2016–2017–2018

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HIGHER EDUCATION SUPPORT AMENDMENT
(VET FEE-HELP STUDENT PROTECTION) BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Small and Family Business, Skills and Vocational Education, Senator the Hon Michaelia Cash)
THE PURPOSE OF THIS BILL IS TO PROVIDE A REMEDY FOR STUDENTS WHO INCURRED DEBTS UNDER THE VET FEE-HELP LOAN SCHEME AS A RESULT OF INAPPROPRIATE CONDUCT BY TRAINING PROVIDERS OR AGENTS OF THOSE PROVIDERS.

The VET FEE-HELP loan scheme, contained in Schedule 1A to the Higher Education Support Act 2003 (HESA) operated from 2009 to 2016 assisting students with the cost of their studies through a loan with income contingent repayment arrangements. Following its commencement, when the focus was on supporting pathways into higher education, VET FEE-HELP was expanded in late 2012 and the requirement for a pathway to higher education was abolished. The decision to expand the scheme was weighted heavily towards supporting growth in the VET sector, but did not provide sufficient safeguards for students or regulatory powers for the Government. Instead, it provided incentives and rewards for unethical behaviour and misuse of student entitlements.

Under the VET FEE-HELP loan scheme, a number of unscrupulous training providers and their agents targeted vulnerable people. Those targeted were signed up to courses which they may not have had the academic capability or means to complete and may not have understood they were receiving a loan from the Commonwealth that needed to be repaid. Some students were not aware they had signed up to training and were not aware of debts they had incurred. As a result, the scheme left many students with large debts and in some cases little to no training outcomes.

Since 2015, the Commonwealth has progressively strengthened protection for students who are using the VET FEE-HELP loan scheme. The Commonwealth introduced a range of initial reforms through the Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015. In particular, students could have their VET FEE-HELP debts remitted for unacceptable conduct by VET providers (or their agents) that occurred on or after 1 January 2016. The Commonwealth replaced the VET FEE-HELP loan scheme with the vastly improved VET Student Loans program from 1 January 2017. Some continuing students accessed VET FEE-HELP under grandfathering arrangements during 2017 and 2018.

On 1 July 2017, the Commonwealth also established the VET Student Loans Ombudsman (VSLO). The establishment of the VSLO made more data available concerning the scale and detail of complaints, including making apparent that there are a significant number of individual cases which cannot currently be remedied under existing legislation.

As a result, the Bill amends Schedule 1A to HESA to introduce a broad remedy for students who incurred a VET FEE-HELP debt as a result of inappropriate conduct by VET providers or their agents, including where that conduct occurred prior to 1 January 2016. Specifically, the Bill:
provides for a new discretionary power for the Secretary to re-credit a person’s FEE-HELP balance where the person incurred a VET FEE-HELP debt as a result of inappropriate conduct by a VET provider or its agents at any time before the closure of the VET FEE-HELP scheme. Where a student’s FEE-HELP balance is re-credited, the student’s corresponding debt to the Commonwealth is remitted;

provides that, in deciding whether to re-credit a person’s FEE-HELP balance, the Secretary must be satisfied that the person did not complete the requirements for the relevant VET unit of study and that it is reasonably likely that the VET provider (or its agent) engaged in inappropriate conduct towards the person in relation to the unit or the course of which the unit formed a part;

provides that the VET Guidelines, a legislative instrument made by the Minister under Schedule 1A to HESA, may prescribe the matters that the Secretary must have regard to in considering whether it is reasonably likely that the VET provider (or its agents) engaged in inappropriate conduct;

provides the Commonwealth with the ability to recover from the VET provider an amount that is equivalent to the amount remitted, in limited circumstances.

To maximise the availability of a remedy to as many affected persons as possible and maximise the Commonwealth’s ability to recover payments made to training providers after 1 January 2016 when the 2015 reforms came into effect, the new provisions would operate in addition to existing provisions in HESA relating to re-credits for unacceptable conduct by VET providers or their agents.

