THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT AMENDMENT (EXTENDING FEE-HELP FOR VET DIPLOMA AND VET ADVANCED DIPLOMA COURSES) BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Vocational and Further Education the Honourable Andrew Robb AO MP)
OUTLINE

This Bill gives effect to a Government budget commitment to extend FEE-HELP assistance to full-fee-paying students in Diploma and Advanced Diploma courses that are accredited as VET qualifications and where credit toward a higher education award is available.

The measure is an extension of existing FEE-HELP arrangements in the higher education sector and is only available where appropriate credit arrangements are in place between the approved VET provider and relevant higher education provider(s). This will ensure that there are good pathways for students wishing to continue through to further study.

VET Registered Training Organisations will be required to seek approval from the Australian Government to receive FEE-HELP assistance for VET Diploma and VET Advanced Diploma students.

FINANCIAL IMPACT

The extension of FEE-HELP for VET Diploma and VET Advanced Diploma courses are appropriated under this Bill. It is expected that around $221m in loans will be issued over the four years to 2010-2011 under this measure although this depends upon the number of VET providers which seek approval to provide VET FEE-HELP assistance and the number of students they enrol.
NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the Higher Education Support Amendment (Extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses) Act 2007.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for sections 1-3 to commence on Royal Assent and for Schedule 1 to commence on 1 January 2008.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information in this column is not part of the Act.

Clause 3 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.
Items 1-16, 18-55 amend the provisions of the *Higher Education Support Act 2003* (the Act) to extend the Act’s operation to the Vocational Education and Training (VET) sector. The amendments are technical in nature and are consequential to item 17.

Item 17 is the substantive amendment which inserts proposed new Schedule 1A into the Act. This Schedule duplicates the relevant parts of the Act and makes the necessary amendments to make the provisions applicable to the VET sector. The effect of this item is to extend FEE-HELP to allow for VET providers to be able to offer FEE-HELP assistance for diploma and advanced diploma courses.

**Items 1, 2 and 3 - At the end of paragraph 2-1(d), section 3-1 and at the end of Division 3**

The purpose of items 1-4 is to extend the operation of the Act to the VET sector.

Section 2-1 sets out the objects of the Act. **Item 1** adds the words “and certain vocational education and training” to paragraph 2-1(d).

Division 3 provides an overview of the Act and section 3-1 sets out the general application of the Act. **Item 2** amends section 3-1 to insert the words “and certain vocational education and training” after the words “for higher education”.

**Item 3** adds proposed new section 3-30 which provides an overview of the proposed new Schedule 1A which deals with the VET FEE-HELP Assistance Scheme. Proposed new section 3-30 clarifies that Schedule 1A provides for financial assistance to students undertaking certain accredited vocational education and training (VET) courses.

**Item 4 - At the end of subsection 5-1(4)**

Division 5 deals with the application of the Act to Table C providers and section 5-1 sets out which provisions of the Act apply and do not apply to Table C providers. **Item 4** adds at the end of subsection 5-1(4) proposed new paragraph 5-1(4)(f). The effect of this amendment is to clarify that Schedule 1A (VET FEE-HELP Assistance Scheme) does not apply to Table C providers.

**Item 5 – At the end of Chapter 1**

**Item 5** is a technical amendment which inserts proposed new Division 6 containing proposed new section 7-1 which provides that Schedule 1A has effect.
Item 6 – After section 22-30

Item 6 inserts proposed new section 22-32 which allows the Minister to make a determination to suspend a body’s approval as a higher education provider but that suspension does not affect the assistance payable to the body’s students under Chapter 3 or the grants to the body under Chapter 2 (Grants for higher education assistance) to the extent that the grants or assistance relate to the students of the body that have not completed the courses of study in which they were enrolled.

Proposed subsection 22-32(2) requires a copy of the determination to be given to the body concerned.

