Schedule of the amendments made by the Senate

(1) **Govt (1) [Sheet GZ155]**

Schedule 1, page 3 (after line 6), after item 1, insert:

**1A At the end of section 137-18**

Add:

(5) A person’s *VET FEE-HELP* debt in relation to a *VET unit of study* is taken to be remitted to the extent that the person’s *FEE-HELP* balance is re-credited under clause 46B of Schedule 1A in relation to the unit.

(2) **Govt (2) [Sheet GZ155]**

Schedule 1, item 3, page 3 (lines 9 to 20), omit the item, substitute:

**3 Paragraph 6(1)(c) of Schedule 1A**

Repeal the paragraph, substitute:

(c) the body is a *registered training organisation*, as listed on the *National Register*, that has been a registered training organisation since at least 1 January 2011; and

(ca) the body has been offering:

(i) at least one *qualifying VET course* continuously since at least 1 January 2011; or

(ii) one or more series of qualifying VET courses since at least 1 January 2011, with each course in a series superseding the other without interruption; and

(3) **Govt (3) [Sheet GZ155]**

Schedule 1, page 3 (after line 22), after item 4, insert:

**4A After paragraph 6(1A)(d) of Schedule 1A**

Insert:

(da) the body has been offering:

(i) at least one *qualifying VET course* continuously since at least 1 January 2011; or

(ii) one or more series of qualifying VET courses since at least 1 January 2011, with each course in a series superseding the other without interruption; and
4B After subclause 6(2) of Schedule 1A

Insert:

(2A) For the purposes of (but without limiting) paragraph (1)(g) or (1A)(i), the requirements set out in the "VET Guidelines can include requirements relating to a body’s capacity to satisfactorily and sustainably provide "VET courses of study.

Note: These requirements could, for example, relate to the stability of the body’s ownership and management, its experience, its business relationships with particular kinds of educational institutions and its record in providing quality student outcomes.

(4)  **Govt (4) [Sheet GZ155]**

Schedule 1, item 7, page 5 (lines 2 to 4), omit subclause 23B(4), substitute:

(4) For the purposes of subclause (3), the "VET Guidelines may empower:
    (a) a person or body:
    (i) to decide whether to approve a particular tool for use when assessing whether a student is academically suited to undertake a "VET course of study; and
    (ii) to charge a fee for making such a decision; and
    (b) a person or body to charge a fee for the use of a tool for such an assessment.
    A fee so charged must not be such as to amount to taxation.

(5)  **Govt (5) [Sheet GZ155]**

Schedule 1, page 6 (after line 2), after item 7, insert:

**7A Subclause 26(1) of Schedule 1A**

Repeal the subclause, substitute:

(1) The Minister may require a "VET provider to be audited:
    (a) about compliance with any or all of the following requirements:
        (i) the "VET financial viability requirements;
        (ii) the "VET fairness requirements;
        (iii) the "VET compliance requirements;
        (iv) the "VET fee requirements;
        (v) other requirements for VET quality and accountability set out in the "VET Guidelines; or
    (b) about any or all of the following matters relating to "VET courses of study provided by the VET provider:
        (i) the approaches used to recruit or enrol students (or potential students) of those courses who receive (or who could receive) "VET FEE-HELP assistance for "VET units of study forming part of those courses;
        (ii) the veracity of enrolments in those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses;
        (iii) the level of teaching resources, or the quality of those resources, for any of those courses;
        (iv) the level of engagement in any of those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses;
        (v) the completion rates for any of those courses of students who receive VET FEE-HELP assistance for VET units of study forming part of those courses.
Schedule 1, page 6 (after line 4), after item 8, insert:

8A Before subclause 36(1) of Schedule 1A

Insert:

Suspension pending revocation

8B At the end of clause 36 of Schedule 1A

Add:

Suspension for poor performance

(5) The *Secretary may, in writing, suspend a body’s approval as a *VET provider if:
(a) an audit of the body has been conducted about any or all of the matters in paragraph 26(1)(b); and
(b) the audit identified one or more concerns; and
(c) those concerns have yet to be resolved as described in paragraph (6)(b).

