



VET Student Loans Act 2016

No. 98, 2016

An Act to provide for loans to students for vocational education and training, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Act binds the Crown	2
4 Objects	2
5 Simplified outline of this Act	3
6 Definitions	4
Part 2—Loans to students	10
Division 1—Secretary may approve loans	10
7 Secretary may approve loans	10
8 Amount of loan	10
Division 2—Eligible students	11
9 Eligible students	11
10 Enrolment and loan application	11
11 Citizenship and residency	11
12 Academic suitability	12
Division 3—Approved courses	13
13 Approved courses	13
14 Kinds of courses	13
15 Provision and delivery	13
16 The <i>courses and loan caps determination</i>	14
Division 4—Applications for loans	15
17 Applications for loans	15
18 Decisions about loans	16
Part 3—Paying and repaying loan amounts	18
Division 1—Paying loan amounts	18
19 Loan must be used to pay tuition fees	18
20 When Secretary is not required to pay loan amount	18
21 Notice about payment of loan amount	19
Division 2—Repaying loan amounts	20
22 When course provider must repay loan amount	20
23 When tuition assurance scheme operator may be required to repay loan amount	21

Part 4—Approved course providers	22
Division 1—Approving course providers	22
24	Meaning of <i>approved course provider</i>
25	Secretary may approve a body.....
26	Provider suitability requirements.....
27	Listed course providers may be taken to meet requirements
28	Application for approval.....
29	Period of approval
30	Decisions about approval.....
31	Fees for applications.....
32	When Secretary is not required to consider application.....
33	Period of approval extends to cover decision on re-approval
Division 2—Conditions of approval	27
34	Secretary may impose conditions
Division 3—Revoking and suspending approvals	28
35	Automatic revocation on winding up.....
36	Secretary may revoke or suspend approval.....
37	Immediate suspension in certain circumstances
38	Secretary must revoke approval on provider request
39	Secretary to notify relevant VET Regulator if approval is revoked or suspended
Division 4—Tuition assurance	31
40	Tuition assurance arrangements
41	Secretary may require tuition assurance scheme operator to act.....
42	Other requirements for tuition assurance scheme operators
Division 4A—External dispute resolution	33
42A	Minister may specify external dispute resolution scheme
42B	Meaning of <i>approved external dispute resolution scheme</i>
42C	Approved course provider must comply.....
Division 5—Ensuring compliance	35
43	Compliance notices
44	Varying and revoking compliance notices.....
45	Compliance audits
46	Approved course provider must cooperate
Part 5—Other requirements for approved course providers	38
Division 1—General	38
47	Conditions of approval and course provider requirements

48	Provider must have certain processes and procedures	38
49	Provider must not use broker or agent	39
Division 2—Information		40
50	Information for students	40
51	Retaining information and documents	40
52	Ongoing information requirements	41
53	Secretary may request information	42
54	Dealing with personal information	43
Division 3—Fees		44
55	Determining tuition fees	44
56	Student not liable for covered fees	44
57	Publishing tuition fees	45
Division 4—Census days		46
58	Determining and publishing census days.....	46
59	No penalty for cancelling enrolment before census day	46
Division 5—Marketing		48
60	Misrepresenting VET student loans.....	48
61	Offering certain inducements	48
62	Engaging in cold-calling.....	48
63	Use of third party contact lists.....	49
64	Other marketing requirements	49
Division 6—Personal liability for executive officers		50
65	Personal liability for executive officers	50
66	Reasonable steps to prevent offence or contravention.....	50
Part 6—Re-crediting FEE-HELP balances		52
Division 1—Application of Part		52
67	Application of Part	52
Division 2—Re-crediting by course provider		53
68	Special circumstances.....	53
69	Course not provided to completion.....	54
70	Secretary may act in place of provider	54
Division 3—Re-crediting by Secretary		55
71	When Secretary may re-credit FEE-HELP balance.....	55
72	Student may apply for re-crediting by Secretary	55
73	Secretary must invite submissions before re-crediting	56

Part 7—Review of decisions	57
Division 1—Reviewable decisions	57
74 Reviewable decisions	57
75 When applications are taken to be refused.....	58
Division 2—Reconsideration of reviewable decisions	59
76 Application for reconsideration	59
77 Reconsideration without application	60
78 Reconsideration by delegates	61
79 Approved course providers must have review officers	61
80 Review by the AAT.....	61
Division 3—Reconsideration of other decisions	62
81 Reconsideration of other decisions	62
Part 8—Regulatory powers	63
82 Monitoring powers	63
83 Investigation powers.....	64
84 Civil penalty provisions.....	64
85 Infringement notices.....	65
86 Enforceable undertakings	66
87 Injunctions.....	66
88 Appointment of investigators	67
89 Delegation of regulatory powers	67
90 Other enforcement action	68
Part 9—Use of information	69
Division 1—Authorised use and disclosure of information	69
91 Use and disclosure by Commonwealth officers.....	69
92 Use and disclosure by certain VET officers	69
93 Disclosure to certain agencies, bodies or persons	69
94 Disclosure for purposes of law enforcement.....	70
95 Disclosure to other bodies for permitted purposes.....	70
96 Disclosure of publicly available information.....	71
97 Commissioner may disclose VET information	71
98 This Division does not limit use or disclosure of VET information	71
Division 2—Offences for misuse of personal information	72
99 VET officers.....	72
100 Use of personal information for other purposes.....	72
101 Unauthorised access to, or modification of, personal information	73

Part 10—General provisions	75
102 Communicating electronically	75
103 Secretary may publish information	75
103A Secretary must publish information relating to operation of the VET student loans program	76
104 Secretary may require a person to provide information about compliance with this Act	77
105 Secretary may use computer programs to make decisions	77
106 Giving false or misleading information	78
107 Verifying tax file numbers	78
108 Contravening offence and civil penalty provisions	79
109 Certain references to course provider include references to agent	79
110 Continuing application of Act to certain persons	79
111 No entitlement to future rights	79
112 Protection from civil actions	80
113 Compensation for acquisition of property	80
114 Delegations	81
115 Appropriation	81
115A Alternative constitutional basis	81
116 Rules	81



VET Student Loans Act 2016

No. 98, 2016

An Act to provide for loans to students for vocational education and training, and for related purposes

[Assented to 7 December 2016]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *VET Student Loans Act 2016*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 January 2017.	1 January 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
- (a) prosecuted for an offence; or
 - (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act; or
 - (c) given an infringement notice under Part 5 of the Regulatory Powers Act.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

4 Objects

The object of this Act is to provide for loans to students for vocational education and training, ensuring that loans are provided:

- (a) to genuine students; and

- (b) for education and training that meets workplace needs and improves employment outcomes.

5 Simplified outline of this Act

VET student loans are approved by the Secretary for eligible students for approved courses.

VET student loans are used by the Secretary to pay tuition fees for students.

If the Secretary uses a loan amount to pay tuition fees, the student incurs a HELP debt. HELP debts are managed under the *Higher Education Support Act 2003*.

In certain circumstances the course provider, instead of the student, must repay a loan amount. This includes circumstances in which the student's FEE-HELP balance may be re-credited.

For a course to be an approved course, the course provider must have been approved by the Secretary. The Secretary is able to take action to ensure that approved course providers are complying with this Act.

Part 5 sets out requirements to be met by approved course providers, and includes civil penalty and offence provisions.

Certain decisions relating to VET student loans and the approval of course providers are reviewable.

The *Regulatory Powers (Standard Provisions) Act 2014* applies for the purposes of this Act.

The use and disclosure of information is regulated.

Rules can be made under this Act.

6 Definitions

In this Act:

approved course: see section 13.

approved course provider: see section 24.

approved external dispute resolution scheme: see section 42B.

approved external dispute resolution scheme operator: see paragraph 42B(c).

approved tuition assurance arrangement: see subsection 40(2).

Australian Privacy Principles has the same meaning as in the *Privacy Act 1988*.

Australian Qualifications Framework means the framework for recognition and endorsement of qualifications:

- (a) that is established by the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education; and
- (b) that is to give effect to agreed standards in relation to the provision of education in Australia;

as in force from time to time.

Note: The Australian Qualifications Framework could in 2016 be viewed on the Australian Qualifications Framework website (<http://www.aqf.edu.au>).

census day: see subsection 58(3).

civil penalty provision has the same meaning as in the Regulatory Powers Act.

cold-calling: see subsections 62(2) and (3).

commence, in relation to winding up a body corporate, has the same meaning as in the *Corporations Act 2001*.

Commissioner means the Commissioner of Taxation.

Commonwealth officer has the same meaning as in the *Higher Education Support Act 2003*.

compliance audit: see subsection 45(2).

compliance notice: see subsection 43(3).

course means a course of study.

course provider means a person who provides, or offers to provide, a course of study.

courses and loan caps determination: see subsection 16(2).

covered fees: see subsection 56(3).

decision maker: see paragraph 74(b).

decision notice: see subsection 36(4).

Departmental investigator: see subsection 88(1).

dependent child means a person who is aged under 18 and does not have a spouse or de facto partner.

electronic communication has the same meaning as in the *Electronic Transactions Act 1999*.

executive officer, of an approved course provider, means a person (whether or not a director of the provider) who is concerned in, or takes part in, the management of the provider.

FEE-HELP balance has the same meaning as in the *Higher Education Support Act 2003*.

genuine student has a meaning affected by any rules made for the purposes of this definition.

intention notice: see subsection 36(2).

judicial officer means:

- (a) a magistrate; or
- (b) a Judge of a court of a State or Territory; or
- (c) a Judge of the Federal Circuit Court of Australia; or

Section 6

(d) a Judge of the Federal Court of Australia.

loan amount means all or a part of a VET student loan.

National VET Regulator has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

NVETR Commissioner means:

- (a) the Chief Commissioner (within the meaning of the *National Vocational Education and Training Regulator Act 2011*); or
- (b) a Commissioner (within the meaning of the *National Vocational Education and Training Regulator Act 2011*).

