. This provision is repealed by items 8 and 9, and replaced by proposed subsection 36-24A(1) at item 9, which provides that if a Commonwealth supported student has not completed the requirements of a unit because of provider default, and the HELP Director decides that there is not a suitable replacement course for the person, or the person decides to have their HELP balance re-credited, then the HECS-HELP debt will be remitted.

For those students who are not Commonwealth supported, arrangements for re-crediting a person’s FEE-HELP balance when a provider ceases to provide a course are currently set out in section 104-42. This section is amended at item 11 to repeal the tuition assurance paragraphs and substitute arrangements that would require the provider to re-credit a person’s HELP balance in the same circumstances.

Subsection 104-42(2) currently allows the Secretary to re-credit the person’s FEE-HELP balance if the provider is unable to do so. This subsection is repealed at item 12 and replaced with the same allowance for the Secretary to re-credit a person’s HELP balance.

Items 35 and 36 deal with paragraphs 97-42(1)(b), (c), and (d) of HESA, which will be inserted as a result of amendments in the Student Loan Sustainability Act, which will come into effect from January 2020. As outlined above, Schedule 3 of the Student Loan Sustainability Act replaces the current lifetime FEE-HELP limit with a renewable HELP limit. Section 97-42 of the Act will insert, into HESA, arrangements for re-crediting a person’s HELP balance in relation to HECS-HELP when the provider ceases to provide a course. Paragraphs 97-42(1) (c) and (d) make reference to tuition assurance, and item 36 will repeal these and replace them with proposed paragraphs 97-42(1)(b), (c), and (d) which reference tuition protection, immediately after the commencement of the Student Loan Sustainability Act.

Review of decisions about replacement courses

Item 19 inserts the following decisions at the end of the table of reviewable decisions at section 206-1 of HESA:

- a determination by the Minister under proposed subsection 166-5(2), that tuition protection requirements do, or do not apply, to a specified higher education provider and
- a decision by the HELP Director that they are, or are not, satisfied there are one or more suitable replacement courses for a student.

While Schedule 1 inserts provisions to disallow the VSL Director and their delegates from reviewing their own decisions, or those decisions of delegates at a higher level, in proposed section 78A at item 26, equivalent provisions already exist in HESA at section 209-1.

Item 20 inserts proposed subsection 209-10(4A), which specifies that review of a decision is not required in cases where, in accordance with proposed section 166-25, there was no suitable replacement course, and the student to whom the default related gave notice under that section that they would not seek reconsideration of the decision, in order to facilitate early re-crediting.

Item 22 adds an exception to section 212-1, to the effect that it will not be possible to appeal to the Administrative Appeals Tribunal in relation to decisions about whether or not a replacement course is available.

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71. HESA, section 36-24A. A Commonwealth supported student is defined at section 36-5. Commonwealth supported students are those who have their course fees subsidised by the Australian Government through the Commonwealth Grant Scheme. They are generally undergraduate bachelor students at public universities. However, some postgraduate courses and courses at NUHEPs are also Commonwealth supported. See DoE, ‘Commonwealth supported places (CSPs)’, StudyAssist website, n.d.

72. Item 6 of Schedule 3 to the Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018.
Making payment of the HELP tuition protection levy a compliance requirement

Proposed section 19-66A at item 5 adds to the compliance requirements in Subdivision 19-E of HESA, requirements for approved higher education providers to whom Part 5.1A applies to comply with the tuition protection requirements and to pay the HELP tuition protection levy, and any penalty for late payment as imposed under the proposed HELP Levy Act, discussed below.

Proposed subsection 19-66A(3) would allow the following matters to be dealt with in the Guidelines:

(a) the issue of notices setting out the amount of HELP tuition protection levy payable by a provider;
(b) when HELP tuition protection levy is due and payable;
(c) the issue of notices extending the time for payment of HELP tuition protection levy;
(d) penalties for late payment of HELP tuition protection levy;
(e) to whom HELP tuition protection levy and any penalties for late payment are payable;
(f) the refund, remission or waiver of HELP tuition protection levy or penalties for late payment;
(g) the review of decisions made under the Higher Education Provider Guidelines in relation to the collection or recovery of HELP tuition protection levy;
(h) any other matters relating to the collection or recovery of HELP tuition protection levy.

