

EXPLANATORY STATEMENT

Higher Education Support Act 2003

Higher Education Support (VET) Guideline 2015

Issued by the authority of the Minister for Vocational Education and Skills

Authority

The Commonwealth Minister for Vocational Education and Skills (the Minister) makes this instrument under clause 99 of Schedule 1A to the *Higher Education Support Act 2003* (Cth) (the Act).

Clause 99 of Schedule 1A provides that the Minister may make guidelines providing for matters that are required or permitted by the Schedule to be provided or necessary or convenient to be provided in order to carry out or give effect to the Schedule.

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 and Operation

The *Higher Education Support (VET) Guideline 2015* (the VET Guideline) revokes and replaces the *VET Guidelines 2015* (F2015C00571) as amended by *Amendment No. 1 to the VET Guidelines 2015* (F2015L00999) (the Former Guidelines).

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

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

On 12 March 2015, the Australian Government announced a suite of eight reforms to the VET FEE-HELP scheme to protect students, taxpayers and the reputation of the VET sector. The reforms spanned areas such as marketing and inducements, consumer information, debt processes and provider standards. The first of these measures came into effect through the making of the VET Guidelines 2015 on 1 April 2015 with a second tranche of measures coming into effect on 1 July 2015 through Amendment No. 1 to the VET Guidelines 2015.

The VET Guideline is made consequent upon a number of reforms to the provision of VET FEE-HELP assistance for vocational education and training, to be effected by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*. The purpose of the amendments introduced by that Act is to:

- give effect to the Government's decision to strengthen the administration of the VET FEE-HELP loan scheme;
- respond to inappropriate market practices;
- introduce complementary actions to improve the quality of outcomes for students; and
- protect students, public monies and the reputation of the broader vocational education and training (VET) sector.

As part of those reforms, the VET Guideline has been substantively amended in relation to:

- VET providers' financial viability and quality requirements (Part 4 Division 1)
- VET providers' compliance requirements in relation to the civil penalty provisions in Division 5A of Schedule 1A to the Act and certain inappropriate marketing, advertising or promoting activities (Part 4 Division 2)
- VET providers' compliance requirements in relation to the conduct of its 'associates' (Part 4 Division 3)
- VET providers' procedures for withdrawing from and re-enrolling in a VET unit of study (section 32)
- VET providers' conduct in relation to requests for Commonwealth assistance (section 33)
- VET providers' student entry procedure (Part 4 Division 5)
- VET providers' compliance with plans agreed to resolve audit concerns (Part 4 Division 6)
- VET providers' student grievance requirements (section 42)
- VET providers' student grievance and review procedure requirements in relation to re-crediting FEE-HELP balances (section 43)
- Re-crediting FEE-HELP balance if there has been unacceptable conduct (Part 6 Division 2)
- Tuition fees charged by Table A providers (Part 7 Division 2)
- Tuition fees charged by VET providers that are not Table A providers (Part 7 Division 3)
- VET FEE-HELP invoice notices (section 79).

The VET Guideline also makes provision for the review of decisions made under subsection 38(2) (Part 11) and for various other matters in relation to delegations and the transitional application of the VET Guideline and the Former Guidelines (Part 12).

The purpose of these amendments is to implement the third and final tranche of these measures by:

- clarifying students' rights and obligations to enable students to make payment decisions with clear information;
- ensuring student debt is incurred in line with course delivery and continued student participation;

- specifying circumstances of unacceptable conduct for remission of students' debts; and
- establishing minimum pre-requisite and prior education qualifications.

The provisions of the VET Guideline have been renumbered and in some cases re-ordered. In addition to the substantive changes listed above, minor changes have been made to many of the provisions of the Former Guidelines to improve the structure and clarity of the VET Guideline.

Details of the VET Guideline are set out at Attachment A. A statement of compatibility with human rights is at Attachment B.

Nature of the VET Guideline

The VET Guideline is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

Consultation

The Department of Education and Training (the department) consulted Australia-wide with VET providers in April and May 2015, with both face to face and webinar consultation sessions conducted nationally. The department was also guided in its decision making by expert advice from the VET FEE-HELP Reform Working Group which was established by the then Assistant Minister for Education and Training in early 2015. The VET FEE-HELP Reform Working Group, chaired by Mr John Hart, CEO of the national industry association Restaurant and Catering Australia, includes VET provider, student and consumer law advocate representatives.

Representations from TAFEs, Table A providers and some larger private providers to provisions set out in Amendment No. 1 to the VET Guidelines 2015 identified implementation issues which has resulted in adjustments to some elements of Amendment No. 1 to the VET Guidelines 2015. In consultation, all groups indicated broad support for the measures.

Commencement

The VET Guideline commences on 1 January 2016.

Detailed Description of the VET Guideline

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Higher Education Support (VET) Guideline 2015*.

Section 2 – Commencement

This section provides that the VET Guideline commences on 1 January 2016.

Section 3 – Authority

This section provides that the VET Guideline is made under the authority of the Act.