NVETR investigator: see subsection 88(2).

NVETR staff member means a member of the staff of the Regulator (within the meaning of the *National Vocational Education and Training Regulator Act 2011*).

officer of an approved course provider means:

- (a) an officer or employee of an approved course provider; or
- (b) a person who performs services for or on behalf of an approved course provider.

officer of an approved external dispute resolution scheme operator means:

- (a) an officer or employee of an approved external dispute resolution scheme operator; or
- (b) a person who performs services for or on behalf of an approved external dispute resolution scheme operator.

officer of a Tertiary Admission Centre has the same meaning as in the *Higher Education Support Act 2003*.

officer of a tuition assurance scheme operator means:

- (a) an officer or employee of a tuition assurance scheme operator; or
- (b) a person who performs services for or on behalf of a tuition assurance scheme operator.

ongoing information requirements: see subsection 52(1).

permanent humanitarian visa has the same meaning as in the *Migration Regulations 1994*.

permitted purpose: see subsection 95(1).

personal information has the same meaning as in the *Privacy Act 1988*.

provider fee limit: see subsection 34(3).

qualifying New Zealand citizen: see subsection 11(2).

registered training organisation has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

responsible parent has the same meaning as in the *Australian Citizenship Act 2007*.

reviewable decision: see paragraph 74(a).

rules means the rules made under section 116.

Secretary means the Secretary of the Department.

special category visa has the same meaning as in the *Migration Act 1958*.

special circumstances: see subsection 68(3).

student includes a prospective student.

student entry procedure means a course provider's procedure to ensure that a student is academically suited to undertake a course.

student identifier has the same meaning as in the *Student Identifiers Act 2014*.

Table A provider has the same meaning as in the *Higher Education Support Act 2003*.

Section 6

Table B provider has the same meaning as in the *Higher Education Support Act 2003*.

tax file number has the same meaning as in the *Income Tax Assessment Act 1936*.

TEQSA means the body established by section 132 of the *Tertiary Education Quality and Standards Agency Act 2011*.

this Act includes:

- (a) the rules; and
- (b) any other instrument made under this Act; and
- (c) the *Higher Education Support Act 2003* to the extent that it relates to this Act; and
- (d) any instrument made under the *Higher Education Support Act 2003* to the extent that the instrument relates to this Act.

tuition assurance arrangement: see subsection 40(1).

tuition assurance scheme operator: see subsection 40(1).

unacceptable conduct: see subsection 71(2).

VET information means information obtained or created for the purposes of this Act.

VET officer means:

- (a) a Commonwealth officer; or
- (b) an officer of a Tertiary Admission Centre; or
- (c) an officer of an approved course provider; or
- (d) an officer of a tuition assurance scheme operator that is a party to an approved tuition assurance arrangement; or
- (e) an officer of an approved external dispute resolution scheme operator.

VET Regulator has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

VET student loan: see subsection 7(2).

VET student loan debt has the same meaning as in the *Higher Education Support Act 2003*.

Part 2 Loans to students

Division 1 Secretary may approve loans

Section 7

Part 2—Loans to students

Division 1—Secretary may approve loans

7 Secretary may approve loans

- (1) The Secretary may approve a loan for a student for a course of study if the Secretary is satisfied that:
 - (a) the student is an eligible student (see Division 2); and
 - (b) the course is an approved course (see Division 3).
- (2) The loan is a *VET student loan*.

8 Amount of loan

The amount of the loan must not be greater than any of the following:

- (a) the maximum loan amount for the course specified in, or worked out in accordance with, the courses and loan caps determination;
- (b) the amount that would reduce the student's FEE-HELP balance to zero;
- (c) the tuition fees for the course.

Division 2—Eligible students

9 Eligible students

To be an *eligible student*, the student must meet the requirements of this Division.

10 Enrolment and loan application

- (1) The student must:
 - (a) be enrolled in the course; and
 - (b) have provided the course provider with any information and documents required by the rules; and
 - (c) meet any other requirements set out in the rules.
- (2) The student must be undertaking the course primarily at a campus in Australia.
- (3) The student must have applied for a VET student loan for the course in accordance with Division 4.

11 Citizenship and residency

- (1) The student must be:
 - (a) an Australian citizen; or
 - (b) the holder of a permanent humanitarian visa who is usually resident in Australia; or
 - (c) a qualifying New Zealand citizen.
- (2) A *qualifying New Zealand citizen* is a New Zealand citizen who:
 - (a) holds a special category visa; and
 - (b) has been usually resident in Australia for at least 10 years; and
 - (c) was a dependent child when he or she was first usually resident in Australia; and
 - (d) has been in Australia for periods totalling 8 years during the previous 10 years; and

Section 12

- (e) has been in Australia for periods totalling 18 months during the previous 2 years.

12 Academic suitability

- (1) The student must have been assessed by the course provider as academically suited to undertake the course concerned.
- (2) The assessment must have been done in accordance with:
 - (a) the course provider's student entry procedure; and
 - (b) any requirements set out in the rules.
- (3) The course provider contravenes this subsection if the provider completes, or assists with completing, anything the student is required to do for the purposes of determining whether the student is academically suited to undertake an approved course.

Civil penalty: 120 penalty units.

Division 3—Approved courses

13 Approved courses

To be an *approved course*, the course must meet the requirements of this Division.

14 Kinds of courses

- (1) The course must be a structured and integrated program of vocational education or vocational training that leads to one of the following:
 - (a) a qualification:
 - (i) of diploma, advanced diploma, graduate certificate or graduate diploma in the Australian Qualifications Framework; and
 - (ii) that meets the guidelines for a VET award as set out in the Australian Qualifications Framework;
 - (b) a qualification specified by the rules.
- (2) The course must:
 - (a) be specified in the courses and loan caps determination; and
 - (b) meet any requirements set out in the rules.

15 Provision and delivery

- (1) The course must be provided by an approved course provider and delivered:
 - (a) by the approved course provider; or
 - (b) for the approved course provider by one or more of the following:
 - (i) another approved course provider;
 - (ii) a person or body registered by TEQSA;
 - (iii) a person or body approved in writing by the Secretary to deliver the course.

Section 16

- (2) A reference in subsection (1) to an approved course provider does not include a reference to an approved course provider whose approval is suspended.

16 The courses and loan caps determination

- (1) The Minister may by legislative instrument determine:
- (a) courses of study for which VET student loans may be approved; and
 - (b) maximum loan amounts, or methods for working out maximum loan amounts, for those courses.
- (2) The determination is the *courses and loan caps determination*.
- (3) The determination may provide for the method set out in Part 5-6 of the *Higher Education Support Act 2003* to be used to index amounts determined by, or worked out in accordance with, the determination.

Division 4—Applications for loans

17 Applications for loans

- (1) An application for a VET student loan for a course must:
 - (a) include the student's tax file number or a certificate from the Commissioner stating that the student has applied to the Commissioner asking the Commissioner to issue a tax file number to the student; and
 - (b) include the student's student identifier (if any).
- (2) The application:
 - (a) must be in the form approved by the Secretary; and
 - (b) must not be made before the end of any period specified in the rules; and
 - (c) must meet any other requirements set out in the rules.
- (3) The application must be signed by both the student and a responsible parent of the student if the following apply:
 - (a) the student is under 18 years of age;
 - (b) the student has a responsible parent;
 - (c) the student has not received youth allowance (within the meaning of the *Social Security Act 1991*) on the basis that the student is independent (within the meaning of Part 2.11 of that Act).
- (4) The Secretary may:
 - (a) request the student to provide further information for the purposes of deciding the application; and
 - (b) require some or all of the further information to be provided as a statutory declaration.
- (5) A course provider contravenes this subsection if the provider completes any part of an application for a VET student loan that the student is required to complete.

Civil penalty: 120 penalty units.

- (6) A course provider contravenes this subsection if:
-

Section 18

- (a) the provider collects information (including from a student) for the purposes of, or in relation to, applications by students for VET student loans; and
- (b) the provider:
 - (i) gives the collected information to the Secretary; or
 - (ii) gives the Secretary information based on the collected information; and
- (c) either or both of the following apply:
 - (i) the collected information omits a material particular or is incorrect in a material particular;
 - (ii) the information based on the collected information omits a material particular or is incorrect in a material particular.

Note: This subsection means that providers will need to verify information they collect from students for the purposes of, or in relation to, applications by students for VET student loans.

Civil penalty: 120 penalty units.

- (7) Subparagraph (6)(c)(i) does not apply if the provider has taken the steps (if any) set out in rules made under subsection 48(1) to verify that the collected information is correct.

Note: Under section 48, the rules may require an approved course provider to have specified processes and procedures in place.

- (8) Subparagraph (6)(c)(ii) does not apply if:
 - (a) the information is incorrect only because the collected information is incorrect; and
 - (b) the provider has taken the steps (if any) set out in rules made under subsection 48(1) to verify that the collected information is correct.

Note: Under section 48, the rules may require an approved course provider to have specified processes and procedures in place.

18 Decisions about loans

- (1) The Secretary must decide whether or not to approve a VET student loan if:
 - (a) an application is made for the loan; and
-

- (b) the application complies with section 17; and
 - (c) the applicant has complied with any request under that section.
- (2) The Secretary must give written notice of the decision to both:
 - (a) the applicant; and
 - (b) the course provider.
- (3) The notice must:
 - (a) be given in accordance with any requirements set out in the rules; and
 - (b) if the Secretary decides not to approve the loan—must include the reasons for the decision.
- (4) The rules may provide for another person to give the notice on the Secretary's behalf.

Part 3—Paying and repaying loan amounts

Division 1—Paying loan amounts

19 Loan must be used to pay tuition fees

- (1) If the Secretary approves a VET student loan for a student for a course, the Secretary must use the loan to pay tuition fees for the student for the course.
- (2) The Secretary may pay loan amounts to the course provider.
- (3) The Secretary may pay loan amounts:
 - (a) before or after the student begins the course; or
 - (b) after the student has completed the course; or
 - (c) by instalments.
- (4) Subsections (2) and (3) do not limit the way in which the Secretary may use the loan to pay tuition fees.