With the exception of the Commonwealth’s notional liability to pay the VSL tuition protection levy, these are the equivalent items that can be included in the rules as set out in proposed section 49A at item 18 of Schedule 1.

Review of the operation of the HELP tuition protection

Item 28 repeals and replaces section 238-7, which is an outdated requirement for the Minister to require, before 31 December 2006, a review to be commenced of the impact on the higher education sector of the higher education reforms enacted through HESA.

Proposed section 238-7 would require the Minister to commence a review of the operation of tuition protection, the HELP Fund and related matters before 1 July 2021, to be conducted at the same time as the review required under the VSL Act (item 38 of Schedule 1) and the ESOS Act (item 50 of Schedule 1).

Civil and criminal penalties

In respect to HELP tuition protection, a penalty of 60 penalty units applies to breaches of each of the following provisions:

• failure of a non-exempt provider to adhere to the tuition protection requirements (proposed section 19-66A at item 5, this is a civil penalty only)
• failure of a provider to provide the prescribed notice to the HELP Director in the event of a default (proposed section 166-15 at item 16, this is a civil penalty and criminal offence)
• failure of a provider to provide the prescribed notice to HELP students in the event of a default (proposed section 166-20 at item 16, this is a civil penalty and criminal offence)
• failure of a higher education provider to provide the HELP Director with information in relation to replacement courses if requested (proposed section 166-27 at item 16, this is a civil penalty and criminal offence)

• failure of a replacement provider to provide notice to the HELP Director and to manage the students enrolment as prescribed (proposed section 166-30 at item 16, this is a civil penalty and criminal offence) and

• failure of a replacement provider to keep enrolment records for a student in a replacement course as prescribed (proposed section 166-32 at item 16, this is a civil penalty and criminal offence).

Students who pay up-front fees

The Bills work by imposing, on non-exempt providers, participation in a tuition protection scheme and payment of an associated levy as a condition of continuing approval as a provider of either VSL or FEE-HELP.

The effect of this is that domestic students who pay up-front fees are not covered by the proposed new tuition protection schemes, or existing TPS. Instead, under current arrangements:

• those accessing state funding or subsidies are referred to their state or territory Department of Education

• those who have paid more than $1,500 are asked to contact ITECA

• those who paid less than $1,500 are referred to the Australian Competition and Consumer Commission.73

The VSL Levy Bill and the HELP Levy Bill—imposition of the levies

The VSL Levy Bill imposes, and sets out a framework for calculating, the VSL tuition protection levy under the proposed VSL Levy Act. Under this Act, the levy will apply to a body that is a ‘leviable provider’ at any time in a year. Clause 5 specifies that a ‘leviable provider’ is an approved course provider to whom Part 5A (proposed in the Main Bill) of the VSL Act applies.

The HELP Levy Bill is in near identical terms to the VSL Levy Bill. It imposes, and sets out a framework for calculating, the HELP tuition protection levy under the proposed HELP Levy Act. Under this Act, the HELP tuition protection levy will apply to a body that is a ‘leviable provider’ at any time in a year. Clause 5 specifies that a ‘leviable provider’ is a higher education provider to whom Part 5-1A (proposed in the Main Bill) of HESA applies.

Under clause 7 of both proposed Acts, the respective levies will consist of:

• an administrative fee component

• a risk rated premium component and

• a tuition protection component.

Subclause 7(3) specifies providers that are owned by the Commonwealth or a state or a territory, and TAFE providers are exempt from the risk rated premium and special tuition protection components.74 That is, they will only pay the administrative fee component.