Section 4 – Schedules

This section provides that each Schedule to the VET Guideline amends or repeals each instrument that is specified in the Schedule as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule has effect according to its terms. The effect of the section is to repeal the Former Guidelines.

Section 5 – Definitions

This section provides for the definition of certain terms used in the VET Guideline.

Part 2 – Approval as a VET Provider

Section 6 – Specified kinds of bodies

This section replaces subclause 2.2 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section sets out the kinds of bodies specified for the purposes of paragraph 6(1A)(a) of Schedule 1A to the Act.

Part 3 – Tuition assurance

Section 7 – Purpose

This section replaces subclause 3.1 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section describes the purpose of Part 3 of the VET Guideline as being to set out the requirements for VET tuition assurance for the purposes of clause 7 of Schedule 1A to the Act.

Section 8 – Requirements for VET tuition assurance

This section replaces subclause 3.2.1 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. In addition, some changes have been made to the substantive requirements under the section.

The section provides that the VET tuition assistance requirements have 4 parts: the VET course assurance requirements (set out in Part 3 Division 2); the VET tuition fee repayment requirements (set out in Part 3 Division 3); the general requirements (set out in Part 3 Division 4); and the administrative and activation requirements (set out in Part 3 Division 5).

The section also indicates that some related matters are set out in Division 6 of Part 3 of the VET Guideline.

In amendments to improve clarity and structure, the provisions of subclauses 3.2.2 and 3.2.3 have been incorporated into sections 7 to 12, and subclause 3.2.4 is no longer required due to rewording of ‘body corporate’ to ‘first body’.

Section 9 – VET course assurance requirements

This section replaces subclause 3.3 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. In addition, some changes have been made to the substantive requirements under the section.

The section provides for the kinds of arrangements that a body (the *first body*) must have in place in order to meet the VET course assurance requirements. The section now provides that the first body must demonstrate that those arrangements are sufficient to cover all students enrolled as VET students in VET units of study with the first body at any time. This addresses a gap which has been identified in the existing requirements. The exponential growth of some VET providers has not been reflected in their VET course assurance coverage which may result in insufficient coverage for students if the tuition assurance arrangements are activated. The section also provides the requirements applying to the kinds of arrangements that a VET provider must have in place to satisfy the VET course assurance requirements. In improving the clarity of these provisions, some additional clauses (section 9(2)(a)(ii) and 9(2)(b)(ii)) explicitly state requirements on the kinds of arrangements previously inferred, to avoid doubt.

The section also sets out the obligations of the first body and the second provider, where the first body ceases to provide an eligible VET course of study and as result ceases to provide a VET unit of study that forms part of the course, and a student who is enrolled as a VET student in the unit at that time with the first body chooses for the VET course assurance option to apply for the unit.

The section is intended to strengthen student protection and protect Commonwealth monies.

Section 10 – VET tuition fee repayment requirements

This section replaces subclause 3.4 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. In addition, some changes have been made to the substantive requirements under the section.

The section provides for the kinds of arrangements that a body (the *first body*) must have in place in order to meet the VET tuition fee repayment requirements. The section now provides that the first body must demonstrate that those arrangements are sufficient to cover all students enrolled as VET students in VET units of study with the first body at any time. This addresses a gap which has been identified in the existing requirements. The exponential growth of some VET providers has not been reflected in their VET tuition fee repayment coverage which may result in insufficient coverage for students if the tuition assurance arrangements are activated. The section also provides the requirements applying to the kinds of arrangements that a VET provider must have in place to satisfy the VET tuition fee repayment requirements. In improving the clarity of these provisions, an additional clause (section 10(2)(a)(ii)) explicitly states requirements on the kind of arrangements previously inferred, to avoid doubt.

The section also sets out the obligations of the first body and the VET repayment TAS operator or VET repayment guarantor, where the first body ceases to provide an eligible VET course of study and as a result ceases to provide a VET unit of study that forms part of the course, and a student who is enrolled as a VET student in the unit at that time with the first body chooses for the VET tuition fee repayment option to apply for the unit.

The section is intended to strengthen student protection and protect Commonwealth monies.

Section 11 – General requirements

This section provides that, to meet the general requirements, a body (the *first body*) must meet the requirements in Division 4 of Part 3 of the VET Guideline.

Section 12 – Requirements about corporate separation

This section replaces subclauses 3.5.1 and 3.5.2 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section deals with the relationship between the first body and each of its VET tuition assurance administrators. It provides that the relationship must satisfy certain criteria as to corporate separation. The section also provides for the process that a body must follow if it wishes to propose an alternative arrangement for the Secretary's approval.

Section 13 – Meaning of ceases to provide an eligible VET course of study

This section replaces subclause 3.5.3 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the meaning of 'ceases to provide a VET course of study'.

Section 14 – Requirements that may amount to ceasing to provide a VET course of study

This section replaces subclauses 3.5.4 and 3.5.5 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for other circumstances that may amount to ceasing to provide a VET course of study.