Note: If the Secretary uses a loan amount to pay tuition fees for a student, the student incurs a VET student loan debt: see section 137-19 of the *Higher Education Support Act 2003*.

20 When Secretary is not required to pay loan amount

The Secretary is not required to pay a loan amount for a student for a course if any of the following applies:

- (a) the student has not given the Secretary the student's tax file number;
- (b) the student has not given the Secretary the student's student identifier;
- (c) the Secretary is satisfied that the student:
 - (i) is not an eligible student; or
 - (ii) is not a genuine student;
- (d) payment of the amount would breach a provider fee limit;
- (e) the loan amount is greater than the student's FEE-HELP balance;

- (f) the Secretary suspects on reasonable grounds that the course provider is not complying with this Act;
- (g) the approval of the course provider has been revoked or suspended, or has expired.

Note: For *provider fee limit*, see subsection 34(3).

21 Notice about payment of loan amount

- (1) If the Secretary decides not to pay a loan amount for a student for a course, the Secretary must notify the course provider of the decision as soon as practicable.
- (2) The rules may set out requirements in relation to notifying the following that loan amounts have been or will be, or have not been or will not be, paid:
 - (a) course providers;
 - (b) students;
 - (c) other persons.

Division 2—Repaying loan amounts

22 When course provider must repay loan amount

- (1) The course provider must pay to the Commonwealth an amount equal to a loan amount that was:
 - (a) used to pay tuition fees for a student for a course; and
 - (b) re-credited to the student's FEE-HELP balance.

Note 1: For re-crediting FEE-HELP balances, see Part 6.

Note 2: If a student's FEE-HELP balance is re-credited, the student's VET student loan debt is taken to be remitted to the extent to which the VET student loan debt relates to the loan amount concerned: see section 137-19 of the *Higher Education Support Act 2003*.

- (2) A course provider must pay to the Commonwealth an amount equal to any amount that was purportedly paid to the provider under this Act that was not payable.
- (3) A course provider must pay to the Commonwealth an amount equal to any amount paid to the provider that exceeded a provider fee limit imposed on the provider.

Note: For *provider fee limit*, see subsection 34(3).

- (4) An amount that a course provider must pay under this section is a debt due to the Commonwealth by the provider.
- (5) The Commonwealth may recover the debt from one or more loan amounts that would otherwise be payable to the course provider in relation to a student.
- (6) If a debt is recovered from a loan amount that is otherwise payable in relation to a student, the amount recovered is taken to have been paid to the course provider in relation to the student.

23 When tuition assurance scheme operator may be required to repay loan amount

The course provider and the tuition assurance scheme operator are jointly and severally liable to pay a debt due to the Commonwealth if:

- (a) the debt is due because a student's FEE-HELP balance was re-credited (see subsection 22(1)); and
- (b) the student's FEE-HELP balance was re-credited because a course was not delivered to completion; and
- (c) an approved tuition assurance arrangement applies (or applied) in relation to the student for the course.

Part 4—Approved course providers

Division 1—Approving course providers

24 Meaning of *approved course provider*

A body approved by the Secretary under this Division is an *approved course provider*.

25 Secretary may approve a body

- (1) The Secretary may approve a body as an approved course provider if the Secretary is satisfied that the body meets the course provider requirements.
- (2) To meet the *course provider requirements* the body must:
 - (a) be a body corporate that is not a trustee; and
 - (b) be established under the law of the Commonwealth, a State or a Territory; and
 - (c) carry on business in Australia and have its central management and control in Australia; and
 - (d) be a registered training organisation; and
 - (e) meet the provider suitability requirements; and
 - (f) be a fit and proper person; and
 - (g) be a party to an approved tuition assurance arrangement; and
 - (h) be a member of an approved external dispute resolution scheme.
- (3) The Secretary may, in writing, exempt a body from either or both of the following:
 - (a) the requirement in paragraph (2)(g) to be a party to an approved tuition assurance arrangement;
 - (b) the requirement in paragraph (2)(h) to be a member of an approved external dispute resolution scheme.
- (4) An exemption under subsection (3) is subject to such conditions as are specified in the exemption.

26 Provider suitability requirements

- (1) The rules may set out *provider suitability requirements* for the purposes of ensuring that loan amounts are paid to suitable course providers.
- (2) The provider suitability requirements may deal with the following in relation to a course provider:
 - (a) financial performance;
 - (b) management and governance;
 - (c) experience in providing vocational education;
 - (d) scope of courses;
 - (e) fees and modes of delivery for courses;
 - (f) student outcomes;
 - (g) industry links.
- (3) Subsection (2) does not limit the provider suitability requirements.

27 Listed course providers may be taken to meet requirements

- (1) The rules may provide for a listed course provider to be taken to meet one or more course provider requirements.
- (2) Each of the following is a *listed course provider* as long as it is a registered training organisation:
 - (a) a Table A provider;
 - (b) a Table B provider;
 - (c) a body established to provide vocational education or training under one of the following:
 - (i) the *Technical and Further Education Commission Act 1990* (NSW);
 - (ii) the *Education and Training Reform Act 2006* (Vic.);
 - (iii) the *TAFE Queensland Act 2013* (Qld);
 - (iv) the *Vocational Education and Training Act 1996* (WA);
 - (v) the *TAFE SA Act 2012* (SA);
 - (vi) the *Training and Workforce Development Act 2013* (Tas.);
 - (vii) the *Canberra Institute of Technology Act 1987* (ACT);

Section 28

- (d) a training organisation owned by the Commonwealth, a State or a Territory;
- (e) a body specified in the rules.

28 Application for approval

- (1) A body may apply to the Secretary for approval as an approved course provider.
- (2) The application must be:
 - (a) in the form approved by the Secretary; and
 - (b) accompanied by the application fee for the application.
- (3) The Secretary may:
 - (a) request the applicant to provide further information for the purposes of deciding the application; and
 - (b) require some or all of the further information to be provided as a statutory declaration.
- (4) The rules may set out requirements in relation to applying for approval.

29 Period of approval

- (1) Approval as an approved course provider has effect for the period specified in the approval.
- (2) The period must not be more than 7 years.
- (3) This section has effect subject to section 33.

30 Decisions about approval

- (1) This section applies if:
 - (a) a body applies to the Secretary for approval as an approved course provider; and
 - (b) the Secretary considers and decides the application.

Note: The Secretary is not required to consider or decide an application for approval as an approved course provider: see section 32.

- (2) The Secretary must give written notice of the decision to the body.
- (3) The notice must:
 - (a) be given in accordance with any requirements set out in the rules; and
 - (b) if the Secretary decides to approve the body for a period of less than 7 years—include the reasons for the period being less than 7 years.

31 Fees for applications

- (1) The Secretary may, by legislative instrument, prescribe fees, or a method of working out fees, for making applications for approval as an approved course provider.
- (2) A fee for making an application for approval as an approved course provider must not be such as to amount to taxation.

32 When Secretary is not required to consider application

- (1) The Secretary is not required to consider or decide an application for approval as an approved course provider:
 - (a) if the application does not comply with section 28; or
 - (b) in circumstances set out in the rules.
- (2) If the Secretary does not consider or decide an application, the Secretary must:
 - (a) give the applicant written notice of, and reasons for, not so considering or deciding; and
 - (b) refund any application fee for the application.
- (3) The notice must be given within 30 days after the application is made, otherwise the Secretary must consider and decide the application.

33 Period of approval extends to cover decision on re-approval

- (1) This section applies if:
 - (a) a body is approved (the *current approval*) as an approved course provider; and
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Section 33

- (b) the body applies for approval as an approved course provider for a further period; and
 - (c) the application is made before the beginning of:
 - (i) the period of 90 days before the current approval ends; or
 - (ii) such shorter period as the Secretary allows.
- (2) The provider's current approval continues in effect until the application is decided.

Division 2—Conditions of approval

34 Secretary may impose conditions

- (1) The Secretary may, at any time:
 - (a) impose conditions on the approval of an approved course provider; or
 - (b) vary a condition of the approval.
- (2) The conditions may include the following:
 - (a) that one or more provider fee limits apply to the provider;
 - (b) that loan amounts will be paid to the provider for specified approved courses only;
 - (c) that an approved course provided by the provider will:
 - (i) be delivered in a particular way; or
 - (ii) address particular content or skills.
- (3) A ***provider fee limit*** is a limit on loan amounts that can be paid to a provider:
 - (a) for a particular period; or
 - (b) for a particular approved course; or
 - (c) for a particular approved course for a particular period.
- (4) Subsection (2) does not limit the conditions the Secretary may impose on the approval.
- (5) The Secretary must give the provider written notice of, and written reasons for:
 - (a) imposing a condition on the approval; or
 - (b) varying a condition of the approval.
- (6) The rules may set out requirements in relation to giving such notice and reasons.

Division 3—Revoking and suspending approvals

35 Automatic revocation on winding up

If an approved course provider is wound up, the approval of the body is revoked when the winding up commences.

Note: *Commence*, in relation to winding up, has the same meaning as in the *Corporations Act 2001*: see section 6.

36 Secretary may revoke or suspend approval

- (1) The Secretary may revoke or suspend the approval of an approved course provider if the Secretary is satisfied that the provider is not complying with this Act.
- (2) Before revoking or suspending the approval, the Secretary must give the provider written notice (the *intention notice*) of the following:
 - (a) that the Secretary is proposing to revoke or suspend the approval;
 - (b) the reasons why the Secretary is proposing to revoke or suspend the approval;
 - (c) that the provider may make written submissions to the Secretary as to why the Secretary should not revoke or suspend the approval;
 - (d) that the written submissions must be given to the Secretary within the period (the *submission period*):
 - (i) for proposed suspension—that ends 14 days after the intention notice is given; or
 - (ii) for proposed revocation—that ends 28 days after the intention notice is given.
- (3) The Secretary must consider any submissions given by the provider within the submission period.
- (4) The Secretary must give the provider written notice (the *decision notice*) of:
 - (a) the Secretary's decision on the suspension or revocation; and

(b) the reasons for the decision.

