
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Vocational Education and Skills, the Hon Luke Hartsuyker MP)
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.

The VET FEE-HELP loan scheme is an income contingent loan scheme that helps students to pay for higher level VET courses. Higher level VET qualifications are at the diploma level and above, with a limited trial extending to specified Certificate IV level qualifications until December 2016.

The VET FEE-HELP loan scheme has experienced significant growth since its inception, some of which can be attributed to the strong early growth of a demand-driven scheme implemented in an area previously unassisted by Government loan assistance. Some of the growth however, derives from the unscrupulous or opportunistic behaviour of some providers and their agents. The characteristics of this pattern of unscrupulous behaviour are aggressive marketing, inappropriate targeting of vulnerable people, and widespread use of inducements.

This Bill enacts a series of measures to strengthen the administration of the VET FEE-HELP loan scheme and improve the quality of outcomes for students while protecting students, public monies and the reputation of the broader VET sector.

The Bill introduces new requirements for VET FEE-HELP approved training providers (VET providers) to develop and apply appropriate student entry procedure requirements. These measures seek to ensure that a student is properly assessed for academic suitability, including demonstrated language, literacy and numeracy requirements, before being admitted to enrol in a VET course of study for which they are entitled to receive a VET FEE-HELP loan. The measures contained in the Bill will increase the protection of vulnerable Australians by protecting students (and intending students) who do not have the capacity to undertake the course in which they are enrolled.

The Bill enhances the protection of students under the age of 18 by requiring a parent’s approval before the student can request a VET FEE-HELP loan.

The Bill further strengthens the protection of students by broadening the circumstances in which a student can seek a re-credit of their VET FEE-HELP loan debt balance and remission of a debt where it is proven that as a result of unacceptable
behaviour by the provider (or their agent) the student enrolled with the provider and subsequently received a VET FEE-HELP loan.

The Bill introduces a minimum registration and trading history requirement as additional eligibility criteria for admitting new VET providers to the VET FEE-HELP loan scheme. 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 Bill will enhance the Commonwealth’s power to deal with unscrupulous behaviours by introducing an infringement notice scheme attached to civil penalties aimed at VET providers who engage in inappropriate marketing behaviours and administrative practices and are found to be contravening civil penalty provisions in Schedule 1A to the Act. Introducing an infringement and a civil penalty regime engages Parts 2 to 5 of the Regulatory Powers (Standard Provisions) Act 2014 (Regulatory Powers Act).

The infringement and civil penalty scheme will support the enhanced compliance regime to be implemented with the assistance of additional funding for the department provided for in the 2015-16 Budget, which will go further to strengthen the administration of the programme, prohibit inappropriate market practices and protect vulnerable students, taxpayers and the reputation of the national vocational education and training sector.

As it presently stands, Schedule 1A to the Act provides for the following regulatory powers:

- the Minister may impose a condition on a body’s approval as a VET provider (clause 12A);
- the Minister may require a VET provider to be audited as to its compliance with a number of VET requirements imposed under Schedule 1A (clause 26);
- compliance notices (clause 26A) may be issued if the Minister is satisfied that the provider has not complied with, or is aware of information that suggests that the provider may not comply with, the Act or Regulations, the VET Guidelines or a condition imposed on a VET provider’s approval;
- suspension of approval as a VET provider (clause 36 of Schedule 1A); and
- revocation of a body’s approval under Subdivisions 5- AA, 5-B or 5-D.

It is intended that an infringement and civil penalty regime with direct and immediate consequences for unacceptable behaviour will go further to stamp out abuse in the market, strengthen the integrity of the scheme and increase protections for students as well as improve educational quality. The breaches that will lead to infringements and penalties will cover the type of practices that have been of concern in the VET sector, including:

- publishing information that suggests VET FEE-HELP assistance is not a loan;
- offering inappropriate inducements;
- failing to comply with student requests to withdraw a request for VET FEE-HELP or cancel enrolment;
- charging a fee for a student to withdraw from their enrolment;
failing to give students adequate time to consider their payment options; accepting requests for VET FEE-HELP assistance when the student is not entitled;

- failing to apportion fees appropriately in line with course delivery and continued student participation and progression through the course;
- failing to provide VET FEE-HELP notices to students;
- failing to publish tuition fees for the information of students; and
- failing to report data as required, which includes data subsequently transmitted to the Australian Taxation Office for timely debt recording on students’ tax records.

Each civil penalty provision in Division 5A of Schedule 1A is subject to an infringement notice under Part 5 of the Regulatory Powers Act. A person who is issued with an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

Further, the expected consequential outcomes of implementing the measures in the Bill include the protection of public monies from misuse. This ensures that the quality of the VET FEE-HELP loan scheme, vulnerable students and taxpayers are protected. These outcomes are important to the reputation of Australia’s quality VET sector.

The Bill will also extend the Commonwealth and the National VET Regulator’s powers with respect to monitoring and investigation. The Bill does this by making the civil penalty provisions and relevant information subject to monitoring by the department and the National VET Regulator under Part 2 (Monitoring) of the Regulatory Powers Act. Similarly, the civil penalty provisions are also made subject to investigation under Part 3 (Investigation) of the Regulatory Powers Act by the department and the National VET Regulator.

This will ensure that the National VET Regulator and the department have sufficient monitoring and investigation powers under the Act to monitor and investigate compliance and purported compliance with respect to the civil penalties in Subdivision 5A-A. The Bill also provides that each of the civil penalty provisions is enforceable by the department under Part 4 of the Regulatory Powers Act.

The Bill also provides for minor technical amendments to be made which are intended to improve the clarity of some requirements of providers.

The technical amendments will directly impact on the functioning of the VET FEE-HELP loan scheme under Schedule 1A to the Act, and will only make minor consequential and technical amendments to the Act.

The Attorney Generals Department, the Department of the Prime Minister and Cabinet, VET providers and the VET FEE-HELP Working Group (comprising of student, provider, consumer law, community college, educationalist and industry peak body representatives) have been consulted in relation to the development of the VET FEE-HELP reform policy.
FINANCIAL IMPACT STATEMENT

It is expected that there will be a financial impact as a result of the amendments in the Bill, particularly for the increase in compliance activities. The 2015-2016 Budget committed $18.2 million in departmental funds, including $3.6 million in capital expenditure, for an increased compliance monitoring regime associated with the reform measures. The introduction of the infringement notice scheme may also result in positive financial impacts on the Commonwealth, depending on the operational impact of the amendments.

The total savings of the VET FEE-HELP reform measures is estimated at $350.9 million in fiscal balance terms over the forward estimates period 2015-16 to 2018-19.

REGULATION IMPACT STATEMENT

The Regulation Impact Statement is at Attachment A.
Statement of Compatibility with Human Rights

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

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

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

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.

The VET FEE-HELP loan scheme is an income contingent loan scheme that helps students to pay for higher level VET courses. Higher level VET qualifications are at the diploma level and above, with a limited trial extending to specified Certificate IV level qualifications until December 2016.

This Bill enacts a series of measures to strengthen the administration of the VET FEE-HELP loan scheme and improve the quality of outcomes for students while protecting students, public monies and the reputation of the broader VET sector.

The Bill introduces new requirements for VET FEE-HELP approved training providers (VET providers) to develop and apply appropriate student entry procedure requirements. These measures seek to ensure that a student is properly assessed for academic suitability, including demonstrated language, literacy and numeracy requirements, before being admitted to enrol in a VET course of study for which they are entitled to receive a VET FEE-HELP loan. The measures contained in the Bill will increase the protection of vulnerable Australians by protecting students (and intending students) who do not have the capacity to undertake the course in which they are enrolled.

The Bill enhances the protection of students under the age of 18 by requiring a parent’s approval before the student can request a VET FEE-HELP loan.

The Bill further strengthens the protection of students by broadening the circumstances in which a student can seek a re-credit of their VET FEE-HELP loan debt balance and remission of a debt where it is proven that as a result of unacceptable behaviour by the provider (or their agent) the student enrolled with the provider and subsequently received a VET FEE-HELP loan.
The Bill introduces a minimum registration and trading history requirement as additional eligibility criteria for admitting new VET providers to the VET FEE-HELP loan scheme. 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 Bill will enhance the Commonwealth’s power to deal with unscrupulous behaviours by introducing an infringement notice scheme attached to civil penalties aimed at VET providers who engage in inappropriate marketing behaviours and administrative practices and are found to be contravening civil penalty provisions in Schedule 1A to the Act. Introducing an infringement and a civil penalty regime engages Parts 2 to 5 of the Regulatory Powers (Standard Provisions) Act 2014 (Regulatory Powers Act).