(6) The suspension:
(a) starts on the day of the decision under subclause (5); and
(b) ends on the day (if any) that the *Secretary notifies the body, in writing, that the Secretary reasonably believes that those concerns have been satisfactorily resolved by the body in accordance with a plan agreed between the body and the Commonwealth.

(7) Before making a decision under subclause (5), the *Secretary must give the body a notice in writing:
(a) stating that the Secretary is considering making the decision; and
(b) stating the reasons why the Secretary is considering making the decision; and
(c) inviting the body to respond to the Secretary, in writing, within 14 days; and
(d) informing the body that, if no response is received within the 14 day period, the Secretary may proceed to make the decision.

(8) In deciding whether to make the decision under subclause (5), the *Secretary must consider any response received from the body within the 14 day period.

(9) The *Secretary must give written notice of a decision under subclause (5) to the body. The notice must be given within 14 days after the day the decision was made.

8C Before subclause 37(1) of Schedule 1A

Insert:

Suspension pending revocation

8D Subclause 37(1) of Schedule 1A

Omit “clause 36 is of no effect for the purposes of”, substitute “subclause 36(1) is of no effect for purposes of or relating to”.
8E At the end of clause 37 of Schedule 1A

Add:

Suspension for poor performance—no impact on existing students

(6) A suspension of a body’s approval as a *VET provider under subclause 36(5) is of no effect for purposes of or relating to assistance payable to the body’s students under Part 2 to the extent that the assistance relates to students of the body who have not completed the *VET courses of study in which they were enrolled with the body before the day the suspension starts (see paragraph 36(6)(a)).

Note: One consequence of this subclause is that clauses 45E and 46B (which apply if the body’s VET FEE-HELP account is in deficit at the end of a calendar year) will continue to apply to the body during the suspension.

7) Govt (7) [Sheet GZ155]

Schedule 1, page 6 (before line 5), before item 9, insert:

8F Subclause 39(1) of Schedule 1A

Omit “may revoke”, substitute “must revoke”.

8G After subclause 39(2) of Schedule 1A

Insert:

(2A) The revocation is subject to the condition that, after the revocation:

(a) clauses 45E and 46B continue to apply to the body as if the body were still approved as a *VET provider; and

(b) other provisions of this Act, or the *VET Guidelines, that:

(i) relate (directly or indirectly) to entitlements to *VET FEE-HELP assistance arising before the revocation; and

(ii) are specified in the notice of revocation under subclause (3) of this clause; continue to apply to the body as if the body were still approved as a VET provider.

8) Govt (8) [Sheet GZ155]

Schedule 1, page 6 (after line 12), after item 10, insert:

10A After paragraph 43(1)(f) of Schedule 1A

Insert:

(fa) in a case where the student is not already entitled to VET FEE-HELP assistance for another VET unit of study forming part of the course—the body with whom the student is enrolled is approved as a *VET provider:

(i) for the day of the enrolment; or

(ii) if that day falls within a period when the body’s approval as a VET provider is suspended under subclause 36(5)—for a later day because that suspension has ended; and
10B Before paragraph 43(1)(g) of Schedule 1A

Insert:

(fb) if the VET provider was approved as a VET provider after 2015, the course is:
   (i) one of the "qualifying VET courses that enabled paragraph 6(1)(ca) or (1A)(da) to be satisfied for the purposes of that approval; or
   (ii) a qualifying VET course that superseded such a course directly or indirectly without interruption; and

11A Subclause 43(1) of Schedule 1A (note)

Repeal the note, substitute:

Note 1: For the purposes of paragraph (e), clause 45A affects whether a person undertakes a VET unit of study as part of a VET course of study.

Note 2: For the purposes of paragraph (fa), a body’s approval as a VET provider ceases while the approval is suspended (see clause 29). If this approval is suspended when the student first enrols in units forming part of the course, the student can only become entitled to VET FEE-HELP assistance when that suspension ends.