The decision notice must be given within 28 days after the end of the submission period.

- (5) If the Secretary revokes or suspends the approval, the revocation or suspension takes effect on the day specified in the decision notice, which must not be a day before the decision is made.
- (6) A decision to suspend or revoke is not invalid merely because the Secretary failed to give the decision notice within the time required under subsection (4).

Note: The Secretary may publish information about compliance action that has been taken under this Act: see section 103.

37 Immediate suspension in certain circumstances

- (1) The Secretary may suspend the approval of an approved course provider (without giving the provider an intention notice under section 36) if:
- (a) the Secretary suspects on reasonable grounds that the provider is not complying with this Act; and
 - (b) the Secretary is satisfied that the circumstances require urgent action.
- (2) The Secretary must give the provider written notice of:
- (a) the suspension; and
 - (b) the reasons for the suspension; and
 - (c) the effect of subsection (4).
- (3) The suspension begins at the time specified in the notice, which must not be before the notice is given.
- (4) Unless subsection (5) or (6) applies, the suspension ends when one of the following happens:
- (a) the Secretary notifies the provider in writing that the suspension has ended;
 - (b) 14 days have passed since the suspension began.
- (5) If, within 14 days after the suspension began, the Secretary gives the provider an intention notice under section 36, the suspension

Section 38

ends when the Secretary gives the provider the decision notice under that section.

- (6) If, within 14 days after the suspension began, the Secretary requires the provider to be audited under section 45, the suspension ends:
- (a) unless paragraph (b) applies—14 days after the Secretary receives the report on the audit; or
 - (b) if, within that 14 days, the Secretary gives the provider an intention notice under section 36—when the Secretary gives the provider the decision notice under that section.

Note: The Secretary may publish information about compliance action that has been taken under this Act: see section 103.

38 Secretary must revoke approval on provider request

If an approved course provider makes a written request to the Secretary for the approval of the provider to be revoked, the Secretary must:

- (a) revoke the approval; and
- (b) give the provider written notice of the revocation.

39 Secretary to notify relevant VET Regulator if approval is revoked or suspended

If the approval of an approved course provider is revoked or suspended, the Secretary must give the relevant VET Regulator notice in writing of the revocation or suspension.

Division 4—Tuition assurance

40 Tuition assurance arrangements

- (1) A *tuition assurance arrangement* is an arrangement between a course provider and another person (the *tuition assurance scheme operator*) under which the tuition assurance scheme operator is to do certain things if a course provider ceases to provide a course at any time after it starts but before it is completed.
- (2) The arrangement is an *approved tuition assurance arrangement* if:
 - (a) the arrangement meets any requirements set out in the rules; and
 - (b) under the arrangement, the tuition assurance scheme operator must:
 - (i) provide for students whose tuition fees are covered by a VET student loan to be able to finish the course, or an equivalent course; or
 - (ii) repay a student's tuition fees if the fees were paid using a VET student loan and it is impractical for the student to finish the course, or an equivalent course.
- (3) To the extent to which the student's tuition fees were paid using the VET student loan, the fees must be repaid to the Commonwealth under subparagraph (2)(b)(ii).

41 Secretary may require tuition assurance scheme operator to act

- (1) This section applies if:
 - (a) an approved tuition assurance arrangement applies (or applied) in relation to a student for a course; and
 - (b) the Secretary is satisfied the provider ceased to provide the course after it started but before it was completed.
- (2) The Secretary may require the tuition assurance scheme operator to:

Section 42

- (a) provide for students whose tuition fees are covered by a VET student loan to be able to finish the course, or an equivalent course; or
 - (b) repay a student's tuition fees if the fees were paid using a VET student loan and it is impractical for the student to finish the course, or an equivalent course.
- (3) A tuition assurance scheme operator must comply with a requirement under subsection (2).

42 Other requirements for tuition assurance scheme operators

- (1) The rules may set out requirements that must be met by a tuition assurance scheme operator who is, or was, a party to a tuition assurance arrangement with an approved course provider.
- (2) The requirements may include one or more of the following:
 - (a) to provide to the Secretary specified information in relation to the tuition assurance arrangement;
 - (b) to provide to the Secretary information in relation to the financial viability of the operator;
 - (c) to provide specified information or assistance to students covered by the arrangement.
- (3) Subsection (2) does not limit the requirements that may be set out under subsection (1).

Division 4A—External dispute resolution

42A Minister may specify external dispute resolution scheme

- (1) The Minister may, by legislative instrument, specify a scheme that provides for investigation and resolution of disputes relating to the following:
 - (a) VET student loans;
 - (b) compliance by approved course providers with this Act;
 - (c) VET FEE-HELP assistance (within the meaning of the *Higher Education Support Act 2003*);
 - (d) compliance by VET providers (within the meaning of the *Higher Education Support Act 2003*) with the *Higher Education Support Act 2003*.
- (2) The Minister must specify the operator of the scheme in the legislative instrument.

Note: The rules may provide for matters that the Minister may or must have regard to in deciding to specify a scheme: see subsection 116(3).

42B Meaning of *approved external dispute resolution scheme*

A scheme is an *approved external dispute resolution scheme* if the scheme:

- (a) provides for investigation and resolution of disputes as mentioned in section 42A; and
- (b) is specified in a legislative instrument made under section 42A; and
- (c) is operated by the person (the *approved external dispute resolution scheme operator*) specified in the legislative instrument.

42C Approved course provider must comply

An approved course provider must comply with the requirements of the approved external dispute resolution scheme of which the provider is a member.

Part 4 Approved course providers
Division 4A External dispute resolution

Section 42C

Note: The rules may set out additional processes and procedures in relation to external dispute resolution: see section 48.

Division 5—Ensuring compliance

43 Compliance notices

- (1) This section applies if the Secretary:
 - (a) is satisfied that an approved course provider is not complying with this Act; or
 - (b) is aware of information that suggests that an approved course provider may not be complying with this Act.
- (2) The Secretary may give the provider a compliance notice.
- (3) The **compliance notice** must:
 - (a) set out the name of the provider to which the notice is given; and
 - (b) set out brief details of the non-compliance or possible non-compliance; and
 - (c) specify action that the provider must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and
 - (d) specify a reasonable period within which the provider must take, or refrain from taking, the specified action; and
 - (e) if the Secretary considers it appropriate—specify a reasonable period within which the provider must provide the Secretary with evidence that the provider has taken, or refrained from taking, the specified action; and
 - (f) state that a failure to comply with the notice is subject to a civil penalty and may also lead to the provider’s approval being suspended or revoked; and
 - (g) set out any other matters specified in the rules for the purposes of this paragraph.
- (4) An approved course provider contravenes this subsection if the provider fails to comply with a compliance notice.

Civil penalty: 60 penalty units.

Section 44

- (5) To avoid doubt, the Secretary is not required to give an approved course provider a compliance notice before suspending or revoking the provider's approval.

44 Varying and revoking compliance notices

- (1) The Secretary may, by written notice given to an approved course provider, vary or revoke a compliance notice if the Secretary considers that taking such action is in the public interest.

Note: A variation could, for example, specify different action to be taken by the provider or a different period for complying with the notice.

- (2) In deciding whether to vary or revoke a compliance notice, the Secretary must consider any submissions that are received from the provider before the end of the period mentioned in paragraph 43(3)(d).

45 Compliance audits

- (1) The Secretary may require an approved course provider to be audited.
- (2) The audit (the *compliance audit*) must be for the purposes of determining either or both of the following:
- (a) whether the provider is complying with this Act;
 - (b) whether one or more students enrolled by the provider are genuine students.
- (3) The audit must be conducted:
- (a) by:
 - (i) the National VET Regulator; or
 - (ii) an auditor approved in writing by the Secretary; and
 - (b) at such time or times, and in such manner, as the Secretary requires.
- (4) The auditor may require any person to provide the auditor with all reasonable facilities and assistance for the purposes of the audit.
- (5) A person contravenes this subsection if the person fails to cooperate fully with the auditor in relation to a compliance audit.

Civil penalty: 60 penalty units.

46 Approved course provider must cooperate

An approved course provider contravenes this section if the provider fails to cooperate fully with any of the following in ensuring compliance with, and the efficient and effective administration of, this Act:

- (a) a VET Regulator;
- (b) the Secretary;
- (c) an APS employee in the Department;
- (d) a consultant engaged by the Commonwealth to perform work in relation to this Act;
- (e) the operator of the approved external dispute resolution scheme of which the provider is a member.

Civil penalty: 60 penalty units.

Part 5—Other requirements for approved course providers

Division 1—General

47 Conditions of approval and course provider requirements

- (1) An approved course provider must comply with any conditions imposed on the provider's approval.
- (2) An approved course provider must continue to meet the course provider requirements.

48 Provider must have certain processes and procedures

- (1) The rules may require an approved course provider to have specified processes and procedures in place.
 - (2) The processes and procedures may relate to one or more of the following:
 - (a) information the provider collects for the purposes of, or in relation to, applications by students for VET student loans;
 - (b) processes or procedures for students to enrol in courses (including student entry procedures) and withdraw from courses;
 - (c) tuition assurance;
 - (d) student grievances;
 - (e) equal benefits and opportunities for students;
 - (f) review of decisions.
 - (3) Subsection (2) does not limit the processes and procedures that may be required by the rules.
 - (4) The rules may specify requirements to be met in establishing and operating the processes and procedures.
 - (5) An approved course provider contravenes this subsection if the provider fails to comply with rules made under this section.
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Civil penalty: 60 penalty units.