The infringement and civil penalty scheme will support the enhanced compliance regime to be implemented with the assistance of additional funding for the department provided for in the 2015-16 Budget, which will go further to strengthen the administration of the programme, prohibit inappropriate market practices and protect vulnerable students, taxpayers and the reputation of the national vocational education and training sector.

It is intended that an infringement and civil penalty regime with direct and immediate consequences for unacceptable behaviour will go further to stamp out abuse in the market, strengthen the integrity of the scheme and increase protections for students as well as improve educational quality by strengthened compliance enforcement on measures that assist a refocus on student progression.

Each civil penalty provision in Division 5A of Schedule 1A is subject to an infringement notice under Part 5 of the Regulatory Powers Act. A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

Further, the expected consequential outcomes of implementing the measures in the Bill include the protection of public monies from misuse and ensuring the reputation of Australia’s quality VET sector is protected.

The Bill will also extend the Commonwealth and the National VET Regulator’s powers with respect to monitoring and investigation. The Bill does this by making the civil penalty provisions and relevant information subject to monitoring by the department and the National VET Regulator under Part 2 (Monitoring) of the Regulatory Powers Act. Similarly, the civil penalty provisions are also made subject to investigation under Part 3 (Investigation) of the Regulatory Powers Act by the department and the National VET Regulator.

This will ensure that the National VET Regulator and the department have sufficient monitoring and investigation powers under the Act to monitor and investigate compliance and purported compliance with respect to the civil penalties in
Subdivision 5A-A. The Bill also provides that each of the civil penalty provisions is enforceable by the department under Part 4 of the Regulatory Powers Act.

The Bill also provides for minor technical amendments to be made which are intended to improve the clarity of some requirements of providers.

**Human Rights Implications**

The Bill engages the following human rights:

- *the right to education* – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- *the right to privacy* – Article 17 of the International Covenant on Civil and Political Rights (ICCPR)
- *the right to a fair and public hearing* – Article 14 of the ICCPR
- *the rights of the child* – Article 3 of the Convention of the Rights of the Child (CRC)

**Right to Education**

The Bill engages the right to education which is set out in Article 13 of the 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 intent of the VET FEE-HELP loan scheme is to make technical and vocational secondary education more accessible to students who may not otherwise have had access.

The Bill contains a number of measures which promote the right to education. The measures in the Bill strengthen the protection of students as they seek out educational opportunities within Australia. For instance, the Bill contains measures which broaden the circumstances in which a student can seek re-credit of their VET FEE-HELP loan debt balance and remission of a debt where this has been incurred as a result of unacceptable behaviour by a VET provider. The measures in the Bill also require VET providers to develop and apply appropriate student entry procedure requirements to ensure that a student is properly assessed as being academically suitable for a course, including by meeting demonstrated language, literacy and numeracy requirements, before being admitted to enrol in a VET course of study for which they are entitled to receive a VET FEE-HELP loan.

In addition, minimum registration and trading history requirements will be introduced in respect of new VET providers entering the VET FEE-HELP loan scheme. This is intended to enhance the integrity of the scheme by ensuring that all providers are suitably experienced and able to provide quality education and training. The Bill will also enhance the Commonwealth’s power to deal with unscrupulous behaviours by providers by introducing an infringement notice scheme attached to civil penalties. These measures are intended to enhance the integrity of the VET FEE-HELP loan scheme and ensure that students are best protected in seeking out and undertaking educational opportunities from VET providers.
To the extent that the Bill requires students to meet certain student entry requirements which could potentially limit a student’s ability to access education in a VET course of study, that limitation is justifiable. The measure seeks to protect vulnerable students who have been signed up to the VET FEE-HELP loan scheme and who do not have the academic ability to undertake the course, leaving them with significant debt and no educational or training outcome. These measures will particularly benefit regional students, the unemployed, culturally and linguistically diverse communities, people with a disability and the elderly.

This Bill is compatible with the right to education.

_The Right to Privacy_

The Bill engages the right to privacy which is set out in Article 17 of the ICCPR. Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The Bill includes a measure allowing for the disclosure of VET personal information to assist State and Territory regulators to ensure the quality of VET in their state or territory. There are already existing provisions in the Act to allow the sharing of VET personal information with other regulators. This amendment expands this disclosure to State and Territory VET regulators, which also serves to assist with resolving complaints submitted by individuals. It should be noted that only the minimum amount of personal information required will be shared or disclosed. The disclosure allowed will not be arbitrary and will in each case be reasonable, necessary and proportionate to the objective.

Therefore, to the extent that the measures in the Bill limit a person’s right to privacy with regard to sharing information with State and Territory VET regulators, this is justifiable because sharing this information is ultimately for the purposes of ensuring quality education and training in the VET sector. This disclosure is intended to protect future students, the individual whose VET personal information has been shared and the broader reputation of the VET sector in Australia.

The Bill also contains measures which extend the Commonwealth and the National VET Regulator’s monitoring and investigation powers. The Bill does this by making the civil penalty provisions and relevant information subject to monitoring by the department and the National VET Regulator under Part 2 (Monitoring) of the Regulatory Powers Act. Similarly, the civil penalty provisions are also made subject to investigation under Part 3 (Investigation) of the Regulatory Powers Act by the department and the National VET Regulator.

This will ensure that the National VET Regulator and the department have sufficient monitoring and investigation powers under the Act to monitor and investigate compliance (and purported compliance) with respect to the civil penalties in Subdivision 5A-A. The consequent obligations imposed on VET providers that are approved under Schedule 1A to the Act relate to:
infringement notices
monitoring and investigation powers (including entry, search and seizure)
civil penalty provisions.

The Bill protects against arbitrary abuses of power by invoking the provisions of the
powers which are conditional upon provisions of that Act being met. As a result,
adequate safeguards are in place which protect the right to privacy. These powers are
reasonable, necessary and proportionate to achieve a legitimate objective. Adequate
safeguards and limitations on the use of regulatory powers ensure that such lawful
interferences are not arbitrary or at risk of abuse.

The Bill is compatible with the right to privacy.

The right to a fair and public hearing

Article 14 of the ICCPR ensures that everyone shall be entitled to a fair and public
hearing by a competent, independent and impartial tribunal established by law.
The Bill engages the right to a fair and public hearing through the creation of an
infringement notice scheme. An infringement notice can be issued by an infringement
officer for contraventions of a strict liability offence provision or a civil penalty
provision that is enforceable under Part 4 of the Regulatory Powers Act, with Part 5 of
the Regulatory Powers Act creating a framework for using infringement notices in
relation to provisions in the Bill.

The right of a person to a fair and public hearing by a competent, independent and
impartial tribunal is preserved by the Bill as its provisions invoke the powers in the
Regulatory Powers Act which allow a person to elect to have the matter heard by a
court rather than pay the amount specified in the notice. The provisions of the
Regulatory Powers Act which are invoked also specify requirements for what must be
included in an infringement notice, ensuring that a person issued with an infringement
notice is aware of their right to have the matter heard by a court. Other Regulatory
Powers Act provisions invoked regarding limiting the operation of the questioning
powers include protections which guarantee the fair trial rights protected in
articles 14(3)(d) and (g) of the ICCPR.

The Bill also invokes the provisions of Part 4 of the Regulatory Powers Act for the
enforcement of civil penalty provisions. The civil penalties allow for the punishment
of VET provider misconduct without the need to impose criminal liability.¹ The
magnitude of the civil penalties imposed is such that they are sufficient to act as a
deterrent, although not carrying the stigma of a criminal conviction².