73. DESSFB, ‘Tuition assurance and provider closures’, op. cit.
In comparison with the TPS Levy, these new levies do not include a base fee component.

**The administrative fee component**

**Clause 8** of both Bills sets out how the administrative fee component of the respective levies is to be calculated.

For new providers for the year, the administrative fee component will be determined in a legislative instrument under **clause 9** of both Bills.

For other providers, the administrative fee component will be the amount determined in the legislative instrument under **clause 9**, multiplied by the total VSL/HELP students for the provider for the year.

Legislative instruments under **clause 9** for the purposes of **clause 8** must be made by the Minister. For 2020 the Minister is required, before 1 August 2020, to determine an amount for new providers, and an amount for other providers. For later years the Minister may, but is not required to, determine new amounts for new providers and/or other providers. If the Minister does not make a new determination, the amount determined previously will be indexed under **clause 10**.

Proposed **subclause 9(3)** imposes limits on the fee amounts:

- the amount for new providers must not exceed $325 and
- the amount for other providers (which is to be multiplied by the total VSL/HELP students for the provider for the year) must not exceed $31 for HELP or $15 for VSL.

**Notes to subclauses 9(2) and 9(3)** direct the reader to the effect of clause 10, which provides for the amounts for new and existing providers, and the caps on those amounts, to be indexed from 2021.

The indexation arrangements for the administrative fee component of each levy, set out in **clause 10** of each Bill, specify an **indexation factor** based on the change in the All Groups Consumer Price Index number from the original series (being the weighted average of the eight capital cities) published by the Australian Statistician for that quarter.

Under **subclauses 9(4) and 9(5)**, in making the legislative instrument, the Minister:

- must have regard to the sustainability of the VSL/HELP Fund and
- may have regard to ‘any other matter the Minister considers appropriate’.

Under current administrative arrangements, for the purpose of the **VSL Levy Act**, the Minister is the Minister for Employment, Skills, Small and Family Business, who currently has responsibility for the **VSL Act**, and for the purposes of the **HELP Levy Act**, the Minister is the Minister for Education, who has primary responsibility for **HESA**.75

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74. TAFE providers are those under the Technical and Further Education Commission Act 1990 (NSW); Education and Training Reform Act 2006 (Vic); TAFE Queensland Act 2013 (Qld); Vocational Education and Training Act 1996 (WA); TAFE SA Act 2012 (SA); Training and Workforce Development Act 2013 (Tas); Canberra Institute of Technology Act 1987 (ACT).

The risk rated premium and tuition protection components

Clause 11 of both Bills sets out how the risk rated premium component of the respective levies is to be calculated.

For new providers for the year, the risk rated premium component will be zero.

For other providers, the risk rated premium component will be calculated according to the method set out in subclause 11(2). The proposed calculation method is:

- the sum of:
  - the number of VSL/HELP students for the year multiplied by the amount determined in a legislative instrument under clause 13 and
  - the amount of VSL/FEE-HELP and HECS-HELP assistance\(^{76}\) paid to the provider in the previous year, multiplied by the percentage determined in a legislative instrument under clause 13 (subclause 13(2) allows this percentage to be zero)

multiplied by

- the sum of each risk factor value worked out for the year in accordance with a legislative instrument under proposed clause 13, plus 1—under subparagraph 13(1)(c)(i), the legislative instrument must determine one or more risk factors that reflect the risk of payments being made out of the VSL Fund or HELP fund, and, for each risk factor, a risk factor value or method for working out the risk factor value for providers or a class of providers, and if a value is provided, under subclause 13(3) it must be a number between zero and 10.

Clause 12 of both Bills sets out how the special tuition protection component of the respective levies is to be calculated.

For new providers for the year, the special tuition protection component for the year will be zero.

For other providers, the special tuition protection component for the year is equal to the total amount of VSL/FEE-HELP and HECS-HELP assistance\(^{77}\) paid to the provider in the previous year, multiplied by the percentage determined in an instrument under clause 13 (subclause 13(2) allows this percentage to be zero).