Proposed subsection 22-32(3) provide that the body is taken, for the purposes of the Act, to continue to be a higher education provider, but only to the extent referred to in subsection 22-32(1).

Proposed subsection 22-32(4) provides that subsection 22-32(3) does not prevent the Minister subsequently revoking the body’s approval as a higher education provider under Division 22.

Proposed subsection 22-32(5) provides that a determination made under subsection 22-32(1) to suspend a body’s approval is not a legislative instrument. That subsection has been inserted to assist the reader as the determination is not legislative instruments within the meaning of section 5 of the Legislative Instruments Act 2003. The determination is an administrative decision that only affects that body.

Item 7 - Section 104-15

Division 104 deals with who is entitled to FEE-HELP balances and section 104-15 deals with a person’s FEE-HELP balance. Item 7 repeals the section and substitutes proposed new subsections 104-15(1) and 104-15(2).

Proposed new subsection 104-15(1) provides that a person’s FEE-HELP balance at a particular time is:

- if the FEE-HELP limit in relation to the person at the time exceeds the sum of all of the amounts of FEE-HELP assistance and VET FEE-HELP assistance that have previously been payable to the person, being that sum as reduced by any amounts previously re-credited under this Subdivision or Subdivision 22B of Schedule 1A—that excess; and
- otherwise—zero.

A note at the end of subsection 104-15(1) assists the reader by clarifying that if an amount is to be re-credited to a FEE-HELP balance, the balance that is to be re-credited is worked out immediately before that re-crediting. The balance is worked out after the re-crediting by taking account of the amount re-credited. If a person’s FEE-HELP limit has been reduced, the balance might not increase, or might not increase by the same amount as the amount re-credited.
Proposed new subsection 104-15(2) provides that to avoid doubt, the sum referred to in paragraph 104-15(1)(a) includes amounts of FEE-HELP assistance and VET FEE-HELP assistance that have been repaid.

Item 8 – Section 107-10

Division 107 sets out how amounts of FEE-HELP assistance are worked out. Item 8 repeals section 107-10 and substitutes proposed new subsections 107-10(1), 107-10(2), 107-10(3) and 107-10(4) which have the effect of providing that amounts of FEE-HELP assistance and VET FEE-HELP assistance must not exceed the FEE-HELP balance.

Proposed new subsection 107-10(1) deals with the amount of FEE-HELP assistance for one unit and provides that the amount of FEE-HELP assistance to which a student is entitled for a unit of study is an amount equal to the student’s FEE-HELP balance on the census date for the unit if:

- there is no other unit of study, with the same census date, for which the student is entitled to FEE-HELP assistance or there is no other VET unit of study, with the same census date, for which the student is entitled to VET FEE-HELP assistance; and
- the amount of FEE-HELP assistance to which the student would be entitled under section 107-1 for the unit would exceed that FEE-HELP balance.

Proposed new subsection 107-10(2) deals with the amount of FEE-HELP assistance for more than one unit and provides that if the sum of:

- the amount of FEE-HELP assistance to which a student would be entitled under section 107-1 for a unit of study; and
- any other amounts of FEE-HELP assistance to which the student would be entitled under that section for other units that have the same census date as that unit and VET FEE-HELP assistance to which the student would be entitled under clause 107-1 for other units that have the same census date as that unit

would exceed the student’s FEE-HELP balance on the census date for the unit, then, despite subsection 107-10(1), the total amount of FEE-HELP assistance and VET FEE-HELP assistance to which the student is entitled for all of those units is an amount equal to that FEE-HELP balance.

An example is provided at the end of subsection 107-10(2) to explain the purpose of that subsection.