For the purpose of assessing their compatibility with Australia’s human rights
obligations, civil penalty provisions should only be considered to be criminal in
nature where there is the possibility of a truly penal consequence, that is,

¹ Australian Law Reform Commission Report 95, *Principled Regulation: Federal Civil and
Administrative Penalties in Australia*, 13 March 2003, Statement of Principle, paragraph 3.110.
² Ibid, paragraph 2.61
imprisonment or, in the rare case, a pecuniary penalty of some magnitude which may impact on other rights such as the right to privacy.3

The civil penalties set out in the Bill are exclusively pecuniary and operate to create a debt to the Commonwealth in the cases of breaches of provisions and are in intended as a deterrent to continued non-compliance. The protections to the right to a fair and public hearing (provided for in the Regulatory Powers Act) are invoked by reference to its enforcement provisions.

The Bill is compatible with the right to a fair and public hearing.

The Rights of the Child

The Bill engages the rights of the child which are provided for in Article 3 of the CRC. Article 3 provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The Bill contains a measure which introduces a requirement that where there is a responsible parent of a person who is under 18, that person is required to be an additional signatory on a request for Commonwealth assistance. The additional signature is not required where the person has been separately assessed as independent and capable of managing their own affairs – the amendments set out that where a person is receiving, or has received youth allowance (within the meaning of the Social Security Act 1991) on the basis that the person is independent (within the meaning of Part 2.11 of that Act), the additional signatory is not required.

To the extent that the Bill prescribes that a person under the age of 18 must have a parent or guardian sign their request for Commonwealth assistance form and the potential of this to limit entry into a VET course of study, that limitation is justifiable.

The measure seeks to protect vulnerable students who have been signed up to the loan scheme, which can represent a significant financial liability to the student, without an appropriate understanding of what they are signing up to or through pressure sales tactics. It does not exclude a person from the loan scheme; it simply puts in place protections to ensure certain minors are not exploited for economic gain.

This Bill is compatible with the rights of the child.

Conclusion

This Bill is compatible with human rights.

---

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

NOTES ON CLAUSES

Abbreviations

the Act: Higher Education Support Act 2003
NVETR: National Vocational Education and Training Regulator
VET Guidelines: VET Guidelines 2015
VET: Vocational Education and Training

Clause 1 – Short title

Clause 1 provides that the Act be cited as the Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015.

Clause 2 – Commencement

Subclause 2(1) contains a table of commencement information and provides that each provision of the Act specified in column 1 of the table commences or is taken to have commenced according to the date specified in column 2 of the table.

The table provides that items 1 to 3 of the Act will commence the day the Act receives Royal Assent. Schedule 1 to the Act will commence immediately before 1 January 2016. Schedule 2 will commence immediately after the start of a single day to be fixed by Proclamation.

The note to subclause 2(1) provides that the table relates only to those provisions of the Act as originally enacted, and that the table will not be amended in the event of any later amendments to the Act.

Subclause 2(2) provides that any information in column 3 of the table is not part of the Act.

Clause 3 – Schedules

Clause 3 provides that legislation that is specified in the Schedules to the Act are amended or repealed as set out in the applicable items in the relevant Schedule and that any other item in a Schedule to this Act has effect according to its terms.
Schedule 1 – VET FEE-HELP Reform amendments

Part 1 – Main amendments

Higher Education Support Act 2003

Item 1

This item substitutes the reference to “clause 46, 47 or 51” in subsection 137(18)(4) of the Act with “clause 46, 46A, 47 or 51” to provide for remission of a person’s VET FEE-HELP debt if a person’s FEE-HELP balance is re-credited under new clause 46A of Schedule 1A to the Act.

Item 2

This item inserts the reference “that is not a trustee of a trust” after “body corporate” in paragraph 6(1)(aa) of Schedule 1A.

This amendment is intended to clarify that a trustee of a trust cannot be approved as a VET provider for the purpose of paragraph 6(1)(aa). The amendment is intended to reduce the level of financial risk to the Commonwealth and to students. Trusts are commonly required to distribute equity to beneficiaries at the close of each financial year. This often results in VET providers, operating as trusts, retaining only minimal balances of equity and working capital. This low balance greatly increases financial risk by removing asset reserves that may later be required to support business operations or repay Commonwealth funds where necessary. Trusts also often have much more complex legal structures than other VET providers making the undertaking of comprehensive financial analysis more difficult and reducing the level of transparency in relation to the financial performance of their operations.

Item 3

This item substitutes paragraph 6(1)(c) of Schedule 1A. New paragraph 6(1)(c) provides that the Minister may, in writing, approve a body as a VET provider if the body is a registered training organisation, as listed on the National Register for training in Australia maintained by the Department or another person prescribed by regulations, and referred to in section 216 of the National Vocational Education and Training Regulator Act 2011, and:

- the body has been a registered training organisation for a minimum length of time as specified in the VET Guidelines for the purposes of new subparagraph 6(1)(c)(i); and
• the body has been providing courses leading to awards of qualifications in the Australian Qualifications Framework for a minimum length of time as specified in the VET Guidelines for the purposes of new subparagraph 6(1)(c)(ii).

This amendment is intended to ensure that only applicants with demonstrated experience in the delivery of VET courses are able to be approved as VET providers for the purposes of the VET FEE-HELP scheme.

Item 4

This item removes the asterisk in paragraph 6(1)(g) of Schedule 1A. Asterisks are used to identify a defined term where it appears in the Act. Where there are multiple references to the term in the same paragraph, only one asterisk is required.

Item 5

This item inserts new subclause 9(3) in Schedule 1A. New subclause 9(3) will prevent a body from re-submitting an application for approval as a VET provider for a period of 6 months starting on the date of the notice given to the applicant under paragraph 11(1)(b) about the decision.

This amendment is intended to improve the quality of initial applications for approval made by VET providers, and to ensure applicants adequately address the application criteria specified in the Act or in the VET Guidelines.

Item 6

This item substitutes paragraph 15(2)(b) in Schedule 1A. New paragraph 15(2)(b) replaces the reference to “independent qualified auditor” with a list of persons who may provide a report on the financial statement as specified in subparagraphs 15(2)(b)(i), (ii) and (iii). These persons include the Auditor-General of a State or a Territory, a registered company auditor (within the meaning of section 9 of the Corporations Act 2001) who is independent of the VET provider, or a person approved by the Minister under paragraph (d) of the definition of “qualified auditor” in subclause 1(1) of Schedule 1 who is independent of the VET provider.

This amendment is intended to ensure that financial statements provided to the Commonwealth are prepared by certain qualified persons. This increases the likelihood that correct, consistent and quality financial statements are submitted to the Commonwealth. This information informs decisions by officers of the Commonwealth relating to VET provider approval and the ongoing analysis of a VET provider’s financial viability.
Item 7

This item inserts new clauses 23B and 23C in Schedule 1A.

Clause 23B

The intention of new clause 23B is to require VET providers to establish minimum pre-requisites and prior education qualification requirements.

New clause 23B requires a VET provider to make and publish a student entry procedure in accordance with the VET Guidelines, and to comply with that procedure (subclauses 23B(1) and (2)).

Subclause 23B(3) provides that a student entry procedure is a written procedure that specifies, in accordance with the VET Guidelines:

- when a student is academically suited to undertake a VET unit or a VET course of study;
- how to assess whether a student is so suited;
- how to report to the Secretary on the results of such assessments; and
- how long the VET provider must retain those results.

A note to subclause 23B(3) provides that the VET Guidelines could, for example, require a student entry procedure to set out the literacy, numeracy and general academic skills a prospective student must demonstrate, and provide for the assessment of those skills to be undertaken online.

Subclause 23B(4) provides that the VET Guidelines may empower a person or body to approve a particular test for assessing a student’s academic suitability to undertake a VET course of study for the purposes of subclause 23B(3).

This amendment is intended to apply additional compliance requirements on VET providers to ensure students are adequately informed as to the pre-requisite and entry requirements of the course for which they may be seeking VET FEE-HELP prior to enrolment. The amendment also ensures students are assessed by the VET provider with respect to the pre-requisite requirements and whether they have the capability and capacity to successfully undertake the higher level VET course of study prior to seeking VET FEE-HELP.

Clause 23C

Clause 23C specifies the requirements for a VET provider receiving a request for Commonwealth assistance.