Section 15 – Administrative and activation requirements

This section provides that, to meet the administrative and activation requirements, a body (the *first body*) must meet the requirements in Division 5 of Part 3 of the VET Guideline.

Section 16 – Statement of VET tuition assurance—content

This section replaces subclauses 3.6.1 and 3.6.5 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that the first body must make a statement of VET tuition assurance that clearly explains the VET tuition assurance arrangements that the first body has in place for a student enrolled in each of its eligible VET courses of study, if the first body ceases to provide the course and at that time the student was enrolled as a VET student in a VET unit of study forming part of the course. The section also sets out some of the matters that must be included in the statement.

Section 17 – Statement of VET tuition assurance—publishing and access

This section replaces subclauses 3.6.3 and 3.6.4 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that the first body must clearly and prominently publish its statement of VET tuition assurance on its website, and ensure that, when enrolling a student, the student is provided with clear information about how to access (on the first body's website) the statement of VET tuition assurance.

Section 18 – Keeping information for VET tuition assurance administrators and the Commonwealth

This section replaces subclauses 3.6.6, 3.6.7 and 3.6.8 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of those subclauses.

The section sets out a VET provider's obligations in relation to: keeping enrolment information on VET students who are enrolled with the VET provider; providing certain information to the Secretary and its VET tuition assurance administrators (if one of its VET

tuition assurance arrangements is activated); and ensuring that its VET tuition assurance arrangements provide for certain matters in relation to that information.

Section 19 – Written VET tuition assurance offer for VET students

This section replaces subclauses 3.6.9 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that the first body must ensure that each of its VET tuition assurance arrangements provides for certain matters in relation to the issuing of a written VET tuition assurance offer and the content of that offer.

Section 20 – Related requirements for exempt bodies

This section replaces subclauses 3.6.2, 3.6.3, 3.6.4, 3.7 and 3.9 of the Former Guidelines, in their application to VET providers that are exempt bodies. A significant number of amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

Subsection 20(1) replaces subclause 3.6.2 of the Former Guidelines.

Subsection 20(2) replaces subclause 3.6.3 of the Former Guidelines.

Subsection 20(3) replaces subclause 3.6.4 of the Former Guidelines.

Subsection 20(4) replaces subclause 3.9 of the Former Guidelines.

Subsection 20(5) replaces subclause 3.7 of the Former Guidelines.

The section deals with various matters in relation to exempt bodies, including requiring an exempt body to make a statement of VET tuition assurance exemption, imposing various obligations upon exempt bodies in relation to the publication of the exemption and the provision of information about how to access the exemption, and providing for the manner in which a body or a VET provider may seek an exemption under subclause 8(1) of Schedule 1A to the Act or a declaration under subclause 20(2) of that Schedule. The section also requires exempt bodies to keep up-to-date enrolment information on VET students who are enrolled with the exempt body.

Section 21 – Related requirements for second providers

This section replaces subclauses 3.6.6, 3.8 and 3.10 of the Former Guidelines, in their application to VET providers that are second providers. A significant number of amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

Subsection 21(1) replaces subclause 3.8 of the Former Guidelines.

Subsection 21(2) replaces subclause 3.6.6 of the Former Guidelines.

Subsections 21(3) and (4) replace subclause 3.10 of the Former Guidelines.

The section requires a VET provider, in its capacity as a second provider, to meet its obligations as a second provider under any legally-binding agreement referred to in paragraph 9(2)(b) that it is a party to, as well as the requirements imposed on a second provider under Part 3 of the VET Guideline.

The section also requires a VET provider, in its capacity as a second provider, to keep up-to-date enrolment information on students enrolled as VET students in replacement units with the second provider, including information in relation to certain specified matters.

The section also deals with the second provider's obligations in relation to students withdrawing from replacement units under special circumstances, including the second provider's obligations in relation to the re-crediting of the student's FEE-HELP balance in relation to the replacement unit.

Part 4 – Quality and accountability requirements

Section 22 – Financial viability requirements

This section replaces subclauses 4.2.1 and 4.2.2 of the Former Guidelines. In addition, some changes have been made to the substantive requirements under the section.

The section provides that, for the purposes of (but without limiting) paragraph 13(f) of Schedule 1A to the Act, the section applies to a body unless it is a body covered by section 6 of the VET Guideline, or is a Table A provider, a Table B provider or a Table C provider.

The section also provides for the other requirements for VET quality and accountability applicable to a body in relation to financial viability requirements. The effect of these other requirements is to provide for financial practices formerly set out in Deeds of Undertaking or conditions imposed on approval of bodies to become VET providers. Subparagraph 22(2)(d) imposes an additional requirement in relation to revenue sources to ensure VET providers with 100 or more enrolments are not solely reliant on revenue through the Higher Education Loan Programme (HELP). The intent of this section is to reduce the level of financial risk to the Commonwealth and to students through strengthening the ongoing scrutiny of VET providers.