Proposed new subsection 107-10(3) provides that if the student has enrolled in the units with more than one higher education provider or VET provider, and access to none of the units was provided by Open Universities Australia, the student must notify each provider of the proportion of the total amount of FEE-HELP or VET FEE-HELP assistance that is to be payable in relation to the units in which the student has enrolled with that provider.
**Proposed new subsection 107-10(4)** provides that if access to some (but not all) of the units of study was provided by Open Universities Australia the student must:

- notify Open Universities Australia of the proportion of the total amount of FEE-HELP assistance that is to be payable in relation to units access to which was provided by Open Universities Australia; and
- notify each higher education provider or VET provider at which the student is enrolled in a unit access to which was not provided by Open Universities Australia, of the proportion of the total amount of FEE-HELP assistance that is to be payable in relation to that unit.

**Items 9 and 10 - Sections 129-1 and 134-1**

Chapter 4 deals with repayment of loans and Part 4-1 of Chapter 4 deals with indebtedness or how a person incurs a HELP debt. **Items 9 and 10** repeal and insert proposed new sections 129-1 and 134-1 which are both information provisions. The new sections explain what Chapter 4 and Part 4-1 are about.

**Item 11 - At the end of section 137-1**

Division 137 sets out how HELP debts arise. **Item 11** is a technical amendment which inserts proposed new paragraph 137-1(d) at the end of section 137-1. The effect of this amendment is to clarify that a VET FEE-HELP debt is also a HELP debt.

**Item 12 - After section 137-15**

**Item 12** inserts proposed new section 137-18 which deals with VET FEE-HELP debts.

**Proposed new subsection 137-18(1)** deals with how a VET FEE-HELP debt is incurred and provides that a person incurs a debt to the Commonwealth if, under clause 151-1 of Schedule 1A, the Commonwealth makes a loan to the person and uses the amount lent to make a payment in discharge of the person’s liability to pay his or her VET tuition fee for a VET unit of study. The debt is a VET FEE-HELP debt.

**Proposed new subsection 137-18(2)** provides that the amount of the VET FEE-HELP debt is the amount equal to 120% of the loan.

**Proposed new subsection 137-18(3)** deals with when VET FEE-HELP debts are incurred and provides that VET FEE-HELP debt is taken to have been incurred by a person immediately after the census date for the unit, whether or not the Commonwealth has made a payment in respect of the person’s VET tuition fee for the unit.

**Proposed new subsection 137-18(4)** deals with the remission of VET FEE-HELP debts and provides that a person’s VET FEE-HELP debt in relation to a VET unit of study is taken to be remitted if the person’s VET FEE-HELP balance is re-credited under clause 124, 127 or 139 of Schedule 1A in relation to the unit.
A note at the end of the section has been inserted to assist the reader by clarifying that the debt is taken to be remitted even if an amount equal to the amount re-credited does not increase the person’s VET FEE-HELP balance.

**Items 13 and 14 - Subsection 140-5(1) (method statement, step 2) and subsection 140-25(1A) (method statement, step 1)**

Division 140 sets out how accumulated HELP debts are worked out.

Section 140-5 sets out how a former accumulated HELP debt is worked out. **Item 13** repeals and inserts proposed new step 2 of the method statement in subsection 140-5(1). The effect of this amendment is to insert new paragraphs (f) and (g) which require a person to include the units undertaken with a VET provider that form part of one particular VET course of study with that provider or another provider as part of the HELP debts that person has incurred in the last 6 months of the immediately preceding financial year.

Section 140-25 sets out how an accumulated HELP debt is worked out. **Item 14** repeals step 1 and inserts proposed new step 1 of the method statement in subsection 140-25(1A). The effect of this amendment is to insert new paragraphs (f) and (g) which require a person to include the units undertaken with a VET provider that formed part of one particular VET course of study with that provider or another provider as part of the HELP debts that person incurred during the first 6 months of the financial year.

**Items 15 and 16 – Section 164-25 and after section 238-10**

Section 164-25 provides for the standing appropriation of monies available under the Act. **Item 15** repeals the section and **item 16** inserts proposed new section 238-12 which is equivalent to former section 164-25. This amendment is a technical amendment which shifts the appropriation to Chapter 7 of the Act to make it clear that the standing appropriation now covers both the higher education regime and the VET scheme as provided for by item 17.

