2013-2014-2015

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HIGHER EDUCATION SUPPORT AMENDMENT (VET FEE-HELP REFORM) BILL 2015

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government
(Sheet number GZ155)

(Circulated by authority of the Minister for Vocational Education and Skills, the Honourable Luke Hartsuyker MP)
Amendments to the Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015

OUTLINE

These proposed Government amendments to the Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015 (the Bill) seek to further enhance protections for students and taxpayers and ensure the VET FEE-HELP scheme is sustainable into the future.

The proposed amendments build on the measures introduced over the course of 2015 to strengthen consumer protections for students and set clear standards with regard to marketing and enrolment practices for VET FEE-HELP providers.

These amendments are focused on ensuring the VET FEE-HELP scheme is affordable for students and taxpayers and that training providers are more accountable for their practices performance.

The Government amendments will:

- freeze total VET FEE-HELP loan amounts for existing VET providers at 2015 levels;
- introduce new entry requirements for registered training providers seeking to offer VET FEE-HELP loans;
- move from payments in advance to payments in arrears for the largest training providers and set new reporting requirements;
- allow the government to pause payments to providers with poor performance pending resolution of performance issues; and
- make other minor amendments to:
  - expand the appointment of investigators to external non-government bodies to better cope with expertise and resourcing requirements; and
  - allow fee charging associated with attesting to the veracity of a provider’s literacy and numeracy testing tool.

FINANCIAL IMPACT

It is expected there will be a financial impact of the Government amendments.

The total savings of the Government amendments is estimated at $10.864 million in underlying cash over the forward estimates period 2015-16 to 2018-19.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Amendments to the Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015

Overview of the Bill

As introduced, the purpose of the Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015 (the Bill) is to amend the Higher Education Support Act 2003 (the Act) to:

- give effect to the Government’s decision to strengthen the administration of the VET FEE-HELP loan scheme;
- respond to inappropriate market practices;
- introduce complementary actions to improve the quality of outcomes for students; and
- protect students, public monies and the reputation of the broader vocational education and training (VET) sector.

Right to Education

The proposed Government amendment engages the right to education which is set out in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 13 recognises the important personal, societal, economic and intellectual benefits of education.

The Article sets out that secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means.

The proposed Government amendments seek to limit the growth of the VET FEE-HELP loan scheme to zero growth in 2016. Student protections ensure that students will have access to the loan even in cases where providers exceed their quota.

The amendments also seek to limit the approval of new VET FEE-HELP approved providers to suitably experienced registered training organisations with a history of providing quality teaching and training. This will enhance the integrity of the scheme by ensuring all providers are suitably experienced and have had the chance to demonstrate they are quality education and training operators.
The amendments will enhance the Commonwealth’s power to deal with poor performance by introducing an audit review on the quality of provider operations and associated pause of VET FEE-HELP payments to providers. The audit review of quality will consider approaches used to recruit students accessing VET FEE-HELP, the veracity of provider student enrolments, level of teaching resources and student engagement and completion rates. The amendments further strengthen the protection of students by ensuring continued access to loans for continuing students in cases where providers are suspended from offering loans to new students while under an audit review plan.

To the extent that these proposed amendments could potentially limit a student’s ability to access education in a VET course of study, this is justifiable. These measures seek to protect students, ensuring they are ultimately getting value for money, a quality training course and that they are likely to complete that training course to obtain desired outcomes.

The right to a fair and public hearing

Article 14 of the International Covenant on Civil and Political Rights (ICCPR) ensures that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The amendments engage the right to a fair and public hearing through ensuring decisions made are reviewable VET decisions, subject to review by the Secretary and for referral to the Administrative Appeals Tribunal on application. The decisions subject to review relate to provisions added through the amendments regarding provider suspension and audit and review plans, and decisions regarding refusal to remit part or all of the interest charge.

This Bill is compatible with the rights to education and to a fair and public hearing.

Conclusion

This Bill is compatible with the right to education. To the extent that the amendments may limit that right, the limitations are reasonable, necessary and proportionate.