The purpose of the Note at the conclusion of section 22 is to outline an example of the type of condition relating to financial matters that may be imposed on a body's approval as a VET provider under clause 12A of Schedule 1A to the Act.

Section 23 – Quality requirements

This section replaces subclause 4.3 of the Former Guidelines. A significant number of amendments have been made to improve the clarity and structure of that subclause.

The section sets out the requirements relating to quality for a VET provider, for the purposes of subclause 17(2) of Schedule 1A to the Act. The requirements have been updated to reflect

current requirements relating to quality that VET providers are required to comply with as conditions of their registration as registered training organisations.

Section 24 – Civil penalty provisions

The section replaces subclauses 4.4 and 4.5 and 4.6 of the Former Guidelines which deal with the use of inducements, marketing, advertising or promotion of VET units of study or VET courses of study. The section provides that a VET provider must not contravene a civil penalty provision of Division 5A of Schedule 1A to the Act. Division 5A was inserted into Schedule 1A by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*. The content in these subclauses of the Former Guidelines are now provided for in Division 5A of Schedule 1A to the Act. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The intent is to enable prospective students to select a VET provider based on considerations of quality and price of training and to make payment decisions with a clear understanding of their rights and obligations. The section also ensures that VET providers are responsible for the actions of their agents or associates and that not contravening a civil penalty provision is a quality and accountability requirement.

Section 25 – Inappropriate marketing etc

The section provides that a VET provider must not contravene subsection 25(2); that subsection then provides for certain restrictions upon any marketing, advertising or promoting done by a person in relation to a VET unit of study or VET course of study. The section prohibits marketing, advertising or promoting that suggests that a thing will be provided to a student or another person or otherwise be available for the student to use if the student enrolls in a VET unit of study or a VET course of study, if this suggestion would be reasonably likely to induce the student to enrol in the unit or course and to complete, sign and give an appropriate officer of a VET provider a request for Commonwealth assistance relating to the unit or course.

The effect of this section is to prevent marketing of things (such as laptops) required or necessary for the student to externally complete all or part of the unit or course in such a manner as to induce students to enrol in a unit or course. The intent is to enable prospective students to select a VET provider based on considerations of quality and price of training.

This section also provides that a VET provider must not contravene subsection 25(3); that subsection then provides for certain restrictions upon cold-calling. The section provides that a person contravenes the subsection if the person cold-calls another person when marketing, advertising or promoting a VET unit or study or VET course of study and, when doing so, or as the result of doing so, the first-mentioned person mentions the possible availability of VET FEE-HELP assistance (however described) for students undertaking the unit or course.

The effect of this section is to restrict the marketing, advertising or promotion of VET FEE-HELP through unsolicited contact with prospective students in person or by telephone, email or other form of electronic communication. Some examples of unsolicited contact includes, in person when prospective students are leaving a Centrelink office; in person at

prospective students' residences when marketing from door-to-door; or by telemarketing. The section is intended to ensure that advice and information on VET FEE-HELP for a unit or course is marketed accurately and fairly and solicited by prospective students.

The section also provides that a VET provider must ensure that all marketing, advertising or promoting of any of its VET units of study or VET courses of study clearly and prominently mentions certain matters. The effect of this section is to ensure prospective students are fully aware of the VET provider they may be enrolling with and the maximum VET tuition fees payable for the VET units of study or VET course of study they are interested in undertaking. The section is intended to enable prospective students to select a VET provider based on considerations of quality and price of training.

Section 26 – Agents or associates

This section replaces subclause 4.6.1 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. In addition, some changes have been made to the substantive requirements under the section.

The section provides that Division 3 of Part 4 of the VET Guideline is made for the purpose to ensure that VET providers take reasonable steps to ensure their agents and associates act responsibly.

Section 27 – Meaning of *agent or associate*

This section replaces subclause 4.6.2 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. In addition, some changes have been made to the substantive requirements under the section.

The section now extends the application of these provisions of the VET Guideline to 'associates' of a VET provider.

The section defines 'agent or associate' to mean any person who acts as agent for the VET provider; without limiting that definition, the section further provides that the VET provider's 'agent or associate' is also any person who acts, for financial gain or benefit, on behalf of the VET provider to do certain specified things.

The broadened definition of 'agent or associate' is intended to prevent any conflict with the use of 'agent' in relation to the civil penalty provisions set out in Schedule 1A to the Act, and to ensure the definition of agent for the purposes of the VET Guideline encompasses the definition of agent in the Former Guidelines. The effect of this section is to define an agent or associate.

Section 28 – Actions of agents or associates

This section replaces aspects of subclause 4.6 of the Former Guidelines, dealing with the relationship between VET providers and their agents. The section also replaces those aspects of subclause 4.5 of the Former Guidelines dealing with the publication of incorrect information about the nature of VET FEE-HELP assistance, and those aspects of subclause 4.4 of the Former Guidelines dealing with the offering and provision of inducements. A number of amendments have been made to improve the clarity and structure

of those subclauses. In addition, some changes have been made to the substantive requirements under the section, and the section now imposes some additional requirements.