If VET provider incorrectly treats student as being entitled

(2) However, for the purposes of this Act (other than clause 39DH), if:
   (a) either or both of the following things happen:
      (i) the student fails to comply with paragraph (1)(a) of this clause by not giving the request at least 2 business days after the enrolment referred to in that paragraph;
      (ii) paragraph (1)(ba) of this clause is not complied with; and
   (b) the "VET provider treats the student as being entitled to "VET FEE-HELP assistance for the unit;

those paragraphs of this clause are taken to have been complied with.
Note 1: The VET provider should not treat the student as being entitled to VET FEE-HELP assistance:
(a) if the student requests the assistance during the 2 business day cooling-off period after the enrolment; or
(b) if being entitled would cause or contribute to the provider’s VET FEE-HELP account being in deficit.

Note 2: However, if the provider does treat the student as being entitled, the provider will contravene subclause 39DH(1) (a civil penalty provision), and the student may still be able to receive the assistance.

Schedule 1, item 12, page 7 (after line 24), after clause 45C, insert:

**45D Notional VET FEE-HELP accounts**

(1) There is a notional *VET FEE-HELP account* for each *VET provider.*

Note 1: The VET provider will need to monitor the balance of its account, as it will have to repay an amount to the Commonwealth if the account is in deficit at the end of 2016 or a later year.

Note 2: This account applies in relation to all students entitled to VET FEE-HELP assistance for VET units of study with census dates on or after 1 January 2016 (whether or not the student received VET FEE-HELP assistance for earlier units before that day). See subclause (7).

**Credits to the VET provider’s VET FEE-HELP account**

(2) A credit arises in the *VET provider’s* *VET FEE-HELP account* as follows:
(a) if the VET provider is already a VET provider on 1 January 2015, a credit arises on the first day of each later calendar year that is equal to the amount worked out under subclause (3);
(b) if the VET provider becomes a VET provider during 2015, a credit arises on the first day of each later calendar year that is equal to the amount worked out under subclause (4);
(c) if the VET provider becomes a VET provider on a day after 2015, a credit arises on that day that is equal to the amount worked out under subclause (5);
(d) if the VET provider pays on a particular day any part of any amount that becomes due under subclause 45E(2), a credit arises on that day that is equal to the amount of that payment;
(e) if another body ceases to be a VET provider, a credit may arise:
   (i) in accordance with a determination under subclause (6) at the time of the cessation; and
   (ii) that is equal to the amount worked out under that determination;
(f) if the *Secretary, on application by the VET provider, is satisfied on a particular day that:
   (i) the VET provider is offering a VET course of study that confers skills in an identified area of national importance; and
   (ii) the course is relevant for employment in a licensed occupation; and
   (iii) one or more students are unable to readily access training places in courses of this kind with any other VET provider; and
   (iv) insufficient credits have arisen in the VET provider’s VET FEE-HELP account for an appropriate number of students to undertake the course with the VET provider; and
   (v) granting an extra credit of a particular amount is appropriate (which need not be the amount specified in the application);
the Secretary may grant a credit, which arises on that day, that is equal to the amount considered appropriate under subparagraph (v).
(3) For the purposes of paragraph (2)(a), the amount to be credited is the amount equal to:

\[
\frac{3}{2} \times \text{VET provider's adjusted 2015 total loan amount}
\]

where:

**VET provider's adjusted 2015 total loan amount** means the sum of the amounts of "VET FEE-HELP assistance paid for students undertaking, with the "VET provider, "VET units of study that had "census dates during the period starting on 1 January 2015 and ending on 31 August 2015.

(4) For the purposes of paragraph (2)(b), the amount to be credited is the amount equal to the sum of:

(a) the "VET provider’s fee revenue for the period:
   (i) starting on 1 January 2015; and
   (ii) ending on the day before the VET provider was approved as a VET provider;
   for "domestic students undertaking "qualifying VET courses in that period; and
   (b) the sum of the amounts of "VET FEE-HELP assistance paid for students undertaking, with the VET provider, "VET units of study that had "census dates during 2015.