Minister for Vocational Education and Skills, the Honourable Luke Hartsuyker MP
NOTES ON AMENDMENTS ON SHEET GZ155

SUMMARY

The amendments on sheet GZ155 will:

- freeze total VET FEE-HELP loan amounts for VET providers at 2015 levels;
- restrict approvals of new VET providers to experienced providers by increasing the stringency of criteria for approval;
- alter the timing and manner of loan assistance payments to providers, allowing the government to pay in arrears on a quarterly basis for the largest (or select) providers; and
- allow the government to pause payments to providers with poor performance.

NOTES ON AMENDMENTS

Amendment (1)

Amendment (1) will insert new item 1A in Schedule 1 to the Bill. New item 1A will insert a new subsection 137-18(5) into the Higher Education Support Act 2003 (the Act), which provides a person’s VET FEE-HELP debt is remitted if a person’s FEE-HELP balance is re-credited under the new clause 46B of Schedule 1A to the Act.

Amendment (2)

Item 3 in Schedule 1 to the Bill will replace the existing paragraph 6(1)(c) of Schedule 1A to the Act with a new paragraph, which contains additional criteria a body must satisfy when applying for approval as a VET provider. Under that new paragraph (c), in order for the Minister to approve a body as a VET provider for the purposes of the Act, the body must have been a registered training organisation as listed on the National Register for at least the period specified in the VET Guidelines, and must have continuously provided, courses leading to awards of qualifications in the Australian Qualifications Framework for at least the period specified in the VET Guidelines.

Amendment (2) will substitute item 3 in Schedule 1 to the Bill. The new item 3 substitutes paragraph 6(1)(c) of Schedule 1A to the Act, with new paragraphs 6(1)(c) and (ca). These paragraphs introduce additional criteria that must be satisfied before the Minister can approve a body as a VET provider for the purposes of the Act.

New paragraph 6(1)(c) will require that a body corporate applying to become a VET provider must have been a registered training organisation as listed on the National Register since at least 1 January 2011.
New paragraph 6(1)(ca) will require that a body applying to become a VET provider must have offered, since at least 1 January 2011, at least one qualifying VET course; or one or more series of qualifying VET courses, each superseding the other without interruption.

A definition of “qualifying VET course” is inserted into the Bill by amendment (18).

The intention of this amendment is to increase the stringency of criteria for the approval of new VET FEE-HELP providers to experienced providers. Provision is made to allow applications from VET providers that meet exceptional circumstances where a provider has been a registered training provider for at least five years and is seeking approval for courses which it has delivered for five years or more. It should be noted that new VET FEE-HELP approved providers will be required to enrol students within their designated loan quota.

Vocational education and training qualifications (courses) are developed in line with the relevant training package for the industry to which the qualification applies. Training packages are subject to continuous improvement to maintain currency and meet industry needs. VET providers must deliver the current (endorsed or accredited) training product. Where new training products are developed and accredited, the replacement product may be deemed equivalent to a superseded product. As a consequence, a qualification (course offered by the provider) may itself become ‘superseded’ and a replacement qualification accredited. The replacement product carries on from the superseded product. Therefore, to avoid doubt, where a qualification is superseded by another qualification (a replacement qualification), both the superseded and the replacement can be considered in meeting the requirements of paragraph 6(1)(ca).

**Amendment (3)**

Amendment (3) will insert items 4A and 4B in Schedule 1 to the Bill. Item 4A inserts a new paragraph 6(1A)(da) of Schedule 1A to the Act. The paragraph introduces additional criteria that must be satisfied before the Minister can approve a body as a VET provider for the purposes of the Act.

New subparagraph 6(1A)(da)(i) will require a body, other than a body corporate, applying to become a VET provider to have been a registered training organisation as listed on the National Register since at least 1 January 2011.