Subclause 13(1) requires that a legislative instrument for the purposes of the risk rated premium component and tuition protection component must be made by the VSL/HELP Director before 1 August each year from 2020. Subclause 13(6) requires that before a Director makes this legislative instrument, the Treasurer must approve it in writing.

In making the legislative instrument, under subclauses 13(4) and 13(5) a Director:

- must have regard to any advice from the VSL/HELP Fund Advisory Board in relation to the matters dealt with in the instrument
- must have regard to the sustainability of the VSL/HELP Fund and
- may have regard to any other matter that Director considers appropriate.

\(^{76}\) Under sections 19 of the VSL Act and sections 96-1 and 110-1 of HESA.

\(^{77}\) Ibid.
Exemptions
As set out above, new providers in a given year will not pay the risk rated premium component or tuition protection component for that year.

Clause 14 of both Bills also allows that the rules/Guidelines to prescribe one or more classes of leviable providers who are exempt from one or more of the three components of the respective levies.

The Governor-General may make Regulations
Clause 15 of both Bills allows that the Governor-General to make Regulations prescribing matters:
• required or permitted by the proposed Act to be prescribed or
• necessary or convenient to be prescribed for carrying out or giving effect to the respective proposed Acts.

Other provisions

Schedule 3 of the Main Bill—changes to arrangements for revoking VSL provider status at the request of the provider
Schedule 3 of the Main Bill is the only part of the package of Bills that does not relate specifically to tuition protection. It proposes minor amendments to the VSL Act provisions related to the Secretary revoking approval as a VSL provider at the request of that provider.

Currently, under section 38, if an approved provider makes a written request to the Secretary for their approval to be revoked, the Secretary must revoke provider approval and advise the provider in writing.

Schedule 3 consists of items 1 and 2, which amend section 38 and insert proposed subsections 38(2) and 38(3), to allow the Secretary to refuse to revoke the approval if suspending or revoking approval is already in progress under another section of the VSL Act:
• Proposed subsection 38(2) will allow the Secretary to refuse to revoke approval if they have already given the provider written notice under subsection 36(2) that they are proposing to revoke or suspend approval, and they have not yet given written notice, as required under subsection 36(4), of their decision about the proposed suspension or revocation. (Revocation or suspension of approval under section 36 occurs when the Secretary is satisfied that the provider is not complying with their responsibilities under the VSL Act.)
• Proposed subsection 38(3) will allow the Secretary to refuse to revoke approval if they have given the provider written notice, under subsection 36(4) or 37(2), that they have suspended the provider’s approval, and the suspension has not ended. (Suspension under section 37 occurs when the Secretary suspects on reasonable grounds that the provider is not complying with their responsibilities under the VSL Act, and is satisfied that the circumstances require urgent action.)

This will prevent approved providers subject to investigations that may result in their VSL provider status being cancelled from pre-empting such moves by requesting their approved provider status be cancelled.
Concluding comments

These Bills provide a long-term response to the question of how best to protect domestic vocational education and training and higher education students in cases of provider or course closure. They propose to replace sector-managed tuition assurance arrangements with two new Australian Government administered sector-funded tuition protection schemes, modelled on the existing TPS.

The practical effect of the Bills will be to create simpler arrangements for students, with a single statutory office holder directing the existing TPS and both new schemes, and processes for decision-making, student placement, and VSL/HELP re-crediting.

TAFE providers and providers that are owned by the Commonwealth or a state or a territory will not be subject to the risk rated premium and special tuition protection components of the levy, while Table A universities will be exempt from the new arrangements entirely. However, most VSL providers, as well as NUHEPs and Table C providers, will be subject to the proposed new arrangements.

Consistent with the TPS, and current tuition assurance arrangements, a range of details will be specified in legislative instruments. These include any providers that may be exempt, and inputs used in the calculation of the two levies, which are designed to be responsive to possible changing circumstances, including the risk profile of providers.