The section provides that a VET provider must take reasonable steps to ensure that none of its agents or associates contravenes subsection 25(2) or (3) (about inappropriate marketing etc) or subsections 28(3) and (4).

The section also provides that ‘reasonable steps’ include more than merely having an agreement with the agent or associate that complies with section 29. The effect of this section is to ensure VET providers implement business practices to monitor their agents’ or associates’ compliance with the provisions set out in this section. The section is intended to strengthen the monitoring of agents or associates acting on behalf of VET providers in recruitment and marketing.

Subsection 28(3) replaces aspects of subclause 4.5 of the Former Guidelines dealing with provisions relevant to VET providers’ agents or associates. A number of amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The subsection provides a person must not directly or indirectly publish certain incorrect information about the nature of VET FEE-HELP assistance or the fees and charges associated with a VET unit of study or a VET course of study.

Subsections 28(4), (5) and (6) replace aspects of subclauses 4.4.2, 4.4.3 & 4.4.5 of the Former Guidelines dealing with inappropriate inducements. A number of amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The subsections provide a person must not directly or indirectly offer or provide certain inducements to enrol in a VET unit of study or VET course of study and to seek Commonwealth assistance for that unit or course.

The effect of this section is to prevent agents or associates working on behalf of VET providers to recruit prospective students through inappropriate inducements. The intent is to enable prospective students to select a VET provider based on considerations of quality and price of training.

Section 29 – Agreement with each agent or associate

This section replaces subclauses 4.6.3, 4.6.4 and 4.6.5 of the Former Guidelines, dealing with agreements between VET providers and their agents. A significant number of amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that a VET provider must ensure that it has a written agreement with another person that is in force at all times while that person is the VET provider’s agent or associate, and deals with the required content of such agreements. It also imposes certain

obligations upon the VET provider in relation to the publication of a list of current and past agents or associates.

Section 30 – Keeping material and making it available to the Minister

This section replaces subclauses 4.6.6 and 4.6.7 of the Former Guidelines, dealing with agreements between VET providers and their agents. A number of minor amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section imposes obligations upon VET providers in relation to the keeping of certain material relating to agreements with its agents or associates, and the provision of material to the Minister upon request.

Section 31 – Providing information to prospective students etc.

This section replaces subclause 4.7 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the information that a VET provider must give to a prospective student before enrolling the prospective student in a VET course of study.

The section also sets out certain obligations in relation to the retention and provision of a record of the information given to each prospective student under subsection 31(2).

Section 32 – Withdrawing from a VET unit of study etc

This section replaces subclause 4.8 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. In addition, some changes have been made to the substantive requirements under the section, and the section now imposes some additional requirements.

The section now provides that a VET provider must clearly and prominently publish on its website its procedure in relation to withdrawal from a VET unit of study and its procedure in relation to re-enrolment following a previous withdrawal. The effect of this section is to ensure students are able to easily access information about a VET provider's withdrawal procedures. The section is intended to strengthen the protection of students.

The section also provides that a VET provider must not have financial, administrative or other barriers to a student withdrawing from a VET unit of study before the unit's census date, and imposes certain obligations upon VET providers in relation to student withdrawals.

Section 33 – Requests for Commonwealth assistance

This section imposes new obligations upon VET providers in relation to documenting and keeping accurate records of enrolments and requests for Commonwealth assistance. The section also requires VET providers to retain such records for at least five years, and to make these records available to the Minister upon request.

The section makes it clear that the purpose of the section is to ensure that students are allowed time to fully consider the implications and responsibilities associated with requesting VET FEE-HELP assistance.

Section 34 – Purpose

This section provides that Division 5 of Part 4 of the VET Guideline is made for the purposes of clause 23B of Schedule 1A to the Act, which was inserted into Schedule 1A to the Act by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*.

Section 35 – VET courses of study to which student entry procedures must set out requirements etc.

This section provides that a VET provider must make a student entry procedure setting out requirements and matters relating to qualifying VET courses undertaken with the VET provider; the section also provides that the student entry procedure need not set out any requirements or matters relating to other kinds of VET courses of study.

The effect of this section is to ensure VET providers make student entry procedures which set out the minimum entry requirements for students to access VET FEE-HELP in qualifying VET courses of study. The section is intended to strengthen the capability of students enrolling in qualifying VET course of study to successfully complete and obtain their qualification.

Section 36 – Publication requirements

This section provides for the way in which a VET provider's student entry procedure must be published on the VET provider's website.

The effect of this section is to ensure VET providers' student entry procedures are easily accessible by prospective students. The section is intended to enable prospective students to make fully informed decisions about the VET course of study they wish to undertake.

Section 37 – When a student is academically suited

This section provides for the way in which a VET provider's student entry procedure must specify when a student is academically suited to undertake a particular course of study.