(5) For the purposes of paragraph (2)(c), the amount to be credited is the amount equal to the "VET provider’s fee revenue for the 2015 calendar year for "domestic students undertaking in that year the "qualifying VET courses that enabled paragraph 6(1)(ca) or (1A)(da) to be satisfied for the purposes of the VET provider’s approval as a VET provider.

(6) The Minister may, by legislative instrument, determine:

(a) whether credits arise in the "VET FEE-HELP accounts of specified "VET providers when another body ceases to be a VET provider; and
(b) the amounts of such credits.

**Debits to the VET FEE-HELP account**

(7) A debit arises in the "VET provider’s "VET FEE-HELP account if a student is entitled to "VET FEE-HELP assistance for a "VET unit of study:

(a) that is to be undertaken with the VET provider; and
(b) that has a "census date on or after 1 January 2016.

The debit arises at the end of that census date, and is equal to the amount of that assistance.

### 45E Effect of VET FEE-HELP account being in deficit at the end of a calendar year

(1) If:

(a) a "VET provider’s "VET FEE-HELP account is in deficit at the end of a calendar year; and
(b) the "Secretary gives the VET provider a written notice about the deficit;

the VET provider must pay to the Commonwealth an amount equal to the amount of the deficit (the **excess loan amount**).

(2) The excess loan amount is due on the seventh day (the **due day**) after the day the notice is given.
Late payments of the excess loan amount attract the general interest charge

(3) If some or all of the excess loan amount remains unpaid after the due day, the *VET provider must pay to the Commonwealth an amount (the general interest charge) relating to the unpaid amount for each day in the period that:
   (a) starts at the beginning of the day after the due day; and
   (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
      (i) the excess loan amount;
      (ii) general interest charge on any of the excess loan amount.

(4) The general interest charge for a particular day is worked out by multiplying the general interest charge rate for that day by the sum of so much of the following amounts as remains unpaid:
   (a) the general interest charge from previous days;
   (b) the excess loan amount.

(5) The general interest charge for a day is due and payable to the Commonwealth at the end of that day.

(6) The Secretary may give written notice to the VET provider of the amount of the general interest charge for a particular day or days. A notice given under this subclause is prima facie evidence of the matters stated in the notice.

(7) The Secretary may remit all or a part of the general interest charge payable by the VET provider if the Secretary is satisfied:
   (a) that:
      (i) the circumstances that contributed to the delay in payment were not due to, or caused directly or indirectly by, an act or omission of the VET provider; and
      (ii) the VET provider has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
   (b) that it is otherwise appropriate to do so.

(8) An amount payable under this clause may be recovered by the Commonwealth from the VET provider as a debt due to the Commonwealth.

15A Clause 60 of Schedule 1A

Repeal the clause, substitute:

60 Time and manner of payments

(1) Amounts payable by the Commonwealth to a VET provider under this Schedule are to be paid in accordance with an applicable determination under subclause (2) or (3).

(2) The Minister may, by legislative instrument, determine the way (including payment in instalments or in arrears), and the times when, amounts payable by the Commonwealth under this Schedule are to be paid to specified kinds of VET providers.

(3) The Minister may, in writing, determine the way (including payment in instalments or in arrears), and the times when, amounts payable by the Commonwealth under this Schedule are to be paid to a particular VET provider.