**Items 19, 20, 22-25, 28, 31, and 33 - Clause 1 of Schedule 1 (repeal and substitute existing definitions)**

Clause 1 of Schedule 1 sets out the definitions that are used in the Act (known as the Dictionary). **Items 19, 20, 22-25, 28, 31, and 33** repeal and substitute the definitions of annual financial reporting period, appropriate officer, census date, decision maker, enrolled, meets the tax file number requirements, official employment, reviewer and student. The effect of these amendments is to extend, where appropriate, existing definitions in the Act to the vocational education and training sector.

**Items 29 and 32 – Clause 1 of Schedule 1 (amended definitions)**

Clause 1 of Schedule 1 sets out the definitions that are used in the Act. **Items 29 and 32** amend the definitions of request for Commonwealth assistance and review officer which has the effect of extending these existing definitions in the Act to the vocational education and training sector.
Items 18, 21, 26, 27, 30, 34-55 – Clause 1 of Schedule 1 (new definitions)

Clause 1 of Schedule 1 sets out the definitions that are used in the Act. Items 18, 21, 26, 27, 30, 34-55 insert the following new definitions as a result of the inclusion of proposed new Schedule 1A: accredited VET course, Australian Quality Training Framework, NTIS, officer of a VET provider, reviewable VET decision, up-front VET payment, VET Administration Guidelines, VET advanced diploma, VET compliance requirements, VET course of study, VET diploma, VET fairness requirements, VET FEE-HELP assistance, VET FEE-HELP debt, VET FEE-HELP Guidelines, VET fee requirements, VET financial viability requirements, VET officer, VET personal information, VET Provider, VET Provider Guidelines, VET quality and accountability requirements, VET quality requirements, VET tuition assurance requirements, VET tuition fee, VET Tuition Fee Guidelines and VET unit of study.

Item 17 – After Chapter 7

Item 17 inserts proposed new Schedule 1A which sets out all the provision dealing with the VET FEE-HELP Assistance Scheme. A note under the heading refers the reader to section 7-1 which gives effect to Schedule 1A. Proposed new clause 1 explains that the purpose of Schedule 1A which is to provide for loans (VET FEE-HELP assistance) to be made available to students enrolled in certain accredited vocational education and training (VET) courses.

As explained above proposed new Schedule 1A duplicates the relevant parts of the Act and makes the necessary amendments (such as replacing higher education provider with VET provider) to make the provisions applicable to the VET sector. The effect of this item is to extend FEE-HELP to allow for VET providers to be able to offer FEE-HELP assistance for VET diploma and VET advanced diploma courses.

The purpose of the amendments is to duplicate the regime created under the Act and apply that as much as possible to the VET sector. One main difference is that Open Universities Australia (OUA) is not relevant to the VET sector and all of the provisions relating to OUA have not been replicated. Another fundamental difference in the operation of the Act is that VET providers will not be eligible to receive ‘grants’ and other forms of HELP assistance. FEE-HELP assistance is the only assistance that has been extended under the Act for the VET sector.

Schedule 1A also follows the structure of the Act in relation to how the provisions are set out but the provisions in the Schedule are referred to as clauses not sections:

- **Part 1** deals with VET providers (Part 2-1 of the Act deals with higher education providers).

In summary this Part:

- makes provision for the VET Provider Guidelines (which is a legislative instrument and is subject to the provisions of the Legislative Instruments Act 2003) and the VET tuition assurance requirements;
- sets out what is a VET provider and how bodies are approved as VET providers;
provides for the quality and accountability requirements that a VET provider must comply with;
provides for the VET financial viability requirements that a VET provider must comply with;
provides for the VET quality requirements that a VET provider must comply with;
provides for the VET fairness requirements that a VET provider must comply with;
provides for the VET compliance requirements that a VET provider must comply with;
provides for the VET fee requirements that a VET provider must comply with;
sets out when a body ceases to be a VET provider and what the process is to make those decision; and
sets out how a body can apply of its own accord to cease to be a VET provider.