The Bill also amends the Ombudsman Act 1976 to reflect the VSLO’s role under the new arrangements.
FINANCIAL IMPACT STATEMENT

This Bill implements the Government’s mechanism to provide a remedy for VET FEE-HELP students who incurred debts under the VET FEE-HELP loan scheme following inappropriate conduct.

Costs to government are difficult to estimate as it is not possible to accurately estimate the total number of students impacted by inappropriate conduct, and the quantum varies in each case. The measure includes the application of criteria to assess a student’s eligibility for a re-credit, which will be assessed on a case-by-case basis. Further, there may be circumstances where debts are re-credited where there is no recovery from the provider.
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 STUDENT PROTECTION) BILL 2018

The Higher Education Support Amendment (VET FEE-HELP Student Protection) Bill 2018 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.

Overview of the Bill

The purpose of this Bill is to provide a remedy for students who incurred debts under the VET FEE-HELP loan scheme as a result of inappropriate conduct by training providers or their agents.

The VET FEE-HELP loan scheme, contained in Schedule 1A to the Higher Education Support Act 2003 (HESA), operated from 2009 to 2016 assisting students with the cost of their studies through a loan with income contingent repayment arrangements. Following its commencement, where the focus was on supporting pathways into higher education, VET FEE-HELP was expanded in late 2012 and the requirement for a pathway to higher education was abolished. The decision to expand the scheme was weighted heavily towards supporting growth in the VET sector, but did not provide sufficient safeguards for students or regulatory powers for the Government. Instead, it provided incentives and rewards for unethical behaviour and misuse of student entitlements.

Under the VET FEE-HELP loan scheme, a number of unscrupulous training providers and their agents targeted vulnerable people. Those targeted were signed up to courses which they may not have had the academic capability or means to complete and may not have understood they were receiving a loan from the Commonwealth that needed to be repaid. Some students were not aware they had signed up to training and were not aware of debts they had incurred. As a result, the scheme left many students with large debts and in some cases little to no training outcomes.

Since 2015, the Commonwealth has progressively strengthened protection for students who are using the VET FEE-HELP loan scheme. The Commonwealth introduced a range of initial reforms through the Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015. In particular, students could have their VET FEE-HELP debts remitted for unacceptable conduct by VET providers (or their agents) that occurred on or after 1 January 2016. The Commonwealth replaced the VET FEE-HELP loan scheme with the vastly improved VET Student Loans program from 1 January 2017. Some continuing students accessed VET FEE-HELP under grandfathering arrangements during 2017 and 2018.
On 1 July 2017, the Commonwealth also established the VET Student Loans Ombudsman (VSLO). The establishment of the VSLO made available more data on the scale and detail of complaints, including making apparent that there are a significant number of individual cases which cannot currently be remedied under existing legislation.

The Bill introduces a broad remedy for students who incurred a VET FEE-HELP debt as a result of inappropriate conduct by VET providers or their agents by giving a discretionary power to the Secretary of the Department administered by the Minister administering HESA (currently, the Secretary of the Department of Education and Training). This discretionary power can be exercised to re-credit a person’s FEE-HELP balance and remit the associated VET FEE-HELP debt if the VET FEE-HELP debt was incurred as a result of the inappropriate conduct of a VET provider or its agents. The Bill also provides the Commonwealth with the ability to recover the amount remitted from the VET provider, in limited circumstances.

To maximise the availability of a remedy to as many affected persons as possible and maximise the Commonwealth’s ability to recover payments made to training providers after 1 January 2016, when the 2015 reforms came into effect, the new provisions would operate in addition to existing provisions in HESA relating to re-credits for unacceptable conduct by VET providers or their agents.

The Bill also amends the Ombudsman Act 1976 to reflect the VSLO’s role under the new arrangements.

Summary of analysis

The Bill is compatible with human rights and, to the extent that it may limit human rights, the measures contained in this Bill are proportionate and justifiable.

