

## **EXPLANATORY STATEMENT**

*Guidelines issued under clause 99 of Schedule 1A to the Higher Education Support Act 2003*

### **Amendment No. 1 to the VET Guidelines 2015**

**Issued by the authority of the  
Assistant Minister for Education and Training**

#### **Subject**

*Higher Education Support Act 2003*  
Amendment No.1 to the VET Guidelines 2015

#### **Authority**

Clause 99 of Schedule 1A to the *Higher Education Support Act 2003* (Act) provides that the Minister may make VET Guidelines to give effect to Schedule 1A to the Act.

In particular, subsection 99(1) specifies that the Minister may make VET Guidelines (the VET Guidelines) to provide for matters required or permitted to be provided or necessary or convenient to be provided in order to carry out or give effect to Schedule 1A to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### **Purpose**

This legislative instrument amends the VET Guidelines 2015 (F2015L00430) to tighten VET marketing and recruitment practices associated with VET FEE-HELP to ensure the availability of VET FEE-HELP is marketed accurately and fairly. The instrument is also intended to clarify understanding of the operation of VET FEE-HELP. It is also intended to clarify students' rights and obligations, to enable students to make payment decisions with clear information, and ensure student debt is incurred in line with course delivery and continued student participation. These amendments form part of the response to the suite of VET FEE-HELP reform measures announced by the Government in March 2015.

The amendments which commence from 1 July 2015 set out the requirements that a VET provider must meet when:

- marketing VET FEE-HELP and VET courses of study for which VET FEE-HELP is available;
- an agent acts for it in regard to recruiting and marketing – including the requirement to have written agreements with agents and the requirements those agreements must contain;
- providing information on VET FEE-HELP to a prospective student before he or she enrolls in a VET course of study;
- allowing students to withdraw from a VET unit of study on or before the census date; and
- publishing fee and census date information in a readily accessible location on the provider's website.

The amendments which commence from 1 January 2016 set out the requirements that a VET provider must meet when:

- accepting a *Request for Commonwealth Assistance* form from a student in compliance with criteria and timing requirements;
- charging tuition fees for a VET course of study so that students do not incur the full cost of a course in one hit upfront. The amendments will result in a VET course of study having a minimum of four census dates, with charges for a course of study split evenly over four equal fee-periods over the course duration;
- providing upfront unit enrolment and fee information to students. The amendments will require providers to issue an Invoice Notice to a student no less than 14 days prior to the census date set out in that Invoice Notice. The amendments prescribe the type of information to be contained in the Invoice Notice and require it be given to the student's nominated personal email or personal mail address (in addition to any VET provider internal portal arrangements).

## Consultation

Consultation has been undertaken on an Australia-wide basis with the VET provider sector including nine national VET provider consultation forums held in April and May 2015. These forums included:

- six face-to-face, sessions held in Melbourne, Adelaide, Sydney, Brisbane, Perth and Canberra
- three webinar forums conducted for:
  - Australian Council for Private Education and Training members
  - TAFE Directors Australia members and
  - VET providers from the Northern Territory, Tasmania, regional and any other VET providers that were unable to attend face-to-face consultation sessions.

The provider forums (face-to-face and webinar based) were well received and attended by over 280 individuals. Feedback from the forums provided valuable insights that have assisted the development and implementation of the amendments.

The amendments were also informed by consultation with a Working Group comprised of representatives of the VET provider sector, peak bodies and consumer groups.

## Commencement

The amendments to the *VET Guidelines 2015* take effect on 1 July 2015 and 1 January 2016 as follows:

For items 1, 5-11, 14-16, 18	1 July 2015; and
For items 2-4, 12-13, 17, 19	1 January 2016.

## Detailed explanation of provisions

### Items 1, 2, 3, 4 and 5 – Interpretation

Item 1 inserts a new term in paragraph 1.3 to specify the meaning of **agent** for the purposes of the newly inserted subparagraph 4.6.2. The term **agent** has the same meaning as that given in subparagraph 4.6.2 but is not limited to brokers, marketing agents, contractors, sub-contractors and third parties.

Item 2 inserts a new term in paragraph 1.3 to specify the meaning of **Commonwealth Assistance Notice** for the purposes of paragraph 9.4. A **Commonwealth Assistance Notice** has the meaning as set out in paragraph 9.4 of the VET Guidelines. This item has effect from 1 January 2016.