New subparagraph 6(1A)(da)(ii) will require a body, other than a body corporate, applying to become a VET provider to have offered, since at least 1 January 2011, at least one qualifying VET course; or one or more series of qualifying VET courses, each superseding the other without interruption.
Item 4B inserts new subclause 6(2A) of Schedule 1A to the Act. Paragraphs 6(1)(g) and 6(1A)(i) of Schedule 1A to the Act require that an applicant for approval as a VET provider “complies with any requirements set out in the VET Guidelines”. New subclause 6(2A) will clarify that, for the purposes of paragraphs 6(1)(g) or (1A)(i), the VET Guidelines can specify requirements relating to the body’s capacity to satisfactorily and sustainably provide VET courses of study. A note at the end of this subclause provides examples of these requirements.

The intention of item 4A is to apply the same criteria as for body corporate applicants as for non-body corporate bodies that are specified in the VET Guidelines, to increase the stringency of criteria for the approval of new VET FEE-HELP providers to experienced providers.

Item 4B will apply to ensure additional criteria as to a body’s capacity to satisfactorily and sustainably provide VET courses of study can be outlined in the VET Guidelines. This amendment will ensure approvals occur in only exceptional circumstances related to quality experienced providers.

**Amendment (4)**

Amendment (4) will repeal and substitute subclause 23B(4) that the Bill will insert into Schedule 1A to the Act. The new subclause 23B(4) will provide, for the purposes of subclause 23B(3), that the VET Guidelines may empower a person or body to approve a particular tool to be used when assessing a student’s academic suitability to undertake a VET course of study, and to charge a fee for making this decision. In addition, it will enable a person or body to charge a fee for the use of assessment tool. A fee charged under this subclause must not be such as to amount to taxation.

In addition to prescribing the minimum requirements in the VET Guidelines the Government will allow providers to have their own language, literacy and numeracy testing tool, however only if it has been externally verified and evaluated by a nominated person or body.

This amendment is intended to allow fee charging by the nominated person or body to conduct an evaluation of the provider’s own language, literacy and numeracy testing tool.

There is a certain level of expertise and work involved in appropriately assessing a language, literacy and numeracy testing tool, therefore the Government proposes that bodies responsible for undertaking this evaluation are appropriately compensated by the VET FEE-HELP approved provider.

**Amendment (5)**

Amendment (5) will insert item 7A in Schedule 1 to the Bill.
Clause 26 of Schedule 1A to the Act empowers the Minister to require a VET provider to be audited as to compliance with the requirements imposed on it by the Act.

New item 7A repeals and substitutes subclause 26(1) of Schedule 1A to the Act. New subclause 26(1) will empower the Minister to require a VET provider to be audited not only for compliance with the requirements of the Act (paragraph (a)), but also about any of the matters set out in subparagraphs 26(1)(b)(i) to (v), relating to enrolment practices, level and quality of teaching resources, level of student engagement, and student completion rates.

This amendment is intended to empower the Commonwealth to initiate an audit review of a provider regarding a range of matters concerning appropriate recruitment and teaching activities and student outcomes for students who receive VET FEE-HELP assistance. The audits will consider the approaches used to recruit or enrol VET FEE-HELP students, the veracity of enrolments, level of teaching resources and quality, level of student engagement and student completion rates for those students in receipt of VET FEE-HELP assistance. This will allow the Commonwealth to assess the extent to which the provider is genuinely teaching the number of students for which they have claimed VET FEE-HELP loan payments.

**Amendment (6)**

Amendment (6) will insert items 8A, 8B, 8C, 8D and 8E in Schedule 1 to the Bill.

New items 8A and 8B will insert new subclauses 36(5) to (9) in Schedule 1A to the Act, and a heading for those subclauses.

Subclause 36(5) will empower the Secretary to suspend a VET provider’s approval where an audit of the body about one or all of the matters set out in paragraph 26(1)(b) has identified one or more concerns, and the concerns have yet to be satisfactorily resolved. The concerns may relate to aggressive marketing activities resulting in signing up students to VET FEE-HELP in cases where they are not capable of undertaking the study, or significantly low completion rates and poor quality training outcomes for students that have accessed VET FEE-HELP.