(4) A determination under subclause (3) is not a legislative instrument.
(15) Govt (16) [Sheet GZ155] (As amended by Lazarus-AMEP (2) [Sheet 7835])

Schedule 1, page 10 (after line 25), after item 20, insert:

20A Clause 91 of Schedule 1A (after table item 1B)
Insert:

| 1C | A decision to suspend a body’s approval as a *VET provider | subclause 36(5) | the *Secretary |
| 1D | A decision that concerns have not been satisfactorily resolved in accordance with a plan agreed with the Commonwealth | paragraph 36(6)(b) | the *Secretary |
| 1E | Refusal to grant a credit for a *VET provider’s *VET FEE-HELP account | paragraph 45D(2)(f) | the *Secretary |
| 1F | Granting a credit for a *VET provider’s *VET FEE-HELP account | paragraph 45D(2)(f) | the *Secretary |
| 1G | Refusal to remit the general interest charge | subclause 45E(7) | the *Secretary |
| 1H | Remitting part of the general interest charge | subclause 45E(7) | the *Secretary |

(16) Govt (17) [Sheet GZ155]

Schedule 1, page 11 (before line 1), before item 22, insert:

21A Before clause 98 of Schedule 1A
Insert:

97A Compensation for acquisition of property

(1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this clause:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.
(17) **Govt (18) [Sheet GZ155]**

Schedule 1, item 22, page 11 (before line 3), before the definition of **responsible parent**, insert:

*general interest charge rate* has the same meaning as in section 8AAD of the *Taxation Administration Act 1953*.

*qualifying VET course* means a structured and integrated program of vocational education or vocational training, usually consisting of a number of modules (units of study) or shorter programs, and leading to the award of a "VET diploma," "VET advanced diploma," "VET graduate diploma" or "VET graduate certificate."

(18) **Govt (19) [Sheet GZ155]**

Schedule 1, item 22, page 11 (after line 9), after the definition of **student entry procedure**, insert:

*VET FEE-HELP account* has the meaning given by clause 45D of Schedule 1A.

(19) **Govt (20) [Sheet GZ155]**

Schedule 1, item 24, page 11 (lines 13 to 16), omit subitem (1), substitute:

(1) The amendments of clause 6 of Schedule 1A to the *Higher Education Support Act 2003* made by this Schedule apply in relation to decisions whether to approve bodies as VET providers made on or after 1 January 2016.

(20) **Govt (21) [Sheet GZ155]**

Schedule 1, item 24, page 11 (after line 23), after subitem (3), insert:

(3A) Paragraph 26(1)(b) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies to matters happening before, on or after 1 January 2016, to the extent that those matters are relevant to VET courses of study provided wholly or partly on or after 1 January 2016.

Example: When auditing a VET provider about a 2016 VET course of study, the audit could look at:

(a) any approaches used in 2015 for recruiting students to the 2016 course; or
(b) teaching resources, student engagement or completion rates for the corresponding course provided in 2015.

(3B) The amendments made by this Schedule of clause 39 of Schedule 1A to the *Higher Education Support Act 2003* apply in relation to requests for revocation made on or after 1 January 2016.

(21) **Govt (22) [Sheet GZ155]**

Schedule 1, item 24, page 12 (after line 2), after subitem (6), insert:

(6A) Subclause 45E(1) of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to the 2016 calendar year and later calendar years.
(22) **Govt (23) [Sheet GZ155]**

Schedule 1, item 24, page 12 (after line 5), at the end of the item, add:

(8) Clause 51A of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to the re-crediting of FEE-HELP balances on or after 1 July 2016.

(9) Clause 60 of Schedule 1A to the *Higher Education Support Act 2003* (as inserted by this Schedule) applies in relation to amounts payable on or after 1 January 2016.

(23) **Govt (24) [Sheet GZ155]**

Schedule 1, Part 1, page 12 (after line 5), at the end of the Part, add:

**24A Transitional—pending applications**

For the purposes of subclause 11(3) of Schedule 1A to the *Higher Education Support Act 2003*, any period referred to in that subclause that was underway on 2 December 2015 is taken to have paused at the end of that day until the end of 21 January 2016.

(24) **Govt (25) [Sheet GZ155]**

Schedule 1, item 26, page 23 (lines 22 and 23), omit “an APS employee in the Department”, substitute “a person”.

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**ROSEMARY LAING**

Clerk of the Senate

The Senate

3 December 2015