Item 3 inserts a new term in paragraph 1.3 to specify the meaning of **fee-period** for the purposes of the newly inserted subparagraph 7.8. This item has effect from 1 January 2016.

Item 4 inserts a definition of **VET FEE-HELP Invoice Notice** in subparagraph 1.3 for the purposes of the newly inserted notice required under paragraph 9.2. A **VET FEE-HELP Invoice Notice** has the meaning as set out in paragraph 9.2 of the VET Guidelines. This item has effect from 1 January 2016.

Item 5 makes a minor editorial amendment to include capital letters for the words '**Prohibited inducement**' to align with the use of the words **Prohibited Inducement** in subparagraphs 4.4.2, 4.4.3 and 4.4.4.

### Item 6

Item 6 makes minor amendments to clarify the current drafting of subparagraph 4.4.3(d) to provide that it is not a Prohibited Inducement for the purposes of paragraph 4.4 for information or advice to be provided about Commonwealth assistance being available in respect of the VET unit of study or VET course. The amendments to this subparagraph improve phrasing readability.

### Item 7

Item 7 makes minor technical amendments to the numbering in paragraph 4.4.4 to ensure consistency throughout the VET Guidelines 2015.

### Item 8

Item 8 corrects a cross-reference in subparagraph 4.4.3(b) resulting from the correction of number formatting at Item 7.

### Item 9

Item 9 repeals paragraphs 4.4.1 and 4.4.1.1

### Item 10

Item 10 inserts a new paragraph 4.4.1 (with the text of the former paragraph 4.4.1.1) which provides that the purposes of the VET quality and accountability requirements is to enable prospective students to select a VET provider on the basis of the quality and price of the training offered.

## Item 11

Item 11 inserts a new paragraph **4.5 Requirements for VET Quality and Accountability – Marketing of VET FEE-HELP** to ensure that advice and information on the availability of VET FEE-HELP for a course is marketed accurately and fairly, allowing students to make payment decisions with a clear understanding of their rights and obligations (paragraph 4.5.1).

The amendments include requirements that a VET provider or its agents must not at any time (including at the time of initial contact with a prospective student) market a VET course of study or VET unit of study as “free” or without obligation to repay, or that they market a VET course of study or VET unit of study in such a way that it would mislead a person to believe that VET FEE-HELP assistance is not a loan to be repaid by the person to the Commonwealth. Additionally, the VET provider or its agents must not market the availability of a VET FEE-HELP loan for a VET course of study or VET unit/s of study, the VET FEE-HELP scheme, or VET FEE-HELP as government funded (paragraph 4.5.2).

In addition, the amendments require that a VET provider or its agents must not advise a person about the likelihood of their future repayments of VET FEE-HELP loans (paragraph 4.5.3). A VET provider or its agents must also provide accurate and up to date information about VET FEE-HELP (paragraph 4.5.4).

New paragraph 4.5.5 provides that, for the purpose of these VET Guidelines, any conduct or acts undertaken by an agent is taken to have been undertaken by the VET provider (paragraph 4.5.5).

Item 11 also inserts a new paragraph **4.6 Requirements for VET Quality and Accountability – Agents** to ensure that VET providers are responsible for the actions of persons that act on their behalf in recruitment and marketing.

New paragraph 4.6.2 provides that, for the purposes of the VET Guidelines, an agent is any person who acts for financial gain or other benefit on behalf of the VET provider and undertakes the activities as outlined in subparagraphs 4.6.2 (a) to (g).

New paragraph 4.6.3 provides that a VET provider must enter into a written agreement with its agents and new subparagraphs 4.6.4 (a) to (d) specify the matters which must be included in that written agreement.

New paragraph 4.6 also requires a VET provider to:

- publish a list of agents on its website (paragraph 4.6.5);
- maintain a record of agent agreements for a minimum of five years (paragraph 4.6.6);
- retain certain information about its agents and make this information available to the Minister if requested (paragraph 4.6.7).

Item 11 also inserts a new paragraph **4.7 Requirements for VET Quality and Accountability – Provision of Information** to ensure prospective students seeking to enrol in a VET course of study are fully informed of the fees that apply to a VET course of study and have access to clear and accurate information on their rights and obligations.