Subclause 36(6) will provide that the suspension begins on the day of the decision made under subclause 36(5), and ends on the day (if any) that Secretary reasonably believes that those concerns have been satisfactorily resolved by the body in accordance with a plan agreed between the body and the Commonwealth.
Subclause 36(7) will require the Secretary, before making a decision to suspend, to give a provider notice setting out the Secretary’s intention to suspend the provider, the reasons why the Secretary is considering this decision, inviting the provider to make submissions to the Secretary within 14 days, and informing the provider that if no submissions are received within the 14 days period, the Secretary may proceed with a decision.

Subclause 36(8) will require the Secretary to consider any submissions received from the body in response to the notice received within the 14-day period, before proceeding with making a decision.

Subclause 36(9) will require the Secretary to give the body written notice of the decision within 14 days after the day of the decision.

This amendment is intended to empower the Secretary to suspend a VET provider’s approval for reasons of poor performance, where the outcomes of an audit of the body warrant that action. Where there are concerns about inadequate quality and performance, the Secretary will have the ability to suspend approval and pause payments to these providers until they satisfactorily resolve the concerns identified in accordance with a plan agreed between the provider and the Commonwealth. The plan will outline what the provider needs to do to lift their performance and what it needs to do to satisfactorily resolve the concerns.

Clause 37 of Schedule 1A to the Act currently empowers the Minister to determine that a suspension of a provider’s approval has no effect on assistance payable to the provider’s current students, thereby preserving those students’ entitlement to VET FEE-HELP assistance.

The amendments to clause 37 made by the new items 8C, 8D and 8E of Schedule 1 to the Bill will have the effect of ensuring that the suspension of a provider’s approval under the new subclause 36(5) will have no effect on VET FEE-HELP assistance payable to the provider’s current students, without the need for a Ministerial determination.

**Amendment (7)**

Amendment (7) inserts new items 8F and 8G into Schedule 1 to the Bill.

Item 8F will amend subclause 39(1) of Schedule 1A to the Act, to provide that the Minister must revoke a VET provider’s approval if the provider requests the Minister to do so.
Item 8G will insert a new subclause 39(2A) of Schedule 1A to the Act. The effect of new subclause (2A) is that, despite the revocation of a provider’s approval under clause 39, clauses 45E and 46B of Schedule 1A (relating to the provider’s VET FEE-HELP account being in deficit and re-crediting of students FEE-HELP balances) continue to apply to the provider. Further, the Minister can, in the notice given to the provider under subclause 39(3), specify additional other provisions of the Act and VET Guidelines that continue to apply to the provider.

Amendment (8)

Amendment (8) will insert new item 10A in Schedule 1 to the Bill. New item 10A inserts new paragraph 43(1)(fa) in Schedule 1A to the Act.

New paragraph 43(1)(fa) will require, as part of the criteria for entitlement to VET FEE-HELP assistance for new students, that the VET provider is not suspended under new subclause 36(5).

This amendment is intended to ensure that whilst a provider is suspended for poor performance, the provider is not able to allow any new students (students enrolling whilst the suspension is in place) access to VET FEE-HELP. Students that enrol during the period of the suspension will not be entitled to access VET FEE-HELP until a later day when the suspension has ended. This paragraph does not affect the entitlement to VET FEE-HELP of students that are already entitled prior to the period of the suspension (i.e. continuing students). The effect of this provision is to allow payments for providers suspended for poor performance to be paused with respect to new students that are not accessing VET FEE-HELP.

Amendment (9)

Amendment (9) will insert item 10B in Schedule 1 to the Bill. New item 10B inserts new paragraph 43(1)(fb) in Schedule 1A to the Act.

New paragraph 43(1)(fb) will provide that where the provider was only approved as a VET provider after 2015, the VET course must be one of the qualifying VET courses referred to in paragraph 6(1)(ca) or 6(1A)(da).