The effect of this section is to ensure prospective students are assessed prior to enrolment in a VET course of study as competent and academically suited to undertake the course. The section specifies a student must:

- a) provide a copy of a Senior Secondary Certificate of Education that has been awarded to the student by an agency or authority of a State or Territory for the student's completion of year 12; or
- b) the student is assessed as displaying competence at or above Exit Level 3 in the Australian Core Skills Framework in both reading and numeracy using an approved assessment tool and the provider reasonably believes the student displays this competence.

The section is intended to apply compliance requirements on VET providers to ensure students are adequately informed as to the pre-requisite and entry requirements of the VET course of study for which they may be seeking VET FEE-HELP prior to enrolment and accessing VET FEE-HELP.

Section 38 – How to assess whether a student is academically suited

This section provides for the way in which a VET provider's student entry procedure must deal with the process by which a student's level of competence in reading and numeracy may be assessed for the purposes of subparagraph 37(2)(b)(i).

The effect of this section is to ensure a VET provider's student entry procedure describes the process (including testing tools) for validly and reliably assessing a student's competence in reading and numeracy against the Australian Core Skills Framework (ACSF). The section specifies the *Core Skills Profile For Adults* as the currently available tool approved to assess competence at or above Exit Level 3 competence in the ACSF.

The section allows for the Minister to approve a tool, on application by a VET provider, if the Minister is satisfied the tool is a valid, reliable, fair and well-constructed way of assessing competence at or above Exit Level 3 in the ACSF and the tool has been appropriately and independently verified and evaluated using evidence-based assessment. The independent person or body verifying and evaluating a tool and the Minister must have regard to the document titled '*Assessment of LLN testing instruments and processes for VET FEE-HELP providers*' published on the Department of Education and Training's website in 2015.

The section is intended to ensure students are assessed by the VET provider, including using an approved assessment tool, with respect to the pre-requisite requirements and whether they have the capability and capacity to successfully undertake the higher level VET course of study prior to seeking VET FEE-HELP. The assessment process must be conducted with honesty and integrity.

Section 39 – Results of assessments

This section provides for the way in which a VET provider's student entry procedure must specify that the results of assessing a student's competence in reading and numeracy are to be reported and retained.

The section is intended to ensure students are given the results of the assessment of their competence in reading and numeracy and for the results to be retained for at least 5 years enabling them to be given to the Secretary in the form, manner and by the time requested by the Secretary.

Section 40 – Compliance with plans agreed to resolve audit concerns

The section provides that, if the suspension of a body's approval as a VET provider under subclause 36(5) of Schedule 1A to the Act is partly of no effect, the body must comply with any plan agreed with the Commonwealth to resolve audit concerns.

The effect of this section is to ensure VET providers comply with the agreed plan to resolve concerns identified by audits carried out under clause 26(1) of Schedule 1A to the Act, as

amended by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*. The concerns may relate to approaches used to recruit students such as the use of aggressive marketing activities which result in signing up students to VET FEE-HELP in cases where they are not capable of undertaking the study, or significantly low completion rates and poor quality training outcomes for students that have accessed VET FEE-HELP.

The section is intended to lift provider performance where concerns have been identified at audit, thereby strengthening the protection of the Commonwealth and students and supporting the increased scrutiny of VET providers set out in the Act.

Part 5 – Student fairness

Section 41 – Equal benefits and opportunities requirements

This section replaces subclauses 5.1 and 5.2 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of those subclauses. In addition, some changes have been made to the substantive requirements under the section.

This section provides for the equal benefits and opportunity requirements with which a VET provider must comply for the purposes of clause 18 of Schedule 1A to the Act.

The section has been amended to provide that VET providers, when taking into account any education disadvantages a particular student has experienced, may only do so provided the student meets the entry procedure requirements under clause 45B of Schedule 1A to the Act. This has the effect of protecting vulnerable students from incurring debts for study that they may not have the academic capability of successfully completing and attaining the qualification.

The section has further been amended to provide that the need to provide a student a particular benefit in order for the student to receive equal and fair treatment does not limit section 24 of the Guideline (which provides that a VET provider must not contravene a civil penalty provision) regarding inappropriate inducements. This links the equal benefits and opportunity requirements to the strengthened student protections provided for in the Guideline.

Section 42 – Student grievance requirements—grievance procedure

This section replaces subclauses 5.3 and 5.4 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

This section provides for the student grievance requirements with which a VET provider must comply for the purposes of clause 19 of Schedule 1A to the Act.

Section 43 – Student grievance and review procedure requirements—re-crediting FEE-HELP balances

This section provides for the student grievance and review procedure requirements with which a VET provider must comply for the purposes of clause 19 of Schedule 1A to the Act.

The section provides that a VET provider must have a procedure for certain matters in relation to the re-crediting of a student's FEE-HELP balance and the review process. The section also provides that the VET provider must comply with this procedure, and have mechanisms in place: to ensure that a student is not victimised or discriminated against in certain related respects; and to train its staff about this procedure. The section also provides that the procedure must be easily accessible on the VET provider's website.