Subclause 23C(1) provides that a VET provider must not treat a student as being entitled to VET FEE-HELP assistance for a VET unit of study in circumstances where the student gives an appropriate officer of the VET provider:

- a request for Commonwealth assistance relating to the unit or a VET course of study of which the unit forms a part; or
• a form that would be such a request if it were signed by a parent or guardian of the student; and
• the student is not entitled to that assistance for that unit or course.

This amendment also seeks to protect certain minors under the age of 18 by requiring that a VET provider does not treat a student as entitled to Commonwealth assistance for a VET unit of study if the person’s responsible parent has not signed the request for Commonwealth assistance, which is the application form for a VET FEE-HELP loan.

A note to subclause 23C(1) provides that to be a request for Commonwealth assistance, a responsible parent must sign the form if the student is under 18 years old and subclause 88(3A) applies.

Clause 23C(2) requires a VET provider to advise a student who applies to enrol in a VET unit of study less than 2 business days before the census date for the unit, that the student will not be entitled to VET FEE-HELP assistance for that unit. This amendment is intended to ensure that, prior to enrolment, a student is made aware that they will not be entitled to receive a VET FEE-HELP loan if they choose to enrol with a VET provider less than 2 business days prior to the census date.

Subclause 23C(3) requires a VET provider to advise a student that a request for Commonwealth assistance must be given at least 2 business days after the student enrolls in the course of study (or the unit of study if the student has not already given a request relating to the course of study) and on or before the census date. This amendment is intended to ensure that students are informed of the 2 business day gap during which they may consider their payment options, including the availability of VET FEE-HELP assistance.

Clause 23C(4) prohibits a VET provider from encouraging a student to give a request for Commonwealth assistance in relation to a VET unit of study less than 2 business days after the student enrolls in the unit.

Item 8

This item makes a technical amendment to a defined term in subclause 27(2) to accord with a drafting convention of a defined term in a specified clause.

Item 9

This item inserts new paragraph 43(1)(ea) in subclause 43(1) in Schedule 1A. New paragraph 43(1)(ea) introduces an additional VET FEE-HELP entitlement requirement that a student must meet the entry procedure requirements set out in clause 45B.

This amendment is intended to ensure that a student enrolled in a higher level VET qualification, and seeking Commonwealth assistance, is academically suited to undertaking that level of study. Together with clause 23B, the amendment seeks to protect vulnerable persons who are not academically suited or do not have the language, literacy and numeracy proficiency to undertake the higher level VET
qualification, from being entitled to VET FEE-HELP for a course of study beyond their academic capability. These changes will reduce the risk of prospective students responding to aggressive marketing tactics.

**Item 10**

This item substitutes subparagraph 43(1)(f)(i) of Schedule 1A. The effect of this amendment is to require that a student must enrol in the unit at least 2 business days before the census date for the unit.

This amendment is intended to ensure that, consistent with the new requirements in clause 45C, requests for Commonwealth assistance must be submitted at least 2 business days after the day the student enrolls in the unit or course to which the request relates, and on or before the census date for the unit or course to which the request relates. The result of these requirements is that a student will no longer be able to enrol on the census date if they wish to seek VET FEE-HELP assistance in relation to a VET unit of study or VET course of study. To do so would not allow at least 2 business days to pass prior to the census date occurring, to enable the student to consider their payment options.

**Item 11**

This item substitutes paragraph 43(1)(h) of Schedule 1A. New paragraph 43(1)(h) provides that a student must meet the request for Commonwealth assistance requirements, specified under clause 45C, as part of the student’s entitlement requirements for VET FEE-HELP assistance.

This amendment is intended to revise paragraph 43(1)(h) to ensure it is consistent with the intent of the 2 business day gap (the 2 business days between the day the student enrolls in the unit or course and when they are able to request Commonwealth assistance). The existing entitlement requirements effectively allow a student to be entitled to access VET FEE-HELP assistance if they submit their request for Commonwealth assistance up to, or on the census date. If, however, a student has not enrolled in the course until the day of or the day prior to the census date, the amendments operate such that the student will not be entitled to VET FEE-HELP as the 2 business day gap would not have elapsed before the census date. These amendments protect students by ensuring they are provided with adequate time for loan payment option decision making.

**Item 12**

This item inserts new clauses 45B and 45C in Schedule 1A. New clause 45B specifies the entry procedure requirements in relation to VET FEE-HELP assistance for a VET unit of study.
Clause 45B

The entry procedure requirements are an entitlement requirement for VET FEE-HELP pursuant to new paragraph 43(1)(ea). The entry procedure requirements are intended to ensure that a student is assessed by the VET provider as academically suited to undertake a course of study (and therefore units of study) for which VET FEE-HELP is available.

Clause 45C

New subclause 45C(1) sets out the requirements for requesting VET FEE-HELP assistance for a VET unit of study which incorporate the requirement for at least 2 business days to have passed between a student’s enrolment and a student giving a request for Commonwealth assistance in relation to a VET unit of study or a VET course of study of which the unit forms a part. A request for Commonwealth assistance must also be given on or before the census date for the unit (paragraph 45C(1)(b)) and must not be withdrawn before the end of the census date (paragraph 45C(1)(c)). These requirements are an entitlement requirement for VET FEE-HELP pursuant to new paragraph 43(1)(h).

New subclause 45C(2) provides that if a student gives a request for Commonwealth assistance within the two day gap after enrolment and the VET provider treats the student as being entitled to VET FEE-HELP assistance for the unit, then the student is taken to have complied with paragraph 45C(1)(a) for the purposes of the Act, other than clause 39DH.

These amendments are intended to separate the process of a student enrolling or accepting an offer of a course or training, from decisions about payment. The intention is to ensure that students have had time to consider their payment options before applying for Commonwealth assistance.

Note 1 provides that the VET provider should not treat the student as being entitled to VET FEE-HELP assistance if the student requests the assistance during the 2 business day cooling-off period after the enrolment.

Note 2 provides that if the VET provider does treat the student as being entitled, the provider will contravene subclause 39DH(1), and the student may still be able to receive the assistance.

Item 13

This item substitutes the reference to “clause 51” in subclause 43(1) of Schedule 1A with “clause 46A or 51”.

This amendment is intended to apply such that if the new clause 46A applies to re-credit a person’s FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP that a person has received for a VET unit of study, then clause 46 does not apply in relation to that unit.
Item 14

This item inserts new clause 46A in Division 7 in Part 2 in Schedule 1A.

New clause 46A introduces a new framework to assist a person, who has unfairly incurred a VET FEE-HELP debt as a result of unacceptable practices by a VET provider, to have their VET FEE-HELP balance re-credited by enabling the Secretary to re-credit a person’s balance with an amount equal to the amounts of VET FEE-HELP assistance that the person received for a VET unit of study, if certain criteria and circumstances exist.

New subclause 46A(1) specifies the things the Secretary must be satisfied of before making a decision to re-credit person’s FEE-HELP balance.

The note to new subclause 46A(1) provides that a VET FEE-HELP debt relating to a VET unit of study will be remitted if the FEE-HELP balance in relation to the unit is re-credited.

New subclause 46A(2) clarifies that if the person received VET FEE-HELP assistance as a result of giving an appropriate officer of the VET provider a form, and that form would have been a request for Commonwealth assistance if it was signed by a responsible parent of the person, then paragraph 46A(1)(c) applies as if the form were the person’s request for Commonwealth assistance. A note is included under new subclause 46A(2) which provides that to be a request for Commonwealth assistance a responsible parent must sign the form if the student is under 18 years old and subclause 88(3A) applies.

New subclause 46A(3) prescribes procedural fairness requirements that apply to a decision made by the Secretary under clause 46A. In particular, prior to making a decision, the Secretary must give the applicant (student) and the VET provider notice in writing containing certain information, and inviting written submissions from the parties.

New subclause 46A(4) provides that, in deciding whether to make a decision under subclause 46A(1), the Secretary must consider any submissions received from the parties within the prescribed period.

New subclause 46A(5) provides that the Secretary must give written notice to the applicant (the student) and the VET provider of a decision to re-credit an applicant’s FEE-HELP balance pursuant to subclause 46A(1) within 28 days after the day the decision was made.

Item 15

This item substitutes the reference to “subclause 46(2) or 47(1)” in subclause 56(1) with “46(2), 46A(1) or 47(1)”.