This amendment is intended to ensure that access to VET FEE-HELP is limited to courses which the new provider has delivered for five years or more.

Amendment (10)

Amendment (10) repeals the note at the end of subclause 43(1) and substitutes two notes.

Note 1 provides explanation for the purposes of paragraph 43(1)(e).
Note 2 provides explanation for the purposes of paragraph 43(1)(fa) clarifying that if a provider’s approval is suspended when the student enrols, the student can only become entitled to VET FEE-HELP when the suspension ends.

Amendment (11)

Amendment (11) will insert new paragraph 45C(1)(ba) in Schedule 1 to the Bill. New paragraph 45C(1)(ba) will require that where a student enrols in a VET course on or after the Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015 receives Royal Assent, and is entitled to VET FEE-HELP assistance, that entitlement must not:

- cause the VET provider’s VET FEE-HELP account to be in deficit at the end of the census day for the unit of study in which the student is enrolled; and
- must not cause or contribute to the VET FEE-HELP account being in deficit at the end of 2016, or a later year.

This amendment is intended to ensure providers have regard to the quota that will apply for VET FEE-HELP assistance for any enrolments from Royal Assent, as it is likely census dates for those enrolments will occur in 2016 when the quotas will apply.

Commencement of this amendment from Royal Assent will safeguard against perverse enrolments seeking to avoid the provisions.

Amendment (12)

Amendment (12) repeals and substitutes subclause 45C(2) of Schedule 1A to the Act inserted by item 12 of Schedule 1 to the Bill. New subclause 45C(2) will provide that for the purposes of the Act, other than clause 39DH, certain requirements for a request for VET FEE-HELP assistance are taken to be complied with even if they have not been, if the VET provider has treated the student as entitled to VET FEE-HELP assistance.

This effect of the subclause is that in circumstances where a student would otherwise not be entitled to VET FEE-HELP assistance because the student has not complied with the 2 business day cooling off period, or has caused the VET provider’s notional VET FEE-HELP account to be in deficit, the students will be treated as being entitled to VET FEE-HELP anyway. This is a student protection provision.

Nevertheless, the provider may still be in breach of clause 39DH of Schedule 1A to the Act.

Note 1 at the end of subclause 45C(2) explains circumstances in which a provider should not treat a student as entitled to VET FEE-HELP assistance.
Note 2 explains that if the provider treats the student as entitled to VET FEE-HELP assistance, the provider will have contravened subclause 39DH(1), which is a civil penalty provision, and despite this, the student may still be able to receive the assistance.

**Amendment (13)**

Amendment (13) inserts new clauses 45D and 45E in Schedule 1 of the Bill.

New clause 45D will provide for the notional VET FEE-HELP account.

New subclause 45D(1) will create a notional VET FEE-HELP account for each VET provider. That account is credited and debited with the amounts, and at the times, set out in subclauses 45D(2) to (7). New subclause 45E then sets out the consequences of a VET provider’s VET FEE-HELP account being in deficit at the end of a calendar year.

New paragraphs 45D(2)(a) to (e) will specify when credit arises in a VET provider’s VET FEE-HELP account in circumstances where:

- the provider is an already existing VET provider on 1 January 2015;
- the provider becomes approved as a VET provider on a day during 2015;
- the provider becomes approved as a VET provider on a day after 2015;
- the provider makes a payment into its notional account under clause 45E; and
- the provider withdraws from the VET FEE-HELP scheme.

If the VET provider pays any part of any amount payable under subclause 45E(1), a credit equal to the amount of that payment arises on the day it is paid.

New subclauses 45D(3)(4) and (5) will set out the method of calculating credits to providers’ VET FEE-HELP accounts.

New subclause 45D(6) will enable the Minister to determine, by a legislative instrument, whether credit arises in the VET FEE-HELP accounts of specified providers when another provider ceases to be a VET provider, and the amount of such credit. Such a credit arises at the time the ceasing provider ceases to be a VET provider.