• **Part 2** deals with VET FEE-HELP assistance (Part 3-3 of the Act deals with FEE-HELP assistance).

In summary this Part:

- provides for the VET FEE-HELP Guidelines and the VET Tuition Fee Guidelines (which are both legislative instruments and are subject the provisions of the *Legislative Instruments Act 2003*);
- sets out who is entitled to VET FEE-HELP assistance and how amounts of FEE-HELP assistance are paid;
- sets out what the course requirements are for VET FEE-HELP assistance;
- explains what a person’s FEE-HELP balance is, how it can be recredited and in what circumstances; and
- sets out how amounts of VET FEE-HELP assistance are worked out and paid.

• **Part 3** sets out the administrative matters for VET FEE-HELP assistance (Chapter 5 of the Act sets out the administrative matters);

In summary this Part:

- makes provision for the VET Administrative Guidelines (which is a legislative instrument and is subject the provisions of the *Legislative Instruments Act 2003*);
- deals with payments by the Commonwealth to VET providers;
- sets out the administrative requirements that are imposed on VET providers such as providing notices to students or a person seeking Commonwealth assistance. These matters form part of the quality and accountability requirements that are detailed in the VET Administrative Guidelines;
- allows certain communications between students and VET providers to be transmitted by electronic communication;
- provides for the protection of VET personal information;
• sets out the requirements relating to students’ tax file numbers; and
• sets out which decisions under Schedule 1A are subject to reconsideration (and who can reconsider the decision) and then reviewable by the Administrative Appeals Tribunal.

- **Part 4** sets out the miscellaneous matters for VET FEE-HELP assistance (Chapter 7 of the Act sets out the miscellaneous matters)

In summary this Part:

- provides for the Secretary to delegate all or any of the powers the Secretary has to an APS employee in the Department and to delegate the Secretary’s powers under Subdivision 16-C to a review officer to reconsider VET reviewable decisions made by the VET provider. The Minister’s delegation power has not been replicated in Schedule 1A because the delegation power allows the Minister to delegate his or her powers under the Act, which includes Schedule 1A; and
- provides that the Minister may, by legislative instrument, make the following Guidelines: VET Administrative Guidelines (Part 4), VET FEE-HELP Guidelines (Part 2), VET Provider Guidelines (Part 1) and VET Tuition Fee Guidelines (Part 2).

### Detailed explanation of key provisions

**Clause 6 – Approval by the Minister**

Clause 6 of Schedule 1A provides that the Minister may, in writing, approve a body corporate as a VET provider if the body satisfies the requirements of clause 6. The requirements are essentially the same except that the body’s principal purpose is to provide education (not conduct research) and the body must be a registered training organisation as listed in the National Training Information Service. The body must meet the VET tuition assurance requirements or be exempted from those requirements and the body must be willing and able to meet the VET quality and accountability requirements.

**Clause 8 (VET tuition assurance requirements exemption for approval), 26 (Compliance Assurance-provider) and 37 (Determination retaining approval as a provider in respect of existing students following suspension of approval)**

Clause 8 sets out when the Minister may exempt a body that is seeking approval as a VET provider from the VET tuition assurance requirements. Subclause 8(1) requires the Minister to make that determination in writing. Subclause 8(3) provides that an exemption under clause 8 is not a legislative instrument.

Clause 26 deals with compliance assurance by the provider if the Minister requires a VET provider to be audited as to compliance with any one or more of the following requirements: VET financial viability requirements, VET fairness requirements, VET compliance requirements or VET fee requirements. Subclause 26(2) provides that the audit must be conducted by a body
determined by the Minister and at such time or times and in such manner as the Minister requires. Subclause 26(4) provides that a determination under paragraph 26(2)(a) is not a legislative instrument.

