SCHEDULE 2 – ITEM 9

At the end of the item – insert the following to explain the extended use of absolute liability:

“This amendment extends the offence under section 179-35 of the Act to include personal information held on a computer of a Tertiary Admission Centre or on behalf of a Tertiary Admission Centre. This includes extending absolute liability to new subparagraphs 179-35(1)(d)(v) and (vi), that is, the element of the offence that the personal information is held in a computer of a Tertiary Admission Centre or on behalf of a Tertiary Admission Centre.

The purpose of attaching absolute liability to this element of the offence is to prevent a person from being able to escape liability for the offence by claiming that they were unaware the personal information they were accessing or modifying was held in a computer of a Tertiary Admission Centre or on behalf of a Tertiary Admission Centre, despite the existence of all of the other elements of the offence.

Although absolute liability removes the requirement to establish fault with regards to one element of the offence, it will still be necessary to prove fault in the other elements of the offence. An offence under section 179-35 can only arise where the person intends to cause access to, or modification of, personal information and the person knows that the access or modification is unauthorised.

Attaching absolute liability to this element of the offence is consistent with other provisions contained in the Act concerning unauthorised access to, or modification of, VET personal information being held by VET providers and with personal information being held by higher education providers and Open Universities Australia.”

SCHEDULE 2 - ITEM 15

At the end of the item – insert the following to explain the extended use of absolute liability:

“This amendment extends the offence under clause 78 of Schedule 1A of the Act to include VET personal information held on a computer of a Tertiary Admission Centre or on behalf of a Tertiary Admission Centre. This includes extending absolute liability to new subparagraphs 78(1)(d)(iii) and (iv), that is, the element of the offence that the VET information is held in a computer of a Tertiary Admission Centre or on behalf of a Tertiary Admission Centre.

The purpose of attaching absolute liability to this element of the offence is to prevent a person from being able to escape liability for the offence by claiming that they were unaware the VET personal information they were accessing or modifying was held in a computer of a Tertiary Admission Centre or on behalf of a Tertiary Admission Centre, despite the existence of all of the other elements of the offence.
Although absolute liability removes the requirement to establish fault with regards to one element of the offence, it will still be necessary to prove fault in the other elements of the offence. An offence under clause 78 can only arise where the person intends to cause access to, or modification of, VET personal information and the person knows that the access or modification is unauthorised.

Attaching absolute liability to this element of the offence is consistent with other provisions contained in the Act concerning unauthorised access to, or modification of, VET personal information being held by VET providers and with personal information being held by higher education providers and Open Universities Australia.”