New subclause 45D(7) will specify that a debit, equal to the amount of the VET FEE-HELP assistance to which a student is entitled, arises in the VET provider’s VET FEE-HELP account for a VET unit of study that is to be undertaken with a VET provider and that has a census date on or after 1 January 2016.

New subclause 45E will provide for the effect of a VET provider’s VET FEE-HELP account being in deficit at the end of a calendar year.
New subclause 45E(1) will require a provider whose VET FEE-HELP account is in deficit at the end of a calendar year to pay the Commonwealth an amount equal to the amount of the deficit (the ‘excess loan amount’) following receipt of a written notice from the Secretary about the excess loan amount.

New subclause 45E(2) will specify that due day for the excess loan amount payable is the seventh day after the notice is given by the Secretary.

New subclause 45E(3) will require a provider to pay the Commonwealth the general interest charge on any excess loan amount, plus any previously accrued interest charge that remains unpaid after the due day.

New subclause 45E(4) will specify that the interest charge for a particular day is worked out by multiplying the general interest charge rate (as defined in clause 1 in Schedule 1A to the Act – see amendment (18)) for that day by the sum of the interest charge from previous days and the excess loan amount.

New subclause 45E(5) will provide that the general interest charge for a day is due and payable to the Commonwealth at the end of that day.

New subclause 45E(6) will provide the Secretary with discretion to give a VET provider written notice of the amount of general interest charge for a particular day or days, and that the notice is prima facie evidence of the matter specified in it.

New subclause 45E(7) will enable the Secretary to remit all or part of the general interest charge where:

- the Secretary is satisfied that the circumstances which contributed to the delay in payment were not due to the provider’s direct or indirect action, or omission; and
- the provider took all reasonable steps to mitigate the circumstances, or their effect;

or where the Secretary is satisfied that it would be appropriate to do so.

New subclause 45E(8) will specify that the Commonwealth may recover, from a VET provider, an amount payable under clause 45E, as a debt due to the Commonwealth.

This amendment is intended to act as a deterrent to providers exceeding their quota, with excesses (deficit) to be identified by the Secretary on provision of a notice to the provider and interest to be due and payable on the deficit amount by the provider if exceeding their quota.

**Amendment (14)**

Amendment (14) inserts items 14A and 14B in Schedule 1 to the Bill. New item 14A inserts new clause 46B in Schedule 1A to the Act, and item 14B inserts new clause 51A in Schedule 1A to the Act.
Clause 46B will provide for re-crediting a person’s FEE-HELP balance where the VET FEE-HELP account is in deficit at the end of the calendar year. New subclause 46(1) will require the VET provider to re-credit a student’s FEE-HELP balance if the Secretary notifies the provider that the provider’s VET FEE-HELP account was in deficit at the end of the calendar year and the VET provider reasonably believes that some or all of that assistance caused or contributed to the deficit.

New subclause 46B(2) will provide that the amount to be re-credited is equal to so much of the VET FEE-HELP assistance as the VET provider reasonably believes caused or contributed to the deficit.

New subclause 46B(3) provides that the Secretary may re-credit the student’s FEE-HELP balance if the provider is unable to do so and the Secretary knows how much of that assistance caused or contributed to the deficit.

New subclause 46B(4) provides for a calculation in circumstances where not all of the deficit can be re-credited under subclauses 46B(1) and (2).

New clause 51A provides that where a student’s FEE-HELP balance is re-credited, the student’s liability to the VET provider for the VET tuition fee is discharged to the extent of the amount re-credited.

This amendment is intended to ensure that where the Commonwealth recovers the deficit from the provider, the VET FEE-HELP debts that contributed to that deficit are remitted, so that the same amount of VET FEE-HELP assistance is not also repaid by the student.

Amendment (15)

Amendment (15) will insert item 15A in Schedule 1 to the Bill. Item 15A repeals and substitutes clause 60 of Schedule 1A to the Act.

Clause 60 of Schedule 1AB to the Act provides for the timing and manner of payments of VET FEE-HELP assistance to a provider.