As the remedy introduced in the Bill is discretionary, there is potential for some students to be ineligible for a remission of debt. However, this is justifiable as the Commonwealth needs to balance the legitimate cancellation of debts with the exclusion of students who completed their training and may opportunistically seek cancellation of their debts. In addition, the decision whether to remit a student’s debt will be made having regard to matters prescribed in a legislative instrument relating to inappropriate conduct by VET providers or their agents, ensuring that decisions are made fairly and consistently.

Analysis of human rights implications

The Bill has implications for the following human rights:

- the right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the rights of the child – Article 3 of the Convention of the Rights of the Child (CRC)
- the rights of people with disabilities - Article 10 of the Declaration on the Rights of Disabled Persons (DRDP).
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. Article 13 further 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 was to make technical and vocational secondary education more accessible to students who may not otherwise have had access to it. The actions of a small number of unscrupulous training providers and their agents have left many students with large debts and little to no training outcomes.

The measures in the Bill introduce a new remedy for students who sought out educational opportunities through the VET FEE-HELP loan scheme and incurred debts as a result of inappropriate conduct by VET providers or agents of those providers. Due to the inappropriate conduct of these providers and their agents, it is likely that affected students have a tainted view of education. The Bill seeks to provide a remedy to these students to restore their confidence and trust in the quality of the education and training system in Australia.

This Bill is compatible with the right to education.

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 measures in the Bill protect vulnerable children who may have experienced unscrupulous behaviour by training providers approved under the VET FEE-HELP loan scheme (or agents of those providers) by introducing a new remedy to ensure debts incurred as a result of this behaviour can be remitted.

Rights of Disabled Persons

Article 10 of the DRDP ensures that disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature. Further, Article 6 of the DRDP provides, in relevant part, that disabled persons have the right to education and vocational training to develop their capabilities and skills to the maximum and hasten the processes of their social integration or reintegration.

The Commonwealth is aware that the VET FEE-HELP scheme was plagued by some unethical provider or agent practices that resulted in vulnerable, including disabled, persons being taken advantage of.
The measures in the Bill seek to provide redress for those vulnerable students who were signed up to the VET FEE-HELP scheme and incurred a significant financial liability, without fully understanding the consequences of what they were signing up to. This Bill will help ensure that debts incurred as a result of the inappropriate conduct of providers or their agents can be remitted.

The Bill is compatible with the rights of disabled persons.

**Conclusion**

This Bill is compatible with human rights and, to the extent that it may limit human rights, the limitations are reasonable, necessary and proportionate.
NOTES ON CLAUSES

Clause 1 - Short title

Clause 1 provides for the Act to be the Higher Education Support Amendment (VET FEE-HELP Student Protection) Act 2018.

Clause 2 - Commencement

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

The table has the effect of providing for the following commencement times:

- Sections 1 to 3 and anything in the Act not otherwise covered by the table commence on the day the Act receives the Royal Assent.

- Schedule 1 commences on 1 January 2019.

- Schedule 2 commences on 1 January 2020, immediately after the commencement of Schedule 3 to the Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018. This is because Schedule 2 to the Bill contains amendments that are consequential to amendments contained in Schedule 3 to the Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018.

Clause 3 - Schedule(s)

Clause 3 provides that any legislation that is specified in a schedule is amended or repealed as set out in the applicable items in the schedule and that any other item in a schedule has effect according to its terms.
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>HESA</td>
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<td>Ombudsman Act</td>
<td>Ombudsman Act 1976</td>
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<td>VSL Act</td>
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<td>VSLO</td>
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<td>VSL Rules</td>
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Schedule 1 Amendments

Summary

Schedule 1 to the Bill amends Schedule 1A to HESA to introduce a broad, discretionary power for the Secretary to re-credit a person’s FEE-HELP balance (with the effect of remitting the corresponding VET FEE-HELP debt) and therefore provide a remedy for VET FEE-HELP students who incurred debts as a result of inappropriate conduct by VET providers (or their agents). Schedule 1 also amends Schedule 1A to require VET providers to subsequently pay a corresponding amount to the Commonwealth in certain circumstances.