This amendment is intended to operate such that if a person’s FEE-HELP balance is re-credited under subclause 46A(1), the VET provider must pay to the
Commonwealth an amount equal to the amount of VET FEE-HELP, which the provider received for the unit.

**Item 16**

This item inserts a new subclause 2A in clause 64 of Schedule 1A to the Act.

New subclause 64(2A) provides that a notice must be given in the manner set out in the VET Guidelines. This amendment will allow the VET Guidelines to provide for notices to be given in a specific way, for example, by requiring that notices are sent to postal or street addresses as well as, or instead of, on the VET provider’s internal information technology portal.

This amendment is intended to assist students who are unaware that they must access, via log on information, internal provider portal arrangements to receive notices required to be given under the Act or the VET Guidelines. It ensures there is adequate transparency of information required to be provided to students, as well as adequate confidence that students have the opportunity to receive the information.

**Item 17**

This item inserts new paragraph 75(cb) into Schedule 1A to the Act.

New paragraph 75(cb) authorises a Commonwealth officer to disclose VET personal information to a person appointed to, or employed or engaged by, a State or Territory VET regulator, to assist that person in their service with that regulator. Clause 75 of Schedule 1A sets out when information can be disclosed in the course of a VET officer’s official employment.

This amendment is intended to enable disclosure of VET personal information to State of Territory VET regulators.

**Item 18**

This item inserts a new paragraph 88(3)(aa) in Schedule 1A to the Act.

Subclause 88(3) sets out the meaning of a request for Commonwealth assistance in relation to a person enrolling in a VET unit of study. New paragraph 88(3)(aa) provides that a request for Commonwealth assistance in relation to a person enrolling in a VET unit of study means a document, if subclause (3A) applies to the person, that is signed by a responsible parent of the person (in addition to being signed by the person).

This amendment is intended as a protective measure to ensure, in respect to certain minors under the age of 18, that the request for Commonwealth assistance (the VET FEE-HELP application form) is not a valid request for Commonwealth assistance until it includes the signature of a responsible parent (in addition to being signed by the person).
Item 19

This item inserts subclause 88(3A) in Schedule 1A to the Act. New subclause 88(3A) applies if a person is under the age of 18 and the person has at least one responsible parent, unless the person is receiving, or has received youth allowance (within the meaning of the Social Security Act 1991) on the basis that the person is independent (within the meaning of Part 2.11 of that Act).

Item 20

This item substitutes the reference to “this clause does” in subclause 88(4) of Schedule 1A with “Subclauses (1) and (2) do”.

Item 21

This item adds two decisions made by the Secretary pursuant to subclause 46A(1) to the table of reviewable VET decisions in clause 91, and specifies the decision maker in respect of each of these decisions.

This amendment is intended to ensure that a decision to re-credit a person’s FEE-HELP balance is reviewable at the VET provider’s request, and a decision not to re-credit a person’s FEE-HELP balance is reviewable at that person’s request.

Item 22

This item inserts the following definitions in clause 1 of Schedule 1 to the Act:

- “responsible parent” which is used in paragraph 88(3A)(b);
- “State or Territory VET regulator” which is used in paragraph 75(cb); and
- “Student entry procedure” which has the meaning given by subclause 23B(3) of Schedule 1A.

Item 23

This item inserts a reference to “of Schedule 1A” after “subclause 27(2)” in the definition of VET tuition fee set out in subclause 1(1) of Schedule 1 to the Act.

Item 24

This item provides that the amendments to be made by this Schedule will apply as follows:

- the amendments of clause 6 of Schedule 1A apply in relation to applications for approval as a VET provider which are made on or after 1 January 2016;
- the amendment to clause 9 of Schedule 1A applies in relation to decisions not to approve bodies as VET providers made on or after 1 January 2016;
- the amendment of clause 15 of Schedule 1A applies in relation to annual financial reporting periods ending on or after 1 January 2016;
• paragraph 43(1)(ea) and clause 45B of Schedule 1A (as inserted by this Schedule) apply in relation to VET courses of study enrolled in on or after 1 January 2016;
• subparagraph 43(1)(f)(i) of Schedule 1A (as inserted by this Schedule) applies in relation to VET units of study enrolled in on or after 1 January 2016;
• paragraph 43(1)(h) and clause 45C of Schedule 1A (as inserted by this Schedule) apply in relation to requests for Commonwealth assistance given on or after 1 January 2016;
• clause 46A of Schedule 1A (as inserted by this Schedule) applies in relation to unacceptable conduct engaged in on or after 1 January 2016.
Part 2 – Civil penalties and enforcement

Higher Education Support Act 2003

Item 25

This item substitutes paragraph 180-20(b). New paragraph 180-20(b) makes reference to a “NVETR staff member”, which is a term now defined in subclause 1(1) of Schedule 1.

Item 26

Division 5A – Civil penalty provisions and enforcement

This item inserts the heading for new Division 5A, “Division 5A – Civil penalty provisions and enforcement”.

Subdivision 5A-A – Civil penalty provisions

This item also inserts the heading, “Subdivision 5A-A – Civil penalty provisions” at the end of Part 1 of Schedule 1A.

This item triggers Part 4 of the Regulatory Powers Act such that the new civil penalty provisions in Division 5A of Schedule 1A will be enforceable under that Part. This will provide a framework for the use of civil penalties to enforce the civil penalty provisions.

Clause 39DA

Subclause 39DA(1) provides that each civil penalty provision added under Division 5A of Schedule 1A is enforceable under Part 4 of the Regulatory Powers Act.

A note provides that Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Subclause 39DA(2) provides that, for the purposes of Part 4 of the Regulatory Powers Act, the Secretary, an SES employee, or an acting SES employee in the Department are authorised applicants in relation to the civil penalty provisions.

Subclause 39DA(3) specifies each “applicable court” is a relevant court in relation to the civil penalty provisions. “Applicable court” is defined in subclause 1(1) of Schedule 1 as the Federal Court of Australia, the Federal Circuit Court of Australia or a court of a State or Territory that has jurisdiction in relation to matters arising under the Act.

Section 81 of the Regulatory Powers Act provides that a court is a relevant court for the purposes of Part 4 of that Act if an Act provides that a court is a relevant court in relation to civil penalty provisions for the purposes of Part 4.
Clause 39DB

New clause 39DB establishes civil penalties that would apply where a VET provider or their agent publishes information that suggests VET FEE-HELP assistance is not a loan.

Subclause 39DB(1) would apply where a VET provider publishes, or causes information to be published, and that information suggests that:

- VET FEE-HELP assistance for a VET unit of study or VET course of study is not a loan, or does not need to be repaid; or
- if a student receives VET FEE-HELP assistance for such a unit or course, that the unit or course is free from any fees or charges.

This amendment includes circumstances where a VET provider causes information to be published, such as by procuring or directing the publishing of information.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

Subclause 39DB(2) would apply where the person publishes information as agent for a VET provider and that information suggests that:

- VET FEE-HELP assistance for a VET unit of study or VET course of study is not a loan, or does not need to be repaid; or
- if a student receives VET FEE-HELP assistance for such a unit or course, that the unit or course is free from any fees or charges.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

This amendment is intended to ensure that VET students, or intended VET students, are aware that, by receiving VET FEE-HELP, the student will be incurring a debt to the Commonwealth that must be repaid. It is aimed at deterring VET providers and their agents from engaging in inaccurate or misleading marketing behaviour with respect to the nature or availability of VET FEE-HELP assistance.

Clause 39DC

New clause 39DC establishes civil penalties that would apply where a provider or their agent offers a person an inappropriate benefit for the purpose of inducing the person to enrol with the provider, and apply for VET FEE-HELP assistance.

Subclause 39DC(1) prohibits a VET provider from offering or providing another person with a benefit, or causing a person to be offered or provided with a benefit, that would be reasonably likely to induce a person to enrol in a VET unit or a VET course of study, make a request for Commonwealth assistance, and receive that assistance in relation to that unit or course.