New clause 60 has the same function, but enables the Minister to specify the timing and manner of payment to kinds of providers by legislative instrument (subclause (2)). The Minister retains the power to determine the timing and manner of payment to particular providers (which may differ from the timing and manner of payment prescribed by legislative instrument) (subclause (3)).

Importantly, the Minister’s power to determine the way in which payments are made is expressed to enable the Minister to make payments by instalment and in arrears.
Subclause 60(4) provides that a determination made by the Minister under subclause 60(3) (in relation to a particular provider) is not a legislative instrument. Subclause 60(4) is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

This amendment is intended to provide flexibility for the Minister to determine different types of payment patterns for different types of providers. For example, this will allow the Minister to pay providers that have the greatest VET FEE-HELP payments on a pattern which may be payments quarterly in arrears, but to minimise the impact on smaller providers or specified providers allowing different payment arrangements to apply to them.

**Amendment (16)**

Amendment (16) will insert item 20A in Schedule 1 to the Bill. Item 20A will insert four new items in the table in clause 91 of Schedule 1A to the Act.

Clause 91 of Schedule 1A to the Act sets out the decisions that are made under the Schedule that are reviewable VET decisions. The four new items inserted into the table in clause 91 will make the following decisions reviewable VET decisions:

- a decision to suspend a body’s approval as a VET provider under subclause 36(5) (item 1C);
- a decision under paragraph 36(6)(b) that concerns about a provider have not be satisfactorily resolved in a plan agreed with the Commonwealth;
- a decision to refuse to remit the general interest charge under subclause 45E(7) (item 1E);
- a decision to remit only part of the general interest charge under subclause 45E(7) (item 1F).

This amendment is intended to ensure that a decision to suspend a provider’s approval is reviewable at the VET provider’s request, a decision that the provider has not satisfactorily resolved in accordance with a plan agreed with the Commonwealth is reviewable at the VET provider’s request, and a refusal to remit the general interest charge or decision to remit part of the general interest charge are reviewable at the provider’s request.

**Amendment (17)**

Amendment (17) will insert item 21A in Schedule 1 to the Bill. Item 21A will insert new clause 97A in Schedule 1A to the Act.
Clause 97A will operate such that if the operation of Schedule 1A would result in an acquisition of property from a person, otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person. Where the Commonwealth and the person do not agree on the amount of the compensation, the person will be able to institute proceedings in the Federal Court of Australia for recovery of the amount of compensation from the Commonwealth. Under this new clause, “acquisition of property”, and “just terms” have the same meaning as in paragraph 51(xxxi) of the Australian Constitution.

**Amendment (18)**

Amendment (18) will insert new definitions in item 22 of Schedule 1 to the Bill. Item 22 will provide that “general interest charge rate” in subclause 1(1) in Schedule 1 to the Act has the same meaning as in section 8AAD of the *Taxation Administration Act 1953*.

The definition ‘qualifying VET course’ means a structured and integrated programme of vocational education and training leading to the award of VET diploma, VET advanced diploma, VET graduate diploma or VET graduate certificate.

**Amendment (19)**

Amendment (19) will insert a new definition in item 22 of Schedule 1 to the Bill. Item 22 will provide that “VET FEE-HELP account” has the same meaning as in clause 45D of Schedule 1A.

**Amendment (20)**

Amendment (20) will repeal and substitute subitem 24(1) in Schedule 1 to the Bill. Subitem 24(1) will provide that the amendments of clause 6 of Schedule 1A to the Act made by Schedule 1 to the Bill apply in relation to decisions whether to approve bodies as VET providers made on or after 1 January 2016.

This amendment is intended to consistently apply the amendments to all new provider approvals from 1 January 2016, regardless of when the application was submitted.