49 Provider must not use broker or agent

- (1) An approved course provider contravenes this subsection if the provider enters into an arrangement (whether written or not) that provides for another person to do one or more of the following in relation to an approved course:
- (a) enrol students, or accept applications for enrolment, in the course;
 - (c) provide information or advice in relation to VET student loans (however described) for the course;
 - (d) assist students to complete or submit applications for a VET student loan for the course;
 - (e) assist, or provide support for, students who could be eligible for a VET student loan for the course to complete any assessments required to show that students are academically suited to undertake the course.

Civil penalty: 60 penalty units.

- (2) Subsection (1) does not apply in relation to an arrangement that is:
- (a) a contract of employment; or
 - (b) specified in the rules.

Note: Employees of approved course providers will be covered by other requirements that apply to approved course providers.

Division 2—Information

50 Information for students

- (1) The rules may require an approved course provider to do one or more of the following in relation to VET student loans or the operation of this Act:

- (a) give particular information to students;
- (b) give information to students in a particular way;
- (c) give information to students at a particular time.

- (2) An approved course provider contravenes this subsection if the provider fails to comply with rules made under subsection (1).

Civil penalty: 60 penalty units.

- (3) An approved course provider commits an offence of strict liability if the provider fails to comply with rules made under subsection (1).

Penalty: 60 penalty units.

51 Retaining information and documents

- (1) An approved course provider must retain documents and information:

- (a) related to the operation of this Act; and
- (b) specified by the rules.

- (2) The documents and information must be retained for:

- (a) the period specified in the rules; or
- (b) if no period is specified—7 years.

- (3) An approved course provider contravenes this subsection if the provider fails to retain documents and information in accordance with this section.

Civil penalty: 60 penalty units.

- (4) An approved course provider commits an offence of strict liability if the provider contravenes this section.

Penalty: 60 penalty units.

52 Ongoing information requirements

- (1) The rules may set out *ongoing information requirements* for the purposes of ensuring that:
- (a) approved course providers are complying with this Act: and
 - (b) the Secretary has access to information and documents related to the operation of this Act.
- (2) The ongoing information requirements may require an approved course provider to do one or more of the following:
- (a) be audited in circumstances set out in the rules, including by a specified person, and provide reports of audits to the Secretary;
 - (b) provide the Secretary with specified information or documents, including in relation to the following:
 - (i) the provider's financial position;
 - (ii) courses of study provided by the provider and the delivery of those courses;
 - (iii) the provider's students (including information and documents relating to enrolment, attendance, completion rates, education outcomes and existing and projected enrolment numbers);
 - (iv) the administration and operation of the business of the provider;
 - (v) tuition fees charged by the provider;
 - (vi) the provider's plans for improving its business;
 - (vii) changes in the provider's key personnel;
 - (viii) changes in the provider's management or governance arrangements;
 - (ix) information the provider has collected for the purposes of, or in relation to, applications by students for VET student loans;

Section 53

- (c) notify the Secretary if the provider is not complying with this Act, or particular provisions of this Act;
 - (d) provide the information in a particular form, including as a statutory declaration.
- (3) Subsection (2) does not limit the ongoing information requirements.
- (4) An approved course provider contravenes this subsection if the provider fails to comply with the ongoing information requirements.
- Civil penalty: 60 penalty units.
- (5) An approved course provider commits an offence of strict liability if the provider fails to comply with the ongoing information requirements.
- Penalty: 60 penalty units.

53 Secretary may request information

- (1) The Secretary may, by notice in writing, require an approved course provider to give the Secretary information or documents that relate to:
- (a) the provision of vocational education and training by the provider; or
 - (b) the provider's compliance with this Act.
- (2) The information or documents must be provided:
- (a) in the form specified in the notice, which may be a statutory declaration; and
 - (b) in accordance with other requirements specified in the notice.
- (3) A notice under this section must not require the giving of information or documents that the provider is required to give to the Secretary under any other provision of this Act.
- (4) An approved course provider contravenes this subsection if the provider fails to comply with a notice given under this section.

Civil penalty: 60 penalty units.

- (5) An approved course provider commits an offence of strict liability if the provider fails to comply with a notice given under this section.

Penalty: 60 penalty units.

54 Dealing with personal information

- (1) An approved course provider must comply with the Australian Privacy Principles in relation to personal information obtained for the purposes of this Act.
- (2) A failure to comply with subsection (1) constitutes an act or practice involving an interference with the privacy of the individual concerned for the purposes of section 13 of the *Privacy Act 1988*.

Note: The act or practice may be the subject of a complaint under section 36 of that Act.

- (3) The provider must have a procedure under which a student enrolled with the provider may apply to the provider for, and receive, a copy of personal information that the provider holds in relation to the student.
- (4) The provider must comply with any requirements set out in the rules relating to the management of personal information.

Division 3—Fees

55 Determining tuition fees

- (1) An approved course provider must determine the tuition fees for each approved course offered by the provider for a particular period.
- (2) The rules may specify the following in relation to tuition fees for an approved course:
 - (a) matters to which an approved course provider must or must not have regard in determining tuition fees;
 - (b) goods or services that must not be covered by tuition fees;
 - (c) how and when tuition fees may be charged;
 - (d) how and when tuition fees may be varied.
- (3) An approved course provider contravenes this subsection if the provider fails to comply with the requirements of the rules in relation to tuition fees for approved courses.

Civil penalty: 120 penalty units.

56 Student not liable for covered fees

- (1) If an approved course provider enrolls a student in a course, the provider must give the student a written statement as to whether or not the enrolment is accepted on the basis that some or all of the tuition fees for the course will be covered by a VET student loan.
- (2) The statement must:
 - (a) be given in accordance with the rules; and
 - (b) if the enrolment is accepted on the basis that only some of the tuition fees for the course will be covered—show the amounts of the tuition fees that will, and will not, be covered by the VET student loan; and
 - (c) meet any other requirements set out in the rules.
- (3) Fees stated to be covered by a VET student loan are *covered fees*.

- (4) An approved course provider contravenes this subsection if the provider requires a student to pay covered fees.

Civil penalty: 120 penalty units.

57 Publishing tuition fees

An approved course provider contravenes this section if:

- (a) the provider enrolls a student in a course on the basis that some or all of the tuition fees for the course are covered fees; and
- (b) on the day before the student is enrolled, the tuition fees for the course were not available on the provider's website in a way that was readily accessible by the public.

Civil penalty: 60 penalty units.

Division 4—Census days

58 Determining and publishing census days

- (1) This section applies if an approved course provider offers an approved course for a particular period.
- (2) The provider must determine the date or dates for the course by which a student's enrolment in the course can be cancelled without the student incurring tuition fees for the course or a part of the course.
- (3) A date by which enrolment may be cancelled without incurring tuition fees for the course or a part of the course is a *census day*.
- (4) A census day must be:
 - (a) determined in accordance with any requirements set out in the rules; and
 - (b) published in accordance with any requirements set out in the rules.
- (5) Once published, the provider must not vary a census day otherwise than in accordance with the rules.
- (6) An approved course provider contravenes this subsection if the provider fails to determine or publish a census day in accordance with the rules.

Civil penalty: 60 penalty units.

- (7) An approved course provider contravenes this subsection if the provider varies a census day other than in accordance with the rules.

Civil penalty: 60 penalty units.

59 No penalty for cancelling enrolment before census day

- (1) An approved course provider contravenes this subsection if:

- (a) the provider enrolls a student in a course on the basis that some or all of the tuition fees for the course are covered fees; and
- (b) on or before a census day for the course, the student requests in writing that the provider cancel the enrolment; and
- (c) the provider fails to cancel the enrolment before the end of the census day.

Civil penalty: 120 penalty units.

- (2) An approved course provider contravenes this subsection if:

- (a) the provider enrolls a student in a course on the basis that some or all of the tuition fees for the course are covered fees; and
- (b) on or before the last census day for the course, the student requests in writing that the provider cancel the enrolment; and
- (c) the provider charges a fee (however described) for cancelling the enrolment.

Civil penalty: 120 penalty units.

- (3) An approved course provider contravenes this subsection if:

- (a) the provider enrolls a student in a course on the basis that some or all of the tuition fees for the course are covered fees; and
- (b) the provider engages in conduct that:
 - (i) prevents the student from cancelling the enrolment; or
 - (ii) unnecessarily inconveniences the student in relation to cancelling the enrolment.

Civil penalty: 120 penalty units.

Division 5—Marketing

60 Misrepresenting VET student loans

An approved course provider contravenes this section if the provider represents, whether by publishing or otherwise, that a VET student loan:

- (a) is not a loan; or
- (b) does not have to be repaid.

Civil penalty: 240 penalty units.

61 Offering certain inducements

- (1) An approved course provider contravenes this subsection if:
- (a) the provider:
 - (i) offers or provides a benefit; or
 - (ii) causes a benefit to be offered or provided; and
 - (b) the benefit would be reasonably likely to induce a person to apply for a VET student loan for a course.

Civil penalty: 120 penalty units.

- (2) Subsection (1) does not apply in relation to a benefit specified in the rules.

62 Engaging in cold-calling

- (1) An approved course provider contravenes this subsection if:
- (a) the provider cold-calls another person to market, advertise or promote a course; and
 - (b) when doing so, or as a result of doing so, the provider mentions the possible availability of a VET student loan (however described) for students undertaking the course.

Civil penalty: 60 penalty units.

- (2) **Cold-calling** includes making unsolicited contact with a student:
- (a) in person; or

- (b) by telephone, email or other form of electronic communication.

Note: *Student* includes a prospective student: see section 6.

- (3) The rules may set out conduct that is taken to be *cold-calling*.

63 Use of third party contact lists

- (1) An approved course provider contravenes this subsection if:
 - (a) the provider receives a student's contact details from another person; and
 - (b) the provider contacts the student to market, advertise or promote a course, or enrol the student in a course; and
 - (c) when doing so, or as a result of doing so, the provider mentions the possible availability of a VET student loan (however described) for students undertaking the course.

Civil penalty: 60 penalty units.

- (2) Subsection (1) does not apply in circumstances specified in the rules.