Clause 37 allows the Minister to make a determination to suspend a body’s approval as a VET provider but that suspension does not affect the assistance payable to the body’s students under Part 2. Subclause 37(1) requires the Minister to make that determination in writing. Subclause 37(5) provides that the determination under subclause 37(1) is not a legislative instrument.

Subclauses 8(3), 26(4) and 37(5) have been inserted into the Schedule to assist the reader as the determinations are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*. The determinations are administrative decisions that only affect that body.

**Division 4 – What are the VET quality and accountability requirements?**

Division 4 of Schedule 1A sets out the quality and accountability requirements. Clause 3 clarifies that VET quality and accountability is also dealt with in the VET Provider Guidelines which are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Mirroring the existing provisions in the Act, the quality and accountability requirements for VET FEE-HELP assistance are:

- the VET financial viability requirements (Subdivision 4-B);
- the VET quality requirements (Subdivision 4-C);
- the VET fairness requirements (Subdivision 4-D);
- the VET compliance requirements (Subdivision 4-E);
- the VET fee requirements (Subdivision 4-F); and
- any other requirements for VET quality and accountability set out in the VET Provider Guidelines.

The quality and accountability requirements have been replicated where it has been practical to do so and where it has not, that information will be set out in guidelines. All guidelines made under Schedule 1A of the Act are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. The reason for the information being provided in guidelines is to ensure that the Department has sufficient time to consult with the VET sector about the quality and accountability requirements and to ensure that the requirements the Department adopts are appropriate and practical for the VET sector. This is not an authorised delegation of legislative authority because not all the quality and accountability requirements that the higher education sector is required to comply with may be applicable or relevant for the VET sector. The ability to place information in the guidelines provides the Department with the necessary flexibility to ensure that the specific needs of the VET sector are adequately addressed.
**Division 14 – Protection of VET personal information**

The existing offence provisions in the Act relating to the requirement to protect personal information have been replicated in Division 14 of Schedule 1A for VET FEE-HELP assistance. Clauses 73 and 78 make provision for an offence for the disclosure, recording, copying, modification or the permitting of any other access to the personal information of a student by the officer of a VET provider, other than in the course of that officer’s official employment. These provisions will mirror those already applying to officers of a higher education provider under sections 179-10 and 179-35 of the Act. The maximum penalty that can be imposed on a person who commits an offence is 2 years imprisonment.

An absolute liability applies to paragraph 78(1)(d) which means that the offence does not give rise to a defence of honest and reasonable mistake of fact. The defence does not apply to circumstances where a mistake results from a lack of awareness of relevant facts. The absolute liability offence replicates existing from paragraph 78(1)(d) of the Act. The purpose of the offence being an absolute liability offence is so that a person cannot raise a defence of honest and reasonable mistake.

**Division 15 – Tax file numbers**

Division 15 of Schedule 1A sets out the requirements relating to student’s tax file numbers for VET FEE-HELP assistance. Division 15 reflects the scheme currently provided for in the Act in relation to students of higher education providers.

The provisions have been replicated for VET FEE-HELP assistance to ensure that students of VET providers and higher education providers are treated in the same manner. The scheme will help to ensure that assistance that may be payable is paid correctly to students who meet the tax file number requirements and all other requirements specified in the Act.

**Division 16 – Review of decisions**

Division 16 of Schedule 1A sets out which decisions are subject to review for VET FEE-HELP assistance. The provisions in Division 16 have replicated the existing provisions in Part 5-7 of the Act for the VET sector to ensure that, to the extent possible, the same approach is adopted for both the higher education and VET sectors.

**Clause 99 - Guidelines**

Clause 99 of Schedule 1A provides for the Minister to make guidelines for VET FEE-HELP assistance by way of legislative instruments. This has the effect of ensuring that these guidelines are subject to the provisions of the *Legislative Instruments Act 2003* relating to registration, tabling, Parliamentary scrutiny and sunsetting or automatic repeal.