The effect of this section is to provide for VET providers to publish a procedure which is easily accessible by students in relation to requests for re-credit of a student's FEE-HELP balance. The section is intended to ensure students are aware of their right to request a re-credit of a FEE-HELP balance under certain circumstances and the process for doing so.

Part 6 – Student entitlements and FEE-HELP balances

Section 44 – Entitlement to VET FEE-HELP assistance

This section replaces subclause 6.1 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that sections 45 and 46 of the VET Guideline set out other requirements for the purposes of paragraph 43(1)(i) of Schedule 1A to the Act. The section also provides that section 47 sets out a lesser percentage for the purposes of working out the amount of a subsidised student's VET FEE-HELP debt.

Section 45 – Full-fee paying students—other requirement for entitlement

This section replaces subclauses 6.2.1 and 6.2.1A of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of those subclauses. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the circumstances in which a person who is a full-fee paying student for a VET unit of study is entitled to VET FEE-HELP assistance for the unit if it forms part of a qualifying VET course, and defines 'full-fee paying student' for these purposes. The definition of a qualifying VET course of study is in Schedule 1 to the Act as amended by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*.

Section 46 – Subsidised students—other requirement for entitlement

This section replaces paragraphs 6.2.2(a) to (c) and subclause 6.2.3 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of those paragraphs and that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the circumstances in which a person who is a subsidised student for a VET unit of study is entitled to VET FEE-HELP assistance for the unit, and defines 'subsidised student' for these purposes.

Section 47 – Subsidised students—amount of VET FEE-HELP debt

This section replaces paragraph 6.2.2(d) of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that paragraph. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section specifies a lesser percentage of 100% for a person's VET FEE-HELP debt to the extent that this debt relates to the person's enrolment as a subsidised student for a VET unit of study, for the purposes of paragraph 137-18(2)(b) of the Act.

Section 48 – Re-crediting FEE-HELP balance if unacceptable conduct

This section provides that Division 2 of Part 6 of the VET Guideline specifies when circumstances exist for the purposes of paragraph 46A(1)(c) of Schedule 1A to the Act. Subclause 46A(1) was amended by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*. This section is in relation to certain requests for Commonwealth assistance of a person (the *student*) relating to a VET unit of study, or VET course of study, undertaken with a VET provider, or a form that would have been such a request relating to a VET unit of study, or VET course of study, undertaken with a VET provider if it had been signed by a responsible parent of a person (the *student*).

The effect of this section is to specify the types of unacceptable conduct for which a student may request a re-credit of the student's FEE-HELP balance.

The section is intended to strengthen student protection and protect Commonwealth monies in cases of inappropriate behaviour.

Section 49 – Publishing information suggesting VET FEE-HELP assistance not a loan etc.

This section provides that the circumstances exist if the VET provider published information or caused information to be published suggesting certain incorrect information to the student in relation to the nature of VET FEE-HELP assistance (however described) or the fees and charges applicable to units or courses.

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies where misleading information is provided to students.

Section 50 – Inappropriate marketing etc

Subsection 50(1) provides that the circumstances exist if the VET provider did, or caused to be done, any marketing, advertising or promoting that suggests that a thing will be provided to a student or another person or otherwise be available for the student to use if the student enrolls in the unit or course, if this provision of, or use of, the thing would be reasonably likely to induce the student to enrol in the unit or course and to seek Commonwealth assistance for that unit or course (or give the form referred to in paragraph 48(b)).

Subsection 50(2) provides that the circumstances exist if: the VET provider cold-called a person, or caused a person to be cold-called, when marketing, advertising or promoting the unit or course; and in doing so, or as the result of doing so, the VET provider suggested, or caused to be suggested, that VET FEE-HELP assistance (however described) could be available if a person were to enrol in the unit or course; and it is reasonably likely that this induced the student to enrol in the unit or course and make the request for Commonwealth assistance (or give the form referred to in paragraph 48(b)).

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 51 – Provision of information

This section provides that the circumstances exist if the VET provider did not provide the student with the information specified in paragraphs 31(2)(b) to (e) (which relate to information about VET FEE-HELP).

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 52 – Inappropriate inducements

This section provides that the circumstances exist if the VET provider offered or provided or caused to be offered or provided certain inappropriate inducements.

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 53 – Failure to provide VET FEE-HELP notices

This section provides that the circumstances exist if the VET provider failed to comply with subclause 64(1), (2), (2A) or (3) of Schedule 1A to the Act in relation to the student (which relate to notices required to be provided to a student by the VET provider before and after a census date).

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 54 – Failure to comply with student requests

This section provides that the circumstances exist if the VET provider failed to comply with certain student requests or charged the student a fee or imposed a penalty (however described) in order for the provider to comply with the request.

The section also provides that the circumstances exist if, after the student withdrew from the unit or course, the VET provider took certain action or failed to take certain action in relation to the student's enrolment.