Prior to enrolment, a VET provider must give each student the following information:

- information required to be provided under Standard 5 of the Standards for Registered Training Organisations (RTOs) 2015 (subparagraph 4.7.2(a));

- about options for paying tuition fees including up-front payment, Government loan via the VET FEE-HELP scheme or any other applicable options (paragraph 4.7.2(b));
- information which clarifies that the tuition fees are covered by the VET FEE-HELP loan but that any other fees incurred will not be covered by this loan, and in addition, any information about applicable loan fees should be provided and the amount specified (subparagraph 4.7.2(c));
- information concerning the location of published tuition fees, census dates and withdrawal policy and procedures (subparagraph 4.7.2(d));
- information about the VET-FEE HELP scheme including the consequences of requesting a VET FEE-HELP loan, the significance of the census date, the requirements around withdrawing from a VET unit of study and the availability of refunds (subparagraph 4.7.2(e)).

This new paragraph 4.7 also requires a VET provider to:

- retain a record of information provided to a prospective student for a minimum of five years (subparagraph 4.7.3(a));
- make the records available to the Minister if requested (subparagraph 4.7.3(b)).

Item 11 also inserts a new paragraph **4.8 Requirements for VET Quality and Accountability – Barriers to Withdrawal**. The purpose of this paragraph is to allow students to withdraw from a VET unit of study on or before the census dates. This new paragraph requires that the VET provider:

- must not have financial, administrative or other barriers in place which would prevent a student from withdrawing from a VET unit of study on or before the census date (paragraph 4.8.2)
- must ensure that where a student notifies the VET provider of withdrawal or cancellation the student will not remain enrolled from the date of notification (paragraph 4.8.3);
- must not enrol the student in subsequent VET units of study without written instructions from the student and must have a process in place for students to select, initiate or request their own enrolment in subsequent VET unit/s of study (paragraph 4.8.4);
- must publish its withdrawal procedures on its website and make them otherwise readily available (paragraph 4.8.5);
- must not charge a student any fine, penalty or fee for withdrawal in accordance with the requirements of paragraph 8.2.1 of these VET Guidelines (paragraph 4.8.6).

## Item 12

Item 12 inserts a new paragraph **4.9 Vet Quality and Accountability – Request for Commonwealth Assistance Form** which is intended to ensure that prospective students have time to consider whether they want to request a VET FEE-HELP loan by providing them with a two-day period to consider their payment options. The new paragraph requires that a VET provider must:

- allow two business days before accepting a *Request for Commonwealth Assistance* form from a prospective student and the VET provider must be satisfied that either prior to or at the time of enrolment the prospective student had received the information outlined in paragraph 4.7.2. A note clarifies that if a person enrolls, for instance, at 4pm on a Friday, the two business day period referred to in this provision concludes at 4pm the following Tuesday (paragraph 4.9.2);

- document and maintain accurate records of enrolments and applications for VET FEE-HELP (paragraph 4.9.3);
- retain all documentation referred to in paragraph 4.9.3 for a minimum of five years and make the records available to the Minister if requested (paragraph 4.9.4).

This item is for implementation from 1 January 2016, allowing a six-month transition period to allow providers to update processes and systems.

### Item 13

Chapter 7 sets out matters concerning Tuition Fees and Census Dates. Paragraph 7.1.1 sets out the matters specified in the Chapter. Item 13 inserts a new subparagraph in paragraph 7.1.1 to specify that 'fee-periods' will be one of the matters specified in the Chapter. This item has effect from 1 January 2016.

### Item 14

Item 14 makes a minor technical amendment in paragraph 7.6.1

### Item 15

Item 15 inserts a new paragraph 7.6.2 to require a VET provider to ensure its census dates are published in a readily accessible location on its website so as to ensure the information is easily accessible to prospective students and prohibits the VET provider from requiring a prospective student to provide log-in information to the VET provider or its agents in order to access this information.

### Item 16

Item 16 repeals paragraph 7.7.1 and inserts a new paragraph 7.7.1 that requires a VET provider to publish its schedule of VET tuition fees in a readily accessible location on its website so as to ensure the information is easily accessible to prospective students and prohibits the VET provider from requiring a prospective student to provide log-in information to the VET provider or its agents in order to access this information.

### Item 17

Item 17 inserts a new paragraph **7.8 Fee-Periods for the Charging of Tuition Fees for a VET Course of Study** to specify the requirements a VET provider must meet to ensure that providers do not charge the whole course fee on commencement and instead levy fees proportionately over each quarter of the course. Students would then incur a VET FEE-HELP debt for VET units of study proportionally over the duration of the course, with a minimum of four census dates or units of study, ensuring debt is incurred in line with course delivery and continued student participation.