Schedule 1 also contains amendments to the Ombudsman Act to reflect the role of the VSLO under the new arrangements.

Detailed explanation

Higher Education Support Act 2003

Item 1 – Subsection 137-18(4)

Section 137-18 of HESA deals with how and when VET FEE-HELP debts are incurred and remitted.

Item 1 amends subsection 137-18(4) of HESA by adding a reference to new clause 46AA (see item 3 below). The effect of this change is that a person’s VET FEE-HELP debt in relation to a VET unit of study will be taken to be remitted if the person’s FEE-HELP balance is re-credited under new clause 46AA in relation to that unit.

Item 2 – Subclause 46(1) of Schedule 1A

Clause 46 of Schedule 1A to HESA sets out the main case for re-crediting a person’s FEE-HELP balance (special circumstances).

Item 2 amends subclause 46(1) by adding a reference to new clause 46AA to make it clear that clause 46 does not apply in relation to a VET unit of study if clause 46AA, 46A or 51 applies to re-credit a person’s FEE-HELP balance with an amount equal to amounts of VET-FEE HELP assistance that the person received for that unit.

Item 3 – After clause 46A of Schedule 1A

Item 3 inserts a new clause 46AA in Schedule 1A to HESA, which deals with re-crediting a person’s FEE-HELP balance for inappropriate conduct by a VET provider or provider’s agent that occurred before or after the commencement of Schedule 1 to the Bill (that is, 1 January 2019) (see item 9 below).
New clause 46AA will operate alongside existing clause 46A, which deals with re-credits for unacceptable conduct engaged in by VET providers (or their agents) on or after 1 January 2016 (see item 24 of Schedule 1 to the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*).

Together, the new clause 46AA and existing clause 46A are intended to ensure equitable access to an equivalent remedy (that is, the re-credit of a person’s FEE-HELP balance and remittance of the associated VET FEE-HELP debt) by as many individuals affected by inappropriate conduct by VET providers (or their agents) as possible.

Under new subclause 46AA(1), the Secretary may 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 with a VET provider if the Secretary is satisfied of two matters.

Firstly, the Secretary must be satisfied that either:

- the person has not completed the requirements for the VET unit of study during the period the person undertook, or was to undertake, the unit (subparagraph 46AA(1)(a)(i)); or

- under VET Guidelines prescribed for this purpose, the person is taken not to have completed those requirements during that period (subparagraph 46AA(1)(a)(ii)). The ability for VET Guidelines to be prescribed for this purpose will allow circumstances to be identified where it would be unfair or inappropriate for persons to be considered as having completed the requirements for VET units of study despite being recorded as having done so, and therefore allow a timely and efficient response to information that may come to light, including as more persons come forward complaining about inappropriate conduct by providers (or their agents).

Secondly, the Secretary must be satisfied that it is reasonably likely that, having regard to any matters prescribed by the VET Guidelines for this purpose, the VET provider (or an agent of the VET provider) engaged in inappropriate conduct towards the person in relation to the unit, or the VET course of study of which the unit forms a part (subparagraph 46AA(1)(b)).

The ability for the VET Guidelines to prescribe matters that the Secretary must have regard to will ensure that there is consistency in the Secretary’s exercise of his/her discretion and also provide the Secretary with flexibility to consider a range of factors. While the matters to be prescribed are a matter for the Minister (as the VET Guidelines are a legislative instrument made by the Minister), it is anticipated that some of the matters will relate to whether the provider (or the provider’s agent) engaged in conduct that would be captured by existing provisions in Schedule 1A to HESA and the VSL Act (and relevant legislative instruments) relating to unacceptable conduct (refer to clause 46A in Schedule 1A and Division 2 of Part 6 of the *Higher Education Support (VET_ Guideline 2015*, and section 71 of the VSL Act and section 148 of the VSL Rules).
For this reason, new subclause 46AA(2) provides that the VET Guidelines may prescribe matters for the purposes for new paragraph 46AA(1)(b) that are also prescribed for the purposes of existing paragraph 46A(1)(c).