64 Other marketing requirements

- (1) The rules may set out requirements in relation to marketing of courses in circumstances where tuition fees for the courses could be covered by VET student loans.
- (2) An approved course provider contravenes this subsection if the provider fails to comply with rules made for the purposes of subsection (1).

Civil penalty: 60 penalty units.

Division 6—Personal liability for executive officers

65 Personal liability for executive officers

- (1) An executive officer of an approved course provider commits an offence if:
 - (a) the provider commits an offence against this Act; and
 - (b) the officer knew that the offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the provider in relation to the commission of the offence; and
 - (d) the officer failed to take all reasonable steps to prevent the commission of the offence.
- (2) The maximum penalty for an offence against subsection (1) is one-fifth of the maximum penalty that could be imposed for the offence committed by the provider.
- (3) An executive officer of an approved course provider contravenes this subsection if:
 - (a) the provider contravenes a civil penalty provision of this Act; and
 - (b) the officer knew that the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the provider in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention.
- (4) The maximum civil penalty for a contravention of subsection (3) is one-fifth of the maximum penalty that could be imposed for the contravention of the civil penalty provision by the provider.

66 Reasonable steps to prevent offence or contravention

- (1) For the purposes of section 65, in determining whether an executive officer of an approved course provider failed to take all reasonable steps to prevent the commission of an offence, or the contravention of a civil penalty provision, a court is to have regard to:
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- (a) what action (if any) the officer took towards ensuring that the provider's employees, agents and contractors had a reasonable knowledge and understanding of the requirements to comply with this Act, in so far as those requirements affected the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware of the offence or contravention.
- (2) This section does not limit the matters to which the court may have regard.

Part 6 Re-crediting FEE-HELP balances

Division 1 Application of Part

Section 67

Part 6—Re-crediting FEE-HELP balances

Division 1—Application of Part

67 Application of Part

This Part applies if an amount of a VET student loan has been used to pay tuition fees for a student for a course, or a part of a course.

Note: If a student's FEE-HELP balance is re-credited under this Part, the student's VET student loan debt is taken to be remitted to the extent to which the VET student loan debt relates to the loan amount concerned: see section 137-19 of the *Higher Education Support Act 2003*.

Division 2—Re-crediting by course provider

68 Special circumstances

- (1) The course provider must, on the Secretary's behalf, re-credit a student's FEE-HELP balance if:
 - (a) the student applies to the provider in writing for the re-credit; and
 - (b) the application is made within 12 months after the census day for the course, or the part of the course; and
 - (c) the provider is satisfied that special circumstances prevented, or will prevent, the student from completing the requirements for the course, or the part of the course.
- (2) The course provider may extend the period for making the application mentioned in paragraph (1)(b).
- (3) Circumstances are *special circumstances* if they:
 - (a) are beyond the student's control; and
 - (b) do not make their full impact on the student until on or after the census day for the course, or the part of the course; and
 - (c) make it impracticable for the student to complete the requirements for the course, or the part of the course, during the student's enrolment in the course, or the part of the course.
- (4) The amount re-credited must equal the amount of the VET student loan that has been used to pay tuition fees for the student for the course, or the part of a course.
- (5) The course provider must, as soon as practicable:
 - (a) consider an application for a student's FEE-HELP balance to be re-credited under this section; and
 - (b) notify the student of the provider's decision on the application.

The notice must include a statement of the reasons for the decision.

Section 69

69 Course not provided to completion

- (1) The course provider must, on the Secretary's behalf, re-credit a student's FEE-HELP balance if:
 - (a) the student has not completed the requirements for the course, or the part of the course, because the provider ceased to provide the course or part after it started but before it was completed; and
 - (b) it is impractical for the student, under the approved tuition assurance arrangement for the course, to finish the course or an equivalent course.
- (2) The amount re-credited must equal the amount of the VET student loan that has been used to pay tuition fees for the student for the course, or the part of the course.
- (3) If the course provider re-credits the student's FEE-HELP balance, the course provider must notify the following of the re-credit as soon as practicable:
 - (a) the student;
 - (b) the tuition assurance scheme operator for the student for the course.

70 Secretary may act in place of provider

The Secretary may re-credit a student's FEE-HELP balance in accordance with this Division if:

- (a) a course provider is unable to act under this Division or is being wound up or has been dissolved; or
- (b) a course provider has failed to act under this Division and the Secretary is satisfied that the failure is unreasonable.

Division 3—Re-crediting by Secretary

71 When Secretary may re-credit FEE-HELP balance

- (1) The Secretary may re-credit the student's FEE-HELP balance if the Secretary is satisfied that the course provider, or a person acting on the provider's behalf, engaged in unacceptable conduct in relation to the student's application for the VET student loan.
- (2) *Unacceptable conduct*, in relation to an application for a VET student loan, has the meaning given by the rules.
- (3) The Secretary may re-credit the student's FEE-HELP balance if the Secretary is satisfied of one or more of the following:
 - (a) the student is not an eligible student;
 - (b) the student is not a genuine student;
 - (c) the student does not have a tax file number;
 - (d) the student does not have a student identifier.
- (4) The Secretary may re-credit the student's FEE-HELP balance if the Secretary is satisfied that:
 - (a) the provider has failed to comply with this Act; and
 - (b) the failure has adversely affected the student.
- (5) The amount re-credited must not exceed the amount of the VET student loan that has been used to pay tuition fees for the student for the course, or the part of the course.
- (6) This section applies whether or not the student applies for the re-credit.

72 Student may apply for re-crediting by Secretary

- (1) A student may apply to the Secretary for the student's FEE-HELP balance to be re-credited under section 71.
- (2) The application must be in writing and meet any requirements set out in the rules.

Section 73

73 Secretary must invite submissions before re-crediting

- (1) Before re-crediting a student's FEE-HELP balance under this Division, the Secretary must give the course provider concerned notice in writing:
 - (a) stating that the Secretary is considering the re-credit; and
 - (b) stating the reasons why the Secretary is considering the re-credit; and
 - (c) inviting the provider to make written submissions to the Secretary about the re-credit within 28 days.
- (2) In deciding whether to re-credit the FEE-HELP balance, the Secretary must take into account any submissions received within the 28 day period.
- (3) The Secretary must give the student and the provider written notice of the Secretary's decision and the reasons for the decision. The notice must be given as soon as practicable after the decision is made.

Part 7—Review of decisions

Division 1—Reviewable decisions

74 Reviewable decisions

The following table sets out:

- (a) the *reviewable decisions* under this Act; and
- (b) the *decision maker* for each of those decisions.

Reviewable VET decisions			
Item	Decision	Provision under which decision is made	Decision maker
1	A decision to approve or not to approve a VET student loan	Section 18	the Secretary
2	A decision to revoke the approval of an approved course provider	Section 36	the Secretary
3	A decision not to re-credit a student's FEE-HELP balance	Section 68 (special circumstances)	the course provider to whom the application was made
4	A decision not to re-credit a student's FEE-HELP balances	Section 68 (special circumstances)	the Secretary (in accordance with section 70)
5	A decision: (a) to re-credit a student's FEE-HELP balance; or (b) not to re-credit a student's FEE-HELP balance	Section 71 (unacceptable conduct)	the Secretary

Section 75

75 When applications are taken to be refused

The decision maker is taken to have decided to refuse an application if:

- (a) a person makes an application for a reviewable decision to be made; and
- (b) the decision maker is required to notify the person of the decision; and
- (c) the person is not notified:
 - (i) within the required time; or
 - (ii) if there is no required time—within 2 months after the application is made.

Division 2—Reconsideration of reviewable decisions

76 Application for reconsideration

- (1) A person whose interests are affected by a reviewable decision may request the decision maker to reconsider the decision.
- (2) The request must be made in writing and given to the decision maker within 28 days after the day on which the person was notified of the decision, or within such longer period as the decision maker allows.
- (3) The request must set out the reasons for requesting the reconsideration.
- (4) After receiving the request, the decision maker must reconsider the decision and:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) The decision maker's decision (the ***reconsidered decision***) to confirm, vary or set aside the reviewable decision takes effect:
 - (a) on the day specified in the reconsidered decision; or
 - (b) if a day is not specified—on the day on which the reconsidered decision is made.
- (6) The decision maker must give the person written notice of the reconsidered decision.
- (7) The notice:
 - (a) must be given within a reasonable period after the reconsidered decision is made; and
 - (b) must contain a statement of the reasons for the reconsidered decision.
- (8) The decision maker is taken to have confirmed the reviewable decision if the decision maker does not give notice of the

Section 77

reconsidered decision to the person within 45 days after receiving the person's request.

77 Reconsideration without application

- (1) The decision maker may reconsider a reviewable decision if the decision maker is satisfied that there is sufficient reason to do so.
- (2) The decision maker may reconsider the decision whether or not:
 - (a) an application for reconsideration of the decision has been made under section 76; or
 - (b) the decision has been reconsidered under section 76; or
 - (c) an application has been made under section 80 for review of the reconsidered decision by the Administrative Appeals Tribunal.
- (3) After reconsidering the reviewable decision, the decision maker must:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (4) The decision maker's decision (the *reconsidered decision*) to confirm, vary or set aside the reviewable decision takes effect:
 - (a) on the day specified in the reconsidered decision; or
 - (b) if a day is not specified—on the day on which the reconsidered decision is made.
- (5) The decision maker must give written notice of the reconsidered decision to the person to whom the decision relates.
- (6) The notice:
 - (a) must be given within a reasonable period after the reconsidered decision is made; and
 - (b) must contain a statement of the reasons for the reconsidered decision.

78 Reconsideration by delegates

- (1) A delegate of the Secretary must not reconsider a reviewable decision made by the delegate.
- (2) A reviewable decision made by a delegate of the Secretary may be reconsidered by another delegate if, and only if, the other delegate:
 - (a) was not involved in making the decision; and
 - (b) occupies a position at a level not lower than that of the delegate who made the decision.