**Amendment (21)**

Amendment (21) will insert new subitems 24(3A) and (3B) in Schedule 1 to the Bill.
Subitem 24(3A) will provide that paragraph 26(1)(b) of Schedule 1A to the Act (as inserted by Schedule 1 to the Bill) will apply to matters happening before, on or after 1 January 2016, to the extent that those matters are relevant to VET courses of study provided on or after 1 January 2016. That is, an audit of a VET provider that occurs on or after 1 January 2016 can look at events and activities taking place before that time – and it is therefore possible to suspend a provider’s approval under subclause 36(5) because of those events and activities. Examples of matters an audit could look for when auditing a provider’s 2016 VET course are provided at the end of subitem 3A.

Subitem 24(3A) is intended to provide that activities of the provider that relate to courses offered after 1 January 2016 and VET FEE-HELP assistance accessed by students after 1 January 2016 are able to be considered at audit even if those activities occurred prior to 1 January 2016, if those matters are relevant to assistance accessed after 1 January 2016. For example, the recruitment activities occurring in 2015 that relate to a student’s enrolment in a course in 2016 may be relevant to that student’s access to VET FEE-HELP in 2016 and should therefore be able to be considered as part of the audit activities.

Subitem 24(3B) will provide that the amendments to clause 39 of Schedule 1A to the Act made by the Bill (as amended by these amendments) apply in relation to requests for revocation made by approved VET providers on and after 1 January 2016.

**Amendment (22)**

Amendment (22) will insert new subitem 24(6A) in Schedule 1 to the Bill.

Subitem 24(6A) will provide that subclause 45E(1) of Schedule 1A to the Act (which requires a provider to pay an amount to the Commonwealth when its VET FEE-HELP account is in deficit at the end of a calendar year) applies in relation to the 2016 calendar year and later calendar years.

This amendment is intended to provide that providers will have notional VET FEE-HELP accounts for 2016 and later years.

**Amendment (23)**

Amendment (23) will insert new subitems 24(8) and (9) in Schedule 1 to the Bill.

Subitem 24(8) will provide that clause 51A of Schedule 1A to the Act (which relates to re-crediting the FEE-HELP balances of students when providers exceed their quota) applies in relation to re-crediting balances on or after 1 July 2016.
Subitem 24(9) provides that the new clause 60, as inserted by item 15A of Schedule 1 to the Bill, will apply to amounts payable on or after 1 January 2016.

This amendment is intended to provide that flexible determinations for time and manner of payment can relate to amounts payable from 1 January 2016.

**Amendment (24)**

Subclause 11(3) of Schedule 1A to the Act provides that the Minister must make a decision on an application for approval as a VET provider within a specified period (typically 90 days, unless additional information is sought to decide the application).

Amendment (24) will insert new item 24A at the end of Part 1 of the Bill, that has the effect of “stopping the clock” on any application before the Minister as at the end of 2 December 2015, with the “clock” starting again on 21 January 2016. In effect, the period in which the Minister has to decide any application for approval as a VET provider that is on foot at the end of 2 December 2015 is extended by another 50 days.

This amendment is intended to extend the legislated timeframes in which the Commonwealth has to assess an existing application. It should be noted however that the extension of the timeframes does not mean that those applicants are exempt from the more stringent assessment requirements. Those requirements commence on 1 January 2016 and apply regardless of when the application for VET FEE-HELP approval was submitted. The extension of the timeframe is to ensure all decisions that are made are applied consistently under the new provisions.

**Amendment (25)**

Amendment (25) will amend the proposed subclause 39GA(1) inserted by item 26 in Schedule 1 to the Bill. This amendment substitutes reference in that subclause to “an APS employee in the Department” with reference to “a person”. This amendment will enable the Secretary to appoint any person, and not just an APS employee in the Department, as an investigator.

There are times when the Department does not have the internal expertise to carry out particular types of investigation and may want to appoint another person or body with relevant expertise, including persons or bodies outside the public service. Equally, there are times when there are competing compliance priorities and additional capacity is required for investigations. This amendment gives the Department the flexibility to appoint other persons or bodies as required. The proposed subclause 39GA(3) of Schedule 1A to the Act will apply to ensure that any person so appointed must have the knowledge or experience necessary to properly exercise the powers of such an investigator.