The Secretary may exercise his/her discretion to re-credit a person’s FEE-HELP balance under subclause 46AA(1) on application by a person under new subclause 46AA(3) (see below) or on his/her own initiative. The Secretary’s ability to re-credit on his/her own initiative is intended to allow for the FEE-HELP balances of multiple students to be re-credited as a group without those students being required to individually submit an application, particularly where the circumstances surrounding those students’ VET-FEE HELP debts are the same or similar or involve the same provider or provider’s agent.

In practice, there are several steps that will ensure that a decision to re-credit a student’s FEE-HELP balance is made fairly and consistently.

In practice, as noted in more detail below, a person may apply through the complaints process managed by the VLSO under Part IIE of the Ombudsman Act. In these circumstances, the VSLO will investigate the person’s complaint and assist the person with the preparation and submission of the application to the Secretary. The VSLO will be able to make recommendations to the Secretary about re-crediting under new clause 46AA. When investigating complaints and making recommendations to the Secretary, the VSLO will make reasonable enquiries to ensure complaints and possible applications for a re-credit are genuine, including analysing:

- statements from affected students;
- students’ records from liquidators and administrators;
- information from government agencies including the Department of Education and Training (the Department), the Australian Skills Quality Authority (ASQA), the National Centre for Vocational Education Research, the Unique Student Identifiers office and the Australian Tax Office; and
- trends from the VSLO’s data and data from the Department and ASQA.

Furthermore, the Secretary’s decision making power under subclause 46AA(1) will be exercised by a delegate of the Secretary. It is proposed that such delegations would be limited to senior executive level subject matter experts within an area of the Department dedicated to the administration of these provisions. This will ensure that decisions are made with the appropriate expertise.

The notes below subclause 46AA(1) explain the effect of a re-credit under subclause 46AA(1):

- in accordance with section 137-18 of HESA (as amended by item 1 of Schedule 1 to the Bill), 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 (Note 1);
• depending on the nature of the inappropriate conduct, the VET provider may be required to repay an amount to the Commonwealth under subclause 56(4) (see item 5 below) (Note 2).

New subclause 46AA(3) provides that a person may apply to the Secretary for the person’s FEE-HELP balance to be re-credited under subclause 46AA(1) and sets out the requirements for the application. Specifically, the application:

• must be in writing; and

• be in the form (if any) approved by the Secretary and accompanied by the information (if any) required by the Secretary; and

• meet any requirements prescribed by the VET Guidelines.

In practice, a person may apply for a re-credit through the complaints process managed by the VSLO under the Part IIE of the Ombudsman Act. Having received and investigated a complaint from a person about inappropriate conduct by a VET provider, the VSLO may assist the person with the preparation and submission of an application to the Secretary.

New subclause 46AA(4) requires the Secretary to seek submissions from an applicant before making a decision to refuse the person’s application under subclause 46AA(3).

Similarly, new subclause 46AA(6) requires the Secretary to seek submissions from a VET provider before making a decision to re-credit a person’s FEE-HELP balance to which subclause 56(4) applies, as such a decision would result in a requirement for the provider to repay an amount to the Commonwealth (see item 5 below).

In both circumstances, the Secretary must give the applicant or the VET provider (as applicable) a notice in writing:

• stating that the Secretary is considering making a decision (paragraphs 46AA(4)(a) and 46AA(6)(a)); and

• stating the reasons why the Secretary is considering making the decision (paragraphs 46AA(4)(b) and 46AA(6)(c)); and

• inviting the person or the VET provider (as applicable) to make written submissions to the Secretary, within 28 days, about why the decision should not be made (paragraphs 46AA(4)(c) and 46AA(6)(d)); and

• informing the person or the VET provider (as applicable) that, if no submissions are received within the 28 day period, the Secretary may proceed to make the decision (paragraphs 46AA(4)(d) and 46AA(6)(e)).