79 Approved course providers must have review officers

- (1) An approved course provider must appoint an officer to reconsider reviewable decisions made by the provider.
- (2) The officer must be appointed by:
 - (a) the chief executive officer of the provider; or
 - (b) a delegate of the chief executive officer of the provider.
- (3) The officer must not reconsider a decision if the officer:
 - (a) was involved in making the decision; or
 - (b) occupies a position at a level lower than that of the person who made the decision.

80 Review by the AAT

- (1) Applications may be made to the Administrative Appeals Tribunal for the review of reconsidered decisions that have been made under section 76 or 77.
- (2) For the purposes of the *Administrative Appeals Tribunal Act 1975* as it applies in relation to a reconsidered decision under section 18, 68 or 71 of this Act, the student concerned is taken to be the only person whose interests are affected by the decision.

Division 3—Reconsideration of other decisions

81 Reconsideration of other decisions

- (1) A person who makes a decision (the *initial decision*) under this Act other than a reviewable decision may reconsider the decision if the person is satisfied that there is sufficient reason to do so.
- (2) After reconsidering the initial decision, the decision maker must:
 - (a) confirm the initial decision; or
 - (b) vary the initial decision; or
 - (c) set the initial decision aside and substitute a new decision.
- (3) The decision maker's decision (the *reconsidered decision*) to confirm, vary or set aside the initial decision takes effect:
 - (a) on the day specified in the reconsidered decision; or
 - (b) if a day is not specified—on the day on which the reconsidered decision is made.
- (4) The decision maker must give written notice of the reconsidered decision to the person to whom the decision relates.
- (5) The notice:
 - (a) must be given within a reasonable period after the reconsidered decision is made; and
 - (b) must contain a statement of the reasons for the reconsidered decision.

Part 8—Regulatory powers

82 Monitoring powers

- (1) This Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

- (3) For the purposes of Part 2 of the Regulatory Powers Act as it applies in relation to this Act:

- (a) each Departmental investigator and NVETR investigator is an authorised applicant; and
- (b) each Departmental investigator and NVETR investigator is an authorised person; and
- (c) a judicial officer is an issuing officer; and
- (d) for an authorised person who is a Departmental investigator, the Secretary is the relevant chief executive; and
- (e) for an authorised person who is an NVETR investigator, each NVETR Commissioner is the relevant chief executive; and
- (f) each of the following is a relevant court:
 - (i) the Federal Court;
 - (ii) the Federal Circuit Court;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to this Act.

Section 83

83 Investigation powers

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence provision of this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

- (2) For the purposes of Part 3 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) each Departmental investigator and NVETR investigator is an authorised applicant; and
 - (b) each Departmental investigator and NVETR investigator is an authorised person; and
 - (c) a judicial officer is an issuing officer; and
 - (d) for an authorised person who is a Departmental investigator, the Secretary is the relevant chief executive; and
 - (e) for an authorised person who is an NVETR investigator, each NVETR Commissioner is the relevant chief executive; and
 - (f) each of the following is a relevant court:
 - (i) the Federal Court;
 - (ii) the Federal Circuit Court;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- (3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to this Act.

84 Civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: 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.

- (2) For the purposes of Part 4 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) each of the following is an authorised applicant:
 - (i) the Secretary;
 - (ii) an SES employee, or an acting SES employee, in the Department; and
 - (b) each of the following is a relevant court:
 - (i) the Federal Court;
 - (ii) the Federal Circuit Court;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

85 Infringement notices

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) an offence provision of this Act;
 - (b) a civil penalty provision of this Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

- (2) For the purposes of Part 5 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) each of the following is an infringement officer:
 - (i) an NVETR staff member who is an SES employee or an acting SES employee;
 - (ii) an NVETR staff member who is an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position;
 - (iii) an SES employee, or an acting SES employee, in the Department; and
 - (b) the relevant chief executive is:

Section 86

- (i) for an infringement notice given by an infringement officer covered by subparagraph (a)(i) or (ii)—each NVETR Commissioner; and
- (ii) for an infringement notice given by an infringement officer covered by subparagraph (a)(iii)—the Secretary.

86 Enforceable undertakings

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

- (2) For the purposes of Part 6 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) each of the following is an authorised person:
 - (i) the Secretary;
 - (ii) an SES employee, or an acting SES employee, in the Department; and
 - (b) each of the following is a relevant court:
 - (i) the Federal Court;
 - (ii) the Federal Circuit Court;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

87 Injunctions

- (1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

- (2) For the purposes of Part 7 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) each of the following is an authorised person:
 - (i) the Secretary;
 - (ii) an SES employee, or an acting SES employee, in the Department; and

- (b) each of the following is a relevant court:
 - (i) the Federal Court;
 - (ii) the Federal Circuit Court;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

88 Appointment of investigators

- (1) The Secretary may, in writing, appoint a person as a *Departmental investigator*.
- (2) An NVETR Commissioner may, in writing, appoint an NVETR staff member as an *NVETR investigator*.
- (3) A person must not be appointed as a Departmental investigator, or an 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.
- (4) A Departmental investigator, and an NVETR investigator, must, in exercising powers as such, comply with any directions of the appointer.

89 Delegation of regulatory powers

- (1) The Secretary may, in writing, delegate his or her powers and functions under the Regulatory Powers Act as it applies in relation to this Act, to an SES employee, or an acting SES employee, in the Department.
- (2) An NVETR Commissioner may, in writing, delegate his or her powers and functions under the Regulatory Powers Act as it applies in relation to this Act, and under section 88, to an NVETR staff member who is:
 - (a) an SES employee or an acting SES employee; or
 - (b) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.

Section 90

- (3) A person exercising powers or performing functions under a delegation under subsection (1) or (2) must comply with any directions of the delegator.
- (4) A person must not exercise powers or perform functions under a delegation under subsection (1) or (2) in relation to an infringement notice given by the person.

90 Other enforcement action

To avoid doubt, taking action under this Part does not limit the taking of action under any other provision of this Act.

Part 9—Use of information

Division 1—Authorised use and disclosure of information

91 Use and disclosure by Commonwealth officers

A Commonwealth officer may use or disclose VET information if the information is used or disclosed for the purposes of:

- (a) this Act; or
- (b) the *Higher Education Support Act 2003*.

92 Use and disclosure by certain VET officers

- (1) Each of the following VET officers may use VET information in his or her capacity as such an officer:
 - (a) an officer of a Tertiary Admission Centre;
 - (b) an officer of an approved course provider;
 - (c) an officer of a tuition assurance scheme operator that is a party to an approved tuition assurance arrangement;
 - (d) an officer of an approved external dispute resolution scheme operator.
- (2) The officer may disclose VET information to another VET officer if the officer believes on reasonable grounds that the disclosure is reasonably necessary for the purposes of exercising powers, or performing functions or duties, in relation to this Act.

93 Disclosure to certain agencies, bodies or persons

- (1) The Secretary may disclose VET information to an agency, body or person mentioned in subsection (2) if the Secretary believes on reasonable grounds that the disclosure is reasonably necessary for the purposes of the exercise of the powers, or the performance of the functions or duties, of the agency, body or person.
- (2) The agencies, bodies and persons to which the Secretary may disclose VET information under this section are the following:

Section 94

- (a) TEQSA;
- (b) the National VET Regulator;
- (c) an agency or authority of a State or Territory responsible for regulating vocational education or vocational training in the State or Territory;
- (d) the Australian Competition and Consumer Commission;
- (e) an approved external dispute resolution scheme operator.

94 Disclosure for purposes of law enforcement

The Secretary may disclose VET information to one or more of the following if the Secretary believes on reasonable grounds that the disclosure of the information is necessary for an enforcement related activity (within the meaning of the *Privacy Act 1988*):

- (a) a Department, agency or authority of the Commonwealth, a State or a Territory;
- (b) an enforcement body (within the meaning of the *Privacy Act 1988*).

95 Disclosure to other bodies for permitted purposes

- (1) The Secretary may disclose VET information to an agency, body or person referred to in subsection (2) for any of the following purposes (a *permitted purpose*):
 - (a) improving the provision of vocational education and training;
 - (b) research relating to the provision of vocational education and training, including research relating to:
 - (i) quality assurance; or
 - (ii) planning the provision of vocational education and training.
- (2) The agencies, bodies and persons to which the Secretary may disclose VET information under this section are the following:
 - (a) a State or Territory agency;
 - (b) an approved course provider;
 - (c) a person who performs services for or on behalf of an approved course provider;

- (d) a body or association determined, by legislative instrument, by the Minister for the purposes of this paragraph.
- (3) However, if the information was provided by an approved course provider, the Secretary may only disclose the information to a person referred to in paragraph (2)(b), (c) or (d) if the provider consents to that disclosure.

96 Disclosure of publicly available information

A person may use or disclose VET information if the information has already been lawfully made available to the public.

97 Commissioner may disclose VET information

- (1) The Commissioner may disclose VET information to a Commonwealth officer or an officer of a Tertiary Admission Centre if the Commissioner believes on reasonable grounds that the disclosure will enable or assist the officer to exercise powers, or perform functions or duties in relation to this Act.
- (2) Subsection (1) has effect despite anything in an Act of which the Commissioner has the general administration.
- (3) Despite subsection 13.3(3) of the *Criminal Code*, in a prosecution for an offence against an Act of which the Commissioner has the general administration, the defendant does not bear an evidential burden in relation to whether this section applies to a disclosure of personal information.

98 This Division does not limit use or disclosure of VET information

This Division does not limit the disclosure or use of VET information.

Note: The use or disclosure of VET information may also be authorised in other circumstances. For example, see the *Privacy Act 1988*.

Division 2—Offences for misuse of personal information

99 VET officers

- (1) A person commits an offence if:
- (a) the person is, or has been, a VET officer; and
 - (b) the person has obtained or generated personal information in his or her capacity as a VET officer; and
 - (c) the person:
 - (i) uses the information; or
 - (ii) discloses the information to another person.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the use or disclosure is authorised or required by:
- (a) a law of the Commonwealth; or
 - (b) a law of a State or Territory listed in the rules for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

100 Use of personal information for other purposes

- (1) A person commits an offence if:
- (a) the person uses personal information; and
 - (b) the information was disclosed to an agency, body or person under section 95; and
 - (c) the use of the information is not for a permitted purpose.