This amendment includes circumstances where a VET provider causes a person to be offered a benefit, such as where a VET provider procures or directs the offering of the
benefit. This amendment is also intended to cover where a VET provider offers or provides the benefit to a third party (such as provision of benefits to a club or for the benefit of its members) for the purposes of inducing a person (the student) to enrol.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

Subclause 39DC(2) prohibits a VET provider’s agent from offering or providing another person with a benefit that would be reasonably likely to induce a person to enrol in a VET unit or a VET course of study, make a request for Commonwealth assistance, and receive that assistance in relation to that unit or course of study.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

Subclause 39DC(3) clarifies that the person referred to in paragraph 39DC(1)(b) or 39DC(2)(c) who is, or may have been offered or provided with the benefit, does not need to be the student, and may be a third party.

This amendment is intended to impose a civil penalty on a VET provider where the VET provider, or its agent or broker, offers inappropriate inducements, which result in the student enrolling with the provider and making a request for Commonwealth assistance in relation to the unit or course in which they enrolled.

Clause 39DD

New clause 39DD specifies appropriate and inappropriate inducements for the purposes of clause 39DC.

Subclause 39DD(1) clarifies that subclauses 39DC(1) and (2) and subclause 39DD(2) do not apply in relation to specified benefits. The benefits set out in subparagraphs 39DD(1)(a) to (d) are not inappropriate inducements (benefits) for the purposes of subclause 39DC(1) and (2).

Subclause 39DD(2) specifies certain benefits which are inappropriate inducements for the purposes of new subclause 39DC(1) and (2).

This amendment is intended to provide non-exclusive examples of certain benefits that would be considered inappropriate inducements for the purpose of new subclause 39DC(1).

Clause 39DE

New clause 39DE establishes a civil penalty that would apply where a VET provider fails to comply with the notice requirements prescribed in subclauses 64(1), (2), (2A) or (3) of Schedule 1A.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

This amendment is intended to penalise a VET provider who has not issued notices or accurately issued notices to a person who has requested Commonwealth assistance. Notices ensure that a person who has requested Commonwealth assistance is aware of
the debt they will incur as of the census date with sufficient time for them to cancel their request for Commonwealth assistance should they choose to do so. The notice requirements also ensure students are notified after the census date of debts they have incurred to the Commonwealth and provides students with the opportunity to correct inaccurate information on that notice within legislated timeframes. The intention of this provision is to deter non-compliance with the notice requirements.

**Clause 39DF**

New clause 39DF establishes a civil penalty that would apply where a VET provider fails to comply with certain requests made by a student who is enrolled in a VET unit of study and is entitled to receive VET FEE-HELP assistance for that unit, prior to the end of the census date.

Subclause 39DF(1) establishes a civil penalty that would apply where a VET provider enrolls a person (the student) in a VET unit of study for which the student is entitled to VET FEE-HELP assistance, and the provider fails to comply with a written request, made by the student before the end of the census date for the unit to:

- cancel the enrolment; or
- withdraw the student’s request for Commonwealth assistance relating to the unit.

Subclause 39DF(2) provides that, for the purposes of the requirement in paragraph 39DF(1)(c) that the student is entitled to VET FEE-HELP assistance, the following matters should be disregarded:

- the requirement that the student remains enrolled at the end of the census date; and
- the requirement that the request for Commonwealth assistance is not withdrawn before the end of that census date.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

This amendment is intended to penalise a VET provider who fails to cancel an enrolment or withdraw a student’s request for Commonwealth assistance where the student has requested this cancellation or withdrawal in writing, with the intention to deter non-compliance with these requirements. This provision seeks to further encourage compliance with the requirements in relation to withdrawal and cancellation in order to protect students from incurring debt where they do not intend to study. It also seeks to protect Commonwealth monies from misuse.

**Clause 39DG**

New clause 39DG establishes a civil penalty that would apply where a VET provider charges a VET student a fee in order to cancel an enrolment or a request for Commonwealth assistance.

Subclause 39DG(1) would apply where a provider enrolls a person (the student) in a VET unit of study to which the student is entitled to VET FEE-HELP assistance, and
charges the student a fee or penalty in order to comply with a written request, made before the end of the census date for the unit by the student, to:

- cancel the enrolment; or
- withdraw the student’s request for Commonwealth assistance relating to the unit.

Subclause 39DG(2) provides that, for the purposes of the requirement that the student is entitled to VET FEE-HELP assistance (39DG(1)(c)), the following matters should be disregarded:

- the requirement that the student remains enrolled at the end of the census date; and
- the requirement that the request for Commonwealth assistance is not withdrawn before the end of that census date.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

This amendment is intended to penalise a VET provider where a fee is charged to a student or penalty is incurred by the student in order for a student to cancel their enrolment or withdraw a request for Commonwealth assistance. The intention of this amendment is to deter a VET provider’s non-compliance with processing a student’s valid request to cancel their request for Commonwealth assistance prior to the student incurring the debt on the census date, where that request is given by the student on or prior to the census date. This provision seeks to further encourage compliance to protect students from incurring debt where they do not intend to study and to protect Commonwealth monies from misuse.

Clause 39DH

New clause 39DH establishes civil penalties that would apply where a provider accepts a request for Commonwealth assistance when the student is not entitled to that assistance.

Subclause 39DH(1) would apply where a student gives a request for Commonwealth assistance to an appropriate officer of a VET provider, and the VET provider treats the student as being entitled to VET FEE-HELP assistance for a VET unit of study, or a VET course of study of which the unit forms a part, and the student is not entitled to such assistance.

This amendment is intended to penalise a VET provider who treats a student as being entitled to VET FEE-HELP for a VET unit of study or a VET course of study of which the unit forms a part, when the student is not entitled.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

Subclause 39DH(2) establishes a civil penalty that would apply where an appropriate officer of the VET provider is given a form by another person (the student), subclause 88(3A) applies to the student, the form is not signed by a responsible parent of the student, the form would have been a request for Commonwealth assistance relating to
a VET unit of study or a VET course of study of which the unit forms a part if it had been signed by a responsible parent of the student, and the VET provider treats the student as being entitled to VET FEE-HELP assistance for the unit.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

Subclause 39(DH)(2) is intended to penalise a VET provider who allows a minor under the age of 18 (to whom subclause 88(3A) applies) to access Commonwealth assistance without the signature of their responsible parent on the Commonwealth assistance form, with the intention to deter non-compliance with this requirement. This provision seeks to further encourage the protection of certain minors, under the age of 18, from incurring debt where they have not first sought advice from a parent about that debt.

Clause 39DI

New clause 39DI establishes civil penalties that would apply where a provider fails to advise a student about the requirements for making a valid request for Commonwealth assistance.

Subclause 39DI(1) would apply where a VET provider fails to advise a student, prior to their enrolment in a VET unit of study, that the student would not be entitled to receive VET FEE-HELP assistance for the unit if he or she enrolls less than 2 business days before the census date for the unit.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

Subclause 39DI(2) would apply where the VET provider enrols a student in a VET unit of study; the student completes, signs and gives an appropriate officer of the VET provider a request for Commonwealth assistance relating to the unit or a VET course of study of which the unit forms a part; and the request is so given less than 2 business days after the student enrolls, and either of the following applies:

- a VET provider failed to advise a student, prior to their enrolment in a VET unit of study, that VET FEE-HELP assistance for the unit can only be received if the request is given at least 2 business days after the student enrolls; or
- a VET provider encouraged a student to give a request for Commonwealth assistance so that it would be given less than 2 business days after enrolling.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

This amendment is intended to penalise a VET provider who has not advised a student about the requirement to allow 2 business days between enrolment and the submission of the request Commonwealth assistance. The intention of this amendment is to deter non-compliance with the provisions that require providers to advise a student, prior to enrolment, about the 2 business period for student loan payment option decision making and to penalise a provider if it encourages a student to give a request for Commonwealth assistance less than 2 business days after course enrolment.
Clause 39DJ

New clause 39DJ establishes a civil penalty that would apply where:

- a VET provider enrols a person (the student) in a VET unit of study in respect of which the provider charges tuition fees, and the student receives VET FEE-HELP assistance for the unit;
- the VET Guidelines, for the purposes of clause 27A, specify when the tuition fees may be charged; and
- the VET provider does not charge those tuition fees in accordance with the VET Guidelines.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

Clause 39DK

New clause 39DK establishes a civil penalty that would apply where on the day before a person (the student) enrols in a VET unit of study (in respect of which the provider charges tuition fees, and the student receives VET FEE-HELP assistance), a VET provider fails to make the tuition fees available on its website in a way that is readily accessible by the public (i.e. without the need for a username or a password).