In addition, the Secretary’s notice to the VET provider must state that, if the Secretary makes the decision, the VET provider will be required to pay an amount to the Commonwealth under subclause 56(4) in relation to the re-crediting (paragraph 46AA(6)(b)).
In deciding whether to re-credit the FEE-HELP balance, the Secretary must take into account any submissions received from the applicant or the VET provider, as applicable, within the 28 day period (new subclauses 46AA(5) and (7)).

These provisions are consistent with the approach in existing subclauses 46A(3)-(4) with respect to re-credits under subclause 46A(1) and ensure that applicants and VET providers are given procedural fairness, that is, an opportunity to make submissions, and that those submissions are taken into account, before the Secretary makes a decision that will adversely affect them.

However, imposing a requirement to seek submissions only in certain circumstances will allow the Secretary to make other decisions under new subclause 46AA(1) in an efficient and fair way.

Furthermore, it is considered unnecessary to require the Secretary to seek submissions from an applicant before the Secretary makes a decision in favour of the applicant (that is, to re-credit the person’s FEE-HELP balance), or from providers where a decision to re-credit a person’s FEE-HELP balance will not result in a requirement for the VET provider to repay an amount to the Commonwealth.

In accordance with new subclause 46AA(8), if the Secretary re-credits a person’s FEE-HELP balance under subclause 46AA(1), the Secretary must give written notice of the decision and reasons for the decision as soon as practicable to:

- the person; and
- the VET provider, if subclause 56(4) applies to the decision (as the decision would result in a requirement for the provider to repay an amount to the Commonwealth (see item 5 below)).

New subclauses 46AA(9)-(10) set out the final date for re-crediting under subclause 46AA(1), providing that:

- the Secretary must not re-credit a person’s FEE-HELP balance on her own initiative after 31 December 2020 or a later date prescribed by the VET Guidelines;
- the Secretary must not re-credit a person’s FEE-HELP balance on application made by the person, if the application is made after 31 December 2020 or a later date prescribed by the VET Guidelines.

While it is hoped that all student complaints relating to inappropriate conduct by providers will be resolved by 31 December 2020, it is not possible to predict whether this will be the case. Therefore, the ability for the VET Guidelines to prescribe a later date for re-credits by the Secretary and for applications will provide the necessary flexibility to deal with any complaints that remain unresolved by 31 December 2020 and ensure a remedy is available to as many affected students as possible. This flexibility also allows the Government to appropriately manage costs and resourcing.
**Item 4 – Before subclause 56(1) of Schedule 1A**

**Item 5 – At the end of clause 56 of Schedule 1A**

Under subclause 56(1) of Schedule 1A to HESA, a re-credit under subclauses 46(2), 46A(1), 47(1) or clause 51 with an amount relating to VET FEE-HELP assistance for a VET unit of study triggers an obligation for the VET provider to pay to the Commonwealth an amount equal to the amount of VET FEE-HELP assistance to which the person was entitled for the unit.

Item 5 inserts a new subclause 56(4) that sets out the effect of a re-credit under new subclause 46AA(1). The effect of new subclause 56(4) is that if:

- a person’s FEE-HELP balance is re-credited with an amount relating to VET FEE-HELP assistance for a VET unit of study with a VET provider; and
- the inappropriate conduct which the Secretary is satisfied was reasonably likely to have been engaged in was, or included, the VET provider treating the person as being entitled to the assistance under clause 43 of Schedule 1A to HESA, when the person was not so entitled to that assistance;

the VET provider must pay the Commonwealth an amount equal to the amount of VET FEE-HELP assistance to which the person was treated as being entitled for the unit.