Note: For *permitted purpose*, see subsection 95(1).

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the use is authorised or required by:
- (a) a law of the Commonwealth; or

- (b) a law of a State or Territory listed in the rules for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) A person commits an offence if:
- (a) the person discloses personal information; and
 - (b) the information was disclosed to an agency, body or person under section 95; and
 - (c) either or both of the following apply:
 - (i) the disclosure is not for a permitted purpose;
 - (ii) the disclosure is to a person who is not an officer or employee of, or engaged by, the agency, body or person to whom the information was disclosed under section 95.

Note: For *permitted purpose*, see subsection 95(1).

Penalty: Imprisonment for 2 years.

- (4) Subsection (3) does not apply if the disclosure is authorised or required by:
- (a) a law of the Commonwealth; or
 - (b) a law of a State or Territory listed in the rules for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to a matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

101 Unauthorised access to, or modification of, personal information

- (1) A person commits an offence if:
- (a) the person causes any unauthorised access to, or modification of, personal information; and
 - (b) the personal information is VET information:
 - (i) that is held on a computer; and
 - (ii) to which access is restricted by an access control system associated with a function of the computer; and
 - (c) the person intends to cause the access or modification; and

Part 9 Use of information

Division 2 Offences for misuse of personal information

Section 101

- (d) the person knows that the access or modification is unauthorised; and
- (e) one or more of the following apply:
 - (i) the information is held on a computer of an approved course provider;
 - (ii) the information is held on behalf of an approved course provider;
 - (iii) the information is held on a computer of a Tertiary Admission Centre;
 - (iv) the information is held on behalf of a Tertiary Admission Centre.

Penalty: Imprisonment for 2 years.

- (2) Absolute liability applies to paragraph (1)(e).

Part 10—General provisions

102 Communicating electronically

- (1) The rules may set out requirements for and in relation to the following:
 - (a) electronic communication between the Commonwealth and students;
 - (b) electronic communication between the Commonwealth and approved course providers;
 - (c) electronic communication between students and approved course providers.
- (2) An approved course provider contravenes this subsection if the provider fails to comply with rules made under subsection (1).

Civil penalty: 60 penalty units.

103 Secretary may publish information

- (1) The Secretary may publish information (other than personal information about a student) if the Secretary is satisfied that the information would:
 - (a) assist a student to decide whether or not to enrol in a course provided by an approved course provider; or
 - (b) assist a student in relation to his or her eligibility for a VET student loan and the circumstances in which the Secretary would approve a VET student loan; or
 - (c) encourage compliance by an approved course provider with this Act.
- (2) The information the Secretary may publish in relation to an approved course provider includes the following:
 - (a) completion rates for students;
 - (b) enrolment numbers and forecast enrolment numbers (including for particular courses);
 - (c) courses offered;

Section 103A

- (d) tuition and other fee arrangements and modes of delivery for those courses;
 - (e) compliance action that has been taken under this Act (including that an intention notice has been given to the provider).
- (3) Subsection (2) does not limit subsection (1).
- (4) The Secretary may require an approved course provider to release or publish the information that the Secretary could publish under this section in relation to the provider.
- (5) An approved course provider contravenes this subsection if the provider fails to comply with a requirement under subsection (4).
- Civil penalty: 60 penalty units.

103A Secretary must publish information relating to operation of the VET student loans program

The Secretary must publish the following information within 42 days after the end of the period of 6 months beginning on 1 January and 1 July in each year (the *reporting period*):

- (a) the number of approved course providers who operated during the reporting period;
- (b) for each of those providers:
 - (i) the name of the provider; and
 - (ii) the value of VET student loans approved by the Secretary for approved courses offered by the provider during the reporting period; and
 - (iii) the number of students who undertook approved courses offered by the provider during the reporting period and whose tuition fees for the courses were paid (whether in whole or in part) using VET student loans; and
 - (iv) the number of such students who completed approved courses during the reporting period; and
 - (v) the amount of tuition fees charged to such students by the provider during the reporting period;

- (c) any other information in relation to VET student loans prescribed under the rules.

104 Secretary may require a person to provide information about compliance with this Act

- (1) The Secretary may, by written notice given to a person who the Secretary believes on reasonable grounds has information or documents relevant to determining whether this Act has been complied with, require the person to give the information or documents to the Secretary.
- (2) The information must be provided:
- (a) in a form (if any) approved by the Secretary; and
 - (b) in accordance with other requirements specified by the Secretary.
- (3) A notice under this section must not require the giving of information by an approved course provider that the provider is required to give to the Secretary under any other provision of this Act.
- (4) A person contravenes this subsection if the person fails to provide information or documents in accordance with a requirement under subsection (1).
- Civil penalty: 60 penalty units.
- (5) A person commits an offence of strict liability if the person fails to provide information or documents in accordance with a requirement under subsection (1).
- Penalty: 60 penalty units.

105 Secretary may use computer programs to make decisions

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary may make decisions under this Act.

Section 106

- (2) A decision made by the operation of a computer program under such an arrangement is, for the purposes of this Act, taken to be a decision made by the Secretary.

106 Giving false or misleading information

- (1) A person contravenes this subsection if:
- (a) a person gives information or a document:
 - (i) to a VET officer; or
 - (ii) otherwise under, or for the purpose of, this Act; and
 - (b) the information or document:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information or document is misleading.
- (2) Subsection (1) does not apply if the information or document is not false or misleading in a material particular.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: A person may commit an offence if the person provides false or misleading information or documents: see sections 137.1 and 137.2 of the *Criminal Code*.

Civil penalty: 240 penalty units.

107 Verifying tax file numbers

For the purposes of this Act:

- (a) the Secretary may ask the Commissioner to verify a tax file number; and
- (b) the Commissioner may at any time give the Secretary any information necessary to ensure that the Secretary has the correct tax file number.

108 Contravening offence and civil penalty provisions

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

109 Certain references to course provider include references to agent

A reference in a civil penalty provision in this Act to a course provider (however described) includes a reference to a person acting on behalf of the provider.

110 Continuing application of Act to certain persons

- (1) This Act continues to apply in relation to a body that was approved as an approved course provider as if the body were still an approved course provider.
- (2) Subsection (1) applies for the purposes of dealing with or resolving any matter that arose during, or that relates to, the period when the body was approved as an approved course provider.
- (3) This Act continues to apply in relation to a person or body who was a tuition assurance scheme operator as if the person or body were still a tuition assurance scheme operator.
- (4) Subsection (3) applies for the purposes of dealing with or resolving any matter that arose during, or that relates to, the period when the body was a tuition assurance scheme operator.

111 No entitlement to future rights

- (1) Neither approval, nor payment of any amount, of a VET student loan requires the Commonwealth to ensure that:
 - (a) a student has access to a course; or
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Section 112

- (b) a course:
 - (i) is delivered in a particular way; or
 - (ii) addresses particular content or skills; or
 - (iii) results in a particular qualification.
- (2) Neither approval, nor payment of any amount, of a VET student loan:
 - (a) requires any other loan to be approved or any other loan amount to be paid; or
 - (b) prevents any amendment of this Act from having full effect from the commencement of the amendment.

112 Protection from civil actions

- (1) This section applies to:
 - (a) the Secretary; and
 - (b) an APS employee in the Department; and
 - (c) a consultant engaged by the Commonwealth to perform work in relation to this Act.
- (2) A person mentioned in subsection (1) is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith:
 - (a) in the performance or purported performance of any functions under this Act; or
 - (b) in the exercise or purported exercise of any powers under this Act.

113 Compensation for acquisition of property

- (1) If the operation of this Act 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 section:

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.

114 Delegations

- (1) The Secretary may, in writing, delegate any or all of his or her powers under this Act to:
- (a) an APS employee; or
 - (b) an officer of an approved external dispute resolution scheme operator.

Note: For *this Act*, see section 6.

- (2) In exercising powers under the delegation, the delegate must comply with any directions of the Secretary.

115 Appropriation

Amounts of VET student loans payable by the Secretary under this Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

115A Alternative constitutional basis

Without limiting its effect apart from this section, this Act also has the effect it would have if each reference to an approved course provider were expressly confined to a corporation to which paragraph 51(xx) of the Constitution applies.

116 Rules

- (1) The Minister may, by legislative instrument, make rules providing for matters:
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Section 116

- (a) required or permitted by this Act to be provided; or
- (b) necessary or convenient to be provided in order to carry out or give effect to this Act.

Note 1: For *this Act*, see section 6.

Note 2: The rules may make different provision with respect to different matters or different classes of matters (see subsection 33(3A) of the *Acts Interpretation Act 1901*). For example, the rules may provide different requirements for different kinds of approved course providers.

- (2) The rules may provide for amounts determined by, or worked out in accordance with, the rules to be indexed using the method set out in Part 5-6 of the *Higher Education Support Act 2003*.
- (3) If this Act (including the rules) permits or requires a decision to be made, the rules may provide for matters that the decision maker may or must (as specified in the rules) have regard to in making the decision.
- (4) If this Act requires or permits the rules to provide for a matter, the rules may provide for the matter to be determined by the Secretary.
- (5) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time.
- (6) The rules may provide for the collection and recovery of approved course provider charge (within the meaning of the *VET Student Loans (Charges) Act 2016*).
- (7) The rules must specify a cap on the amount of VET student loans that can be approved for:
 - (a) the calendar year in which this subsection commences; and
 - (b) each of the 2 following calendar years.
- (8) Subsections (2) to (7) do not limit subsection (1).

*[Minister's second reading speech made in—
House of Representatives on 13 October 2016
Senate on 7 November 2016]*

(156/16)

No. 98, 2016

VET Student Loans Act 2016

83