The civil penalty in respect of a contravention of this provision is 60 penalty units.

This amendment is intended to penalise a VET provider who does not ensure that students and intending students have access to tuition fee information (on the VET provider’s website in a public, readily accessible place) with the intention to deter non-compliance with the correct publication of tuition fee information that ensures students have enough information prior to enrolment to make enrolment, study and payment decisions.

Clause 39DL

New clause 39DL establishes a civil penalty that would apply where a VET provider enrols another person (the student) in a VET unit of study, the student receives VET FEE-HELP assistance for the unit, the VET provider is subject to a requirement under subclause 24(1) or (2) to provide information relating to the VET FEE-HELP assistance, and the VET provider fails to comply with that requirement.

The civil penalty in respect of a contravention of this provision is 60 penalty units.

The intention of this provision is to penalise a VET provider who fails to report data to the Commonwealth as required by the provisions in the Act. Timely and accurate reporting of data is essential for effective administration of the scheme, including for student debt information to be reported and subsequently transmitted to the Australian Taxation Office for timely debt recording on students’ tax records.
Subdivision 5A-B – Infringement notices

This item also inserts the heading for new “Subdivision 5A-B – Infringement notices”.

Clause 39EA

New clause 39EA triggers Part 5 of the Regulatory Powers Act to operate by providing that a civil penalty provision of Division 5A is subject to an infringement notice under Part 5 of the Regulatory Powers Act. Part 5 of the Regulatory Powers Act creates a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.

A note at the end of new clause 39EA provides that Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Clause 39EB

New clause 39EB provides that an infringement officer in relation to the civil penalty provisions is:

- each NVETR staff member who is:
  - an SES employee or an acting SES employee; or
  - an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position; or
- each SES employee, or an acting SES employee, in the Department.

Clause 39EC

New clause 39EC provides that, for the purposes of Part 5 of the Regulatory Powers Act, the relevant chief executive in relation to the civil penalty provisions is:

- for an infringement notice given by an infringement officer covered by clause 39FA(a) – each NVETR Commissioner; and
- for an infringement notice given by an infringement officer covered by paragraph 39EB(b) – the Secretary.

Subdivision 5A-C – Monitoring and investigation powers

This item also inserts the heading, “Subdivision 5A-C – Monitoring and investigation powers”.

Clause 39FA

Subclause 39FA(1) provides that Subdivision 5A-A is subject to monitoring under Part 2 of the Regulatory Powers Act.

A note to subclause 39FA(1) provides that Part 2 of the Regulatory Powers Act creates a framework for monitoring whether Subdivision 5A-A has been complied with and notes that it includes powers of entry and inspection.
Subclause 39FA(2) provides that information given in compliance or purported compliance with a provision of Subdivision 5A-A of Schedule 1A is subject to monitoring under Part 2 of the Regulatory Powers Act.

A note to subclause 39FA(2) provides that Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Part 2 of the Regulatory Powers Act has been triggered by the Bill to ensure that the Department and the National VET Regulator have an appropriate framework and powers for monitoring compliance and purported compliance with the civil penalty provisions, and that information given in compliance or purported compliance with the civil penalty provision, is appropriately subject to monitoring.

Clause 39FB


Subclause 39FB(1) provides that for the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to Subdivision 5A-A of Schedule 1A:

- each civil penalty provision of Division 5A is related to Subdivision 5A-A of Schedule 1A;
- each departmental investigator and NVETR investigator is an authorised applicant;
- each departmental investigator and NVETR investigator is an authorised person;
- a judicial officer is an issuing officer;
- for an authorised person who is a departmental investigator, the Secretary is the relevant chief executive; and
- for an authorised person who is a NVETR investigator, each NVETR Commissioner is the relevant chief executive; and
- each applicable court is the relevant court.

These paragraphs trigger relevant provisions of Part 2 of the Regulatory Powers Act and specify certain persons as being able to exercise certain roles with respect to monitoring powers under Part 2 of that Act.

Subclause 39FB(2) allows an authorised person to be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to a provision of Subdivision 5A-A of Schedule 1A. Under paragraph 23(1)(a) of the Regulatory Powers Act, a person exercising monitoring powers may only be assisted by another person if it is necessary and reasonable to do so.
Clause 39FC

New clause 39FC provides that each civil penalty provision of Division 5A is subject to investigation under Part 3 of the Regulatory Powers Act. A note to clause 39FC provides that Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened, and notes that Part 3 includes powers of entry, search and seizure.

This amendment is intended to ensure that the department and the National VET Regulator have an appropriate framework and sufficient powers for investigating and gathering material that relates to a contravention of the civil penalty provisions.

Clause 39FD


New subclause 39FD(1) provides that for the purposes of Part 3 of the Regulatory Powers Act as it applies in relation to evidential material that relates to a civil penalty of Division 5A:

- each departmental investigator and NVETR investigator is an authorised applicant;
- each departmental investigator and NVETR investigator is an authorised person;
- a judicial officer is an issuing officer;
- for an authorised person who is a Departmental investigator, the Secretary is the relevant chief executive; and
- for an authorised person who is a NVETR investigator, each NVTER Commissioner is the relevant chief executive; and
- each applicable court is the relevant court.

This amendment is intended to trigger the relevant provisions in Part 3 of the Regulatory Powers Act and specify certain persons as being able to exercise certain roles with respect to investigation powers under Part 3 of that Act.

Pursuant to paragraph 53(1)(b) of the Regulatory Powers Act, new subclause 39FD(2) allows an authorised person to be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision of Subdivision 5A-A of Schedule 1A. Under paragraph 53(1)(a) of the Regulatory Powers Act, a person exercising monitoring powers may only be assisted by another person if it is necessary and reasonable to do so.

Subdivision 5A-D – Other matters

This item inserts the heading “Subdivision 5A-D – Other matters”.

32
Clause 39GA

New clause 39GA provides for the appointment of investigators.

Subclause 39GA(1) provides that the Secretary may, in writing, appoint an APS employee in the department as a Departmental investigator for the purposes of Division 5A.

Subclause 39GA(2) provides that the NVETR Commissioner may, in writing, appoint a NVETR staff member as a NVETR investigator for the purposes of Division 5A.

Subclause 39GA(3) provides that a person must not be appointed as a Departmental investigator or a NVETR investigator unless the appointer is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of such an investigator. The intention of this requirement is that persons are to be appointed only when they have the requisite knowledge, training or experience on the scope of the powers to be exercised.

Subclause 39GA(4) provides that a Departmental investigator and a NVETR investigator, must, in exercising powers as such, comply with any directions of the appointer. The intention of this provision is to ensure that investigators must comply with directions given by the person who appoints them.

Subclause 39GA(5) provides that if a direction is given under subclause (4) in writing, the direction is not a legislative instrument. This subclause is included to assist readers to understand that the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

Clause 39GB

New clause 39GB provides sets out the relevant functions and powers of a person referred to in paragraphs (a) to (d) include those conferred by Part 2, 3, 4 or 5 (as applicable) of the Regulatory Powers Act in relation to this Division.

Clause 39GC

New clause 39GC provides for delegation of powers by the relevant chief executive.

Subclause 39GC(1) provides that the Secretary may, in writing, delegate his or her powers and functions that arise under the Regulatory Powers Act as the relevant chief executive and relate to Division 5A of Schedule 1A, to an SES employee, or an acting SES employee, in the department.

Subclause 39GC(2) provides that a NVETR Commissioner may, in writing, delegate his or her powers and functions that are under the Regulatory Powers Act as the relevant chief executive and relate Division 5A or arise under clause 39GA of Schedule 1A, to an NVETR staff member who is:

- an SES employee, or an acting SES employee; or
• an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.

Subclause 39GC(3) provides that a person exercising powers or performing functions under a delegation under subclause 39ED(1) or (2) must comply with any directions of the delegator.

Subclause 39GC(4) provides that a person must not exercise powers or perform functions under a delegation under subclause (1) or (2) in relation to an infringement notice given by the person. This amendment will seek to ensure procedural fairness with respect to the exercise of powers and performance of functions by delegates.