That is, unlike existing clause 46A or other provisions in Subdivision 7-B of Schedule 1A to HESA, a re-credit under subclause 46AA(1) will only trigger an obligation for the VET provider to repay the Commonwealth in limited circumstances; that is, where the basis for the Secretary’s decision to re-credit a student’s FEE-HELP is that it is reasonably likely that the student was not entitled to VET-FEE HELP assistance but the provider treated them as entitled (noting that it is anticipated that the VET Guidelines will prescribe this conduct as one of the matters that the Secretary must have regard to for the purposes of new paragraph 46AA(1)(b)).

Item 4 inserts a subheading before subclause 56(1) clarifying that subclause 56(1) deals with the effect of re-crediting other than under new subclause 46AA(1). This change is consequential to the insertion of new subclause 56(4).

**Item 6 – Clause 91 of Schedule 1A (at the end of the table)**

The table in clause 91 of Schedule 1A to HESA sets out the reviewable VET decisions under Schedule 1A and the decision maker for each of those decisions.

Item 6 adds two new items at the end of the table relating to:

- a refusal of an application made under subclause 46AA(3) to re-credit a person’s FEE-HELP balance under subclause 46AA(1);
- a decision to re-credit a person’s FEE-HELP balance to which subclause 56(4) applies.
The Secretary is the decision maker for both decisions.

The effect of these changes is that the Secretary may reconsider these decisions if he/she is satisfied that there is sufficient reason to do so (see clause 95 of Schedule 1A). A person whose interests are affected by these decisions may also request the Secretary to reconsider the decisions (see clause 96 of Schedule 1A).

In practice, the decision making power under subclause 46AA(1) will be exercised by a delegate of the Secretary (noting that, under section 238-1 of HESA, the Secretary may delegate to an APS employee all or any of his/her powers under HESA). It is proposed that such delegations would be limited to senior executive level subject matter experts within an area of the Department which will be dedicated to administration of these provisions. This will ensure that decisions are made with the appropriate expertise. In turn, in accordance with subclause 94(2) of Schedule 1A to HESA, the delegate who reconsiders the reviewable decision will be a person who was not involved in making the decision and will occupy a more senior position. This will ensure that the decisions are reviewed with the appropriate expertise and independence.

Following reconsideration of these decisions, an application may also be made to the Administrative Appeals Tribunal for review (see clause 97 of Schedule 1A).

**Ombudsman Act 1976**

**Item 7 – After paragraph 20ZM(1)(c)**

Section 20ZM of the Ombudsman Act sets out the functions of the VSLO, which is established under Part IIE of the Ombudsman Act.

As part of its functions, the VSLO can conduct investigations, and make recommendations and other reports, about VET loan assistance (which includes both VET student loans under the VSL Act and VET FEE-HELP assistance under Schedule 1A to HESA) and compliance by VET providers (whether approved under the VSL Act or Schedule 1A to HESA) with the VSL Act, HESA and relevant legislative instruments (see paragraph 20ZM(1)(a) of the Ombudsman Act).

Section 20ZO of the Ombudsman Act further provides that, in performing its functions, the VSLO may conduct an investigation in relation to a complaint made under section 20ZP or on his/her own initiative.

Item 7 inserts a new paragraph 20ZM(1)(ca), providing for a new function for the VSLO, specifically to make recommendations to the Secretary of the Department administered by the Minister administering HESA (currently, the Secretary of the Department of Education and Training) about re-crediting the FEE-HELP balances of particular persons or classes of persons under clauses 46A and 46AA of Schedule 1A to HESA.

In the context of new clause 46AA, the VSLO will be able to make recommendations to the Secretary about particular students, following investigations into complaints received from those students. Equally, through the VSLO’s own work and investigations conducted on the VSLO’s own initiative, the VSLO may identify particular students or groups of students and recommend to the
Secretary that those students’ FEE-HELP balance be re-credited under new clause 46AA. In making recommendations for re-credits under new clause 46AA, the VSLO would have regard to relevant matters in the VET Guidelines (see new subclauses 46AA(1)(a)(ii) and 46AA(1)(b)), noting that the Secretary will ultimately make the decision whether to re-credit.