These requirements include that a VET course of study must have four sequential fee-periods in which a student can only be charged 25 per cent of the total tuition fee for the VET course of study in each fee period. Fee-periods are to include a minimum of one census date and a minimum of one VET unit of study.

This item is for implementation from 1 January 2016, allowing a six-month transition period to allow providers to update processes and systems.

## Item 18

Item 18 inserts new text at the end of subparagraph 8.2.1(d) (concerning matters or things for which fees may be charged). The new text provides that a fine or penalty may not be imposed for withdrawing from a VET unit of study.

## Item 19

This item repeals current Chapter 9 Commonwealth Assistance Notice to Students and inserts a new **Chapter 9 – Notices to Students**, which includes the addition of a new notice to be provided to students – the VET FEE-HELP Invoice Notice. The new Chapter 9 includes all the existing provisions regarding Commonwealth Assistance Notices (CAN) from the repealed chapter, with additional information on the method of giving a CAN to students.

The new provisions, which are related to the VET FEE-HELP Invoice Notice, set out prescribed information to be provided to the personal email or mail address of a student. The new provisions also provide for the additional assurance of receipt of the information by the student rather than requiring students to log-in to a VET provider portal arrangement in order to access the information. This Invoice Notice will ensure that a student has accurate information about the potential VET FEE-HELP debt they will incur and the applicable census date and withdrawal information, allowing them to make informed decisions about continued study participation and conscious decisions about incurring a VET FEE-HELP debt. The revised provisions require the Invoice Notice to be issued no less than 14 days prior to the census date recorded in that Notice.

This item is for implementation from 1 January 2016, allowing a six-month transition period to allow providers to update processes and systems.

## **Statement of Compatibility with Human Rights**

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

### **Amendment No. 1 to the VET Guidelines 2015**

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

#### **Overview of the Legislative Instrument**

The VET FEE-HELP scheme is intended to enable potential students to select a VET provider based on considerations of quality or price. The provider must not, and must ensure that its agents or brokers do not, market, publicise or otherwise communicate information about a VET unit of study or VET course of study, or engage in any other conduct that may have the effect of encouraging a prospective student to choose a VET provider based on false or misleading information. Students should be afforded the full understanding of their rights and obligations based on the provisions of the scheme, which includes not incurring a debt until the census date has passed, and students must be provided with sufficient information prior to incurring the debt in order to ensure that they may make informed study and payment decisions.

The aim of the new requirements is to ensure that the integrity of the scheme is maintained and to ensure that VET providers participating in the scheme or their agents or brokers, do not exercise undue influence, through inappropriate marketing and information provision practices, on the ability of eligible persons to make study and payment decisions. The new requirements seek to address this behaviour by regulating the marketing and information provision practices used by VET providers by improving the information available and provided to students, and thereby better protecting students' interests.

#### **Human rights implications**

##### *Right to education*

This instrument engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*. In particular, article 13(2)(c) states that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

This instrument affects the provision of vocational education and training by introducing safeguards for prospective students which are intended to prevent inappropriate marketing practices being used to entice students to enrol in a VET unit of study or VET course of study for which Commonwealth assistance is available.

The Department of Education and Training has identified a new trend by some brokers and intermediaries in the VET FEE-HELP market, towards high volume sign-up of students. This has, in some instances, resulted in misleading advice being offered to potential students about the financial liability they are incurring. Such inappropriate sign-up activity has also been identified occurring where students are unaware of the commitment they are making, or of their rights and obligations. Two examples of the types of behaviour these amendments seek to address include: (1) preventing VET



Providers from requiring students to pay fees to withdraw from a unit of study prior to the census date, in some cases equivalent to 10 per cent of unit fees (in excess of \$1,000) and placing restrictions on withdrawal until that fee is paid; and (2) preventing agents from advising students that if they earn less than \$50,000 they have free access to Government funding which pays for their studies, with no requirement to repay.

Although the instrument places some rules on how providers may market VET units of study and VET courses of study to potential students and students, these rules are designed to protect students. The new provisions are intended to enhance (specifically in relation to the VET FEE-HELP scheme) requirements already imposed on VET providers in their capacity as registered training organisations, relating to services provided by third parties and information required to be provided to prospective students before enrolment. The restrictions brought about by this legislative instrument do not conflict with any of the rights enumerated in the applicable treaties and are compatible with the right to education.

This instrument is compatible with the right to education.

## **Conclusion**

This legislative instrument is compatible with human rights because it advances the protection of human rights.