Clause 39GD

New clause 39GD clarifies that action may be taken under Division 5A in addition to, or instead of, any action that may be taken under any other provision of the Act, including under any or all of the specified provisions of Schedule 1A.

This amendment is intended to make it clear that the enforcement of a civil penalty against a VET provider would not prevent other action under the Act, such as the provision of a compliance notice with respect to the same conduct of a VET provider.

Item 27

This item substitutes paragraph 72(b) in clause 72 in Schedule 1A with a new paragraph 72(b).

This amendment is intended to make reference to the purposes of Division 5A of Part 1 of Schedule 1A to extend the definition of VET personal information to include information that is obtained or created by a VET officer for the purposes of Division 5A which deals with civil penalty provisions and infringement notices.

Item 28

This item substitutes paragraph 74(3)(a) of Schedule 1A. New paragraph 74(3)(a) expands the meaning of “official employment” of a VET officer to include, for a Commonwealth officer, the performance of duties or functions, or the exercise of powers under or for the purposes of Schedule 1A or conferred as described in clause 39GB (functions and powers conferred under the Regulatory Powers Act).

This amendment is intended to authorise Commonwealth officers to disclose civil penalty/infringement information lawfully.

Item 29

This item inserts new paragraph 75(ab) in clause 75 in Schedule 1A. New paragraph 75(ab) refers to disclosure by a Commonwealth officer of VET personal information relating to a civil penalty provision for purposes relating to:

• monitoring or investigating compliance with a civil penalty provision; or
• enforcing the civil penalty provision; or
• issuing an infringement notice in relation to the civil penalty provision.

This amendment is intended to authorise disclosure of information for the purposes of issuing an infringement notice or enforcing a civil penalty provision.

Item 30

This item inserts the following definitions into subclause 1(1) of Schedule 1 to the Act:

• “applicable court” which refers to:
  o the Federal Court of Australia;
  o the Federal Circuit Court of Australia; or
  o a court of a State or Territory that has jurisdiction in relation to matters arising under this Act;
• “civil penalty provision” which refers to each of the following clauses or subclauses of Schedule 1A:
  o subclauses 39DB(1) and (2);
  o subclauses 39DC(1) and (2);
  o clause 39DE;
  o subclause 39DF(1);
  o subclause 39DG(1);
  o subclause 39DH(1) and (2);
  o subclauses 39DI(1) and (2); or
  o clauses 39DJ, 39DK and 39DL;
• “Departmental investigator” which means a person appointed under subclause 39GA(1);
• “judicial officer” which means:
  o a magistrate;
  o a Judge of a court of a State or Territory;
  o a Judge of the Federal Circuit Court of Australia; or
  o a Judge of the Federal Court of Australia;
  “NVETR Commissioner” which refers to the Chief Commissioner or a Commissioner within the meaning of the National Vocational Education and Training Regulator Act 2011;
• “NVETR investigator” which means a person appointed under subclause 39GA(2);
  “NVETR staff member” which means a member of the staff of the NVETR (within the meaning of the National Vocational Education and Training Regulator Act 2011); and

Item 31

This item provides that the amendments to be made by this Schedule will apply as follows:
• clause 39DC(1) of Schedule 1A (as inserted by this Schedule) applies in relation to conduct referred to in paragraph (b) that occurs on or after 1 January 2016;
• clause 39DC(2) of Schedule 1A (as inserted by this Schedule) applies in relation to conduct referred to in paragraph (a) of that subclause that happens on or after 1 January 2016;
• clause 39DF(1) of Schedule 1A (as inserted by this Schedule) applies in relation to requests referred to in paragraph (d) of that subclause that are given on or after 1 January 2016;
• clause 39DG(1) of Schedule 1A (as inserted by this Schedule) applies in relation to requests referred to in paragraph (d) of that clause that are given on or after 1 January 2016
• subclause 39DH(1) of Schedule 1A (as inserted by this Schedule) applies in relation to requests referred to in paragraph (b) of that subclause that are given on or after 1 January 2016;
• subclause 39DH(2) of Schedule 1A (as inserted by this Schedule) applies in relation to forms referred to in paragraph (b) of that subclause that are given on or after 1 January 2016;
• clause 39DI(1) and (2) of Schedule 1A (as inserted by this Schedule) apply in relation to enrolments on or after 1 January 2016;
• clause 39DJ of Schedule 1A (as inserted by this Schedule) applies in relation to VET courses of study that commence on or after 1 January 2016; and
• clauses 39DK and 39DL of Schedule 1A (as inserted by this Schedule) apply in relation to enrolments on or after 1 January 2016.
Schedule 2 – Other amendments

*Higher Education Support Act 2003*

The amendments set out in Schedule 1 to this Bill are to apply to the *Higher Education Support Act 2003* as it currently stands. The amendments proposed by this Schedule 2 are additional amendments to the *Higher Education Support Act 2003* which will be required in the event that the Higher Education and Research Reform Bill 2014 passes.

**Item 1**

This item inserts paragraph 137-18(4)(aa) in section 137-18. New paragraph 137-18(4)(aa) specifies subclause 46A(1) of Schedule 1A as an additional reason for remitting a debt in relation to a VET unit of study.

**Item 2**

This item substitutes “about re-crediting FEE-HELP balances” in subclause 39GD(d) of Schedule 1A with “about re-paying VET FEE-HELP assistance”.

**Item 3**

This item substitutes the heading for clause 46A of Schedule 1A with “Provider repayment of VET FEE-HELP assistance – unacceptable conduct by provider or provider’s agent”.

**Item 4**

This item substitutes the heading for clause 46A of Schedule 1A with “Decision that this subclause applies”.

**Item 5**

This item substitutes the reference to “re-credit a person’s FEE-HELP balance with an amount equal to the amounts of VET FEE-HELP assistance that the person received for a VET unit of study” in clause 46A, with “decide that this subclause applies to a person”.

**Item 6**

This item substitutes paragraph 46A(1)(a) of Schedule 1A with new paragraphs 46A(1)(a) and (aa). New paragraph 46A(1)(a) requires that “the person has been enrolled in a VET unit of study with a VET provider”. New paragraph 46A(1)(aa) requires that “the person received VET FEE-HELP assistance for the unit”.
Item 7

This item substitutes paragraph 46A(1)(d) of Schedule 1A. New paragraph 46A(1)(d) requires that “the person applies in writing to the provider for the remission of the person’s VET FEE-HELP debt in relation to the unit”.

Item 8

This item substitutes the notes under subclause 46A(1) of Schedule 1A with:

Note 1: If this subclause applies, the VET FEE-HELP debt of the person is remitted (see subsection 137-18(4)) and the provider must repay the amount of the VET FEE-HELP assistance to the Commonwealth (see clause 56).

Note 2: A decision that this subclause does not apply to a person is reviewable under Division 16.

Item 9

This item substitutes the reference to “decision under subclause (1)” from subclause 46A(3) of Schedule 1A with “decision that subclause (1) applies”.

Item 10

This item substitutes paragraph 46A(3)(c) of Schedule 1A. New paragraph 46A(3)(c) requires the applicant and the VET provider to be invited to each make written submissions to the Secretary within 28 days on why that decision to recredit a student’s VET FEE-HELP balance should be made.

Item 11

This item substitutes the reference to “decision under subclause (1)” in subclause 46A(4) and 46A(5) of Schedule 1A with “decision that subclause (1) applies”.

Item 12

This item inserts paragraph 56(1)(aa) referring to subclause 46A(1) (unacceptable conduct), into subclause 56(1)(a) of Schedule 1A.
**Item 13**

This item substitutes items 2 and 3 of the table in clause 91 of Schedule 1A with:

2. A decision that subclause 46A(1) does not apply to a person in relation to a unit of study

3. A decision that subclause 46A(1) applies to a person in relation to a unit of study

**Item 14**

This item provides that amendments made by Schedule 2 apply, or are taken to have applied in relation to unacceptable conduct engaged in on or after 1 January 2016.

**Item 15**

This item provides for the transitional arrangements that will apply if Schedule 2 commences after 1 January 2016. This item also provides 3 examples of how the transitional arrangements are intended to apply.
Regulation Impact Statement
Changes to the VET FEE-HELP Scheme
August 2015