As noted above, as a result of the new function in paragraph 20ZM(1)(ca), the VSLO will also be able to make recommendations to the Secretary about re-credits under existing clause 46A.

**Item 8 – At the end of subsection 20ZX(7)**

Section 20ZX of the Ombudsman Act deals with annual and other reports by the VSLO.

Item 8 inserts a new paragraph 20ZX(7)(e), which has the effect of requiring a report relating to the operations of the VSLO during a period to include, in relation to the function mentioned in new paragraph 20ZM(1)(ca), the number of persons whose FEE-HELP balances the VSLO has recommended be re-credited.

**Item 9 – Application of amendments**

Item 9 contains application provisions for certain amendments contained in Schedule 1 to the Bill.

Item 9(1) provides that new clause 46AA applies in relation to conduct engaged in by a VET provider (or an agent of a VET provider) before or after the commencement of Schedule 1 to the Bill (that is, 1 January 2019).

The application of clause 46AA to conduct that occurred before the commencement of Schedule 1 to the Bill is necessary and justified to provide a redress to (often vulnerable) individuals who were targeted by the unscrupulous and unethical actions of a number of VET providers or their agents, particularly following the expansion of the VET FEE-HELP loan scheme in late 2012, because there is currently no legislative remedy available to those individuals.

In addition, as noted above, unlike existing provisions in Subdivision 7-B of Schedule 1A to HESA, a decision by the Secretary to re-credit a person’s FEE-HELP balance under clause 46AA will result in a requirement for a VET provider to repay an equivalent amount to the Commonwealth only in limited circumstances, that is, where the inappropriate conduct involved the VET provider treating the person as being entitled to assistance under clause 43 of Schedule 1A, where the person was not at the time entitled to that assistance. The implication is that in those circumstances the VET provider was also not entitled to payment by the Commonwealth, at that time.

The application of clause 46AA to conduct engaged before the commencement of Schedule 1 to the Bill does not otherwise adversely affect individuals’ rights or impose liabilities on the basis of past conduct.
Item 9(2) provides that the amendment of section 20ZX of the Ombudsman Act applies to an annual report for a financial year ending after Schedule 1 to the Bill commences.
Schedule 2  Consequential amendments

Summary

Schedule 2 to the Bill contains amendments to provisions of Schedule 1A to HESA and the Ombudsman Act (as introduced by Schedule 1 to the Bill). These amendments are consequential to amendments contained in Schedule 3 to the Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018. In particular, Schedule 3 to that Act replaces various references to FEE-HELP balance in HESA with references to HELP balance and replaces the headings of various provisions.

Detailed explanation

Higher Education Support Act 2003

Items making consequential amendments to change references to FEE-HELP to HELP and to replace headings

The following items make consequential amendments to change references to FEE-HELP balance to HELP balance.

<table>
<thead>
<tr>
<th>Item number</th>
<th>HESA provision</th>
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<tr>
<td>2</td>
<td>Subclause 46AA(1) of Schedule 1A</td>
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<td>3</td>
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<td>6</td>
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<td>7</td>
<td>Clause 91 of Schedule 1A (table items 4 and 5)</td>
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With respect to the heading of new clause 46AA, item 1 replaces the words “FEE-HELP balance” with the words “HELP balance in relation to VET FEE-HELP assistance”. As a result of this change, the heading to new clause 46AA will read: “Re-crediting a person’s HELP balance in relation to VET FEE-HELP assistance – inappropriate conduct by provider or provider’s agent”. This is consistent with changes made to the headings of other provisions in Subdivision 7-B of Schedule 1A by Schedule 3 to the Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018.
Ombudsman Act 1976

Item 8 – Paragraphs 20XM(1)(ca) and 20ZX(7)(e)

Similarly, to items 1-7 above, item 8 makes a consequential change to paragraphs 20XM(1)(ca) and 20ZX(7)(e) to change the references to FEE-HELP balance to HELP balance.