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 55 – Accepting requests for Commonwealth assistance etc. when student not entitled

This section provides that the circumstances exist if the student is not entitled to VET FEE-HELP assistance for the unit, but the VET provider treated the student as being so entitled.

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 56 – Failure to advise about requests

This section provides that the circumstances exist if the VET provider enrolled the student in certain circumstances in which the student would not be able to receive VET FEE-HELP assistance for the unit and the VET provider failed to advise the student of as much.

The section also provides that the circumstances exist if the student's request for Commonwealth assistance relating to the unit or course was given to an appropriate officer of the VET provider less than 2 business days after the student enrolled in the unit, and before enrolling the student in the unit, the VET provider failed to advise the student that VET FEE-HELP assistance for the unit could only be received if the request is given at least 2 business days after enrolling or the VET provider encouraged the student to give the request so that it would be given less than 2 business days after enrolling.

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 57 – Failure to apportion fee appropriately

This section provides that the circumstances exist if the VET provider charged the student fees for the unit and the tuition fees were not charged in accordance with Part 7 of the VET Guideline.

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Section 58 – Failure to publish fees

This section provides that the circumstances exist if the VET provider charged the student fees for the unit and, on the day before the student enrolled in the unit, the tuition fees were not available on the VET provider's website in a way that was readily accessible by the public.

The effect of this section is to enable a student to request a re-credit of the student's FEE-HELP balance if circumstances exist under this section. The section is intended to strengthen student protection and protect Commonwealth monies.

Part 7 – VET tuition fees and census dates

Section 59 – Periods during which VET units of study are provided or proposed to be provided

This section replaces subclause 7.2 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides (for the purposes of subclauses 27(1), 28(1), 28(2A) and 67(1) of Schedule 1A to the Act) for the period for a VET unit of study a VET provider provides or proposes to provide.

Section 60 – Matters to which a VET provider must not have regard in determining VET tuition fees

This section replaces subclause 7.3 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides (for the purposes of subclause 27(3) of Schedule 1A to the Act) for the matters to which a VET provider must not have regard in determining the VET tuition fees payable for a VET unit of study by a person enrolled by a VET provider as a VET student in relation to the unit.

Section 61 – Determining the census date for a VET unit of study

This section replaces subclause 7.4 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that, for the purposes of subclause 67(2) of Schedule 1A to the Act, the date determined to be the census date for a VET unit of study must be at least 20% of the way through the period starting at the commencement of that provision of the unit and ending on the day a student would reasonably be expected to complete that provision of the unit.

Section 62 – Varying VET tuition fees and census dates

This section replaces subclause 7.5 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides (for the purposes of paragraph 27(4)(a) and paragraph 67(4)(a) of Schedule 1A to the Act) for the date prior to which and the circumstances in which the VET tuition fees or the census date for a VET unit of study may be varied.

The section also provides for the VET provider's obligations in relation to publication and notification of the variations for the purposes of clause 27A and subclause 67(5) of Schedule 1A to the Act.

Section 63 – Date by, and manner in, which a VET provider must publish schedules of tuition fees and census dates

This section replaces subclause 7.6 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides (for the purposes of paragraph 28(2)(b) and subclause 67(3) of Schedule 1A to the Act) for the date by which and the manner in which a VET provider must publish schedules of tuition fees and census dates.

Subclause 7.7 of the Former Guidelines has not been replaced as the form in which a VET provider must give the Minister a schedule of VET tuition fees should be a Ministerial determination and is not required to be provided for in the VET Guideline.

Section 64 – Fee for VET courses not to exceed VET tuition fees and fees covered by section 66

This section replaces subclause 8.3 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that, for the purposes of clause 27A of Schedule 1A to the Act, the fees payable for a VET course of study must not exceed the sum of the total amount of the VET tuition fees payable for each of the VET units of study forming part of the course and the total amount of any fees covered by section 66 of the Guideline for the course or for any of those units.

The effect of this section is to provide for the fees that are payable by a student for undertaking a VET unit of study which forms part of a VET course of study. The section is intended to specify the fees that may be charged to students and to differentiate between tuition fees, which may be payable with a VET FEE-HELP loan, and other fees (in limited circumstances) which may be payable by a student provided they meet certain criteria. The effect is to limit charges which may be imposed on students.

Section 65 – Repayment of tuition fees

This section replaces subclause 8.4 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section requires a VET provider to repay a person any tuition fees paid by the person for an enrolment in a VET unit of study if the person made the payment on or before the census date for the unit and the enrolment is withdrawn before the end of the census date. The section provides for the way in which the obligation to repay the person arises. It also provides for the circumstances in which the VET provider is not obliged to repay a person in respect of a withdrawn enrolment.

Section 66 – Fees that are not tuition fees

This section replaces subclause 8.2 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section sets out a list of the matters or things for which non-tuition fees may be payable, for the purposes of paragraph 60(b) of the VET Guideline.

The effect of this section is to limit the fees a VET provider can charge a student for undertaking a VET unit of study which forms part of a VET course of study. The section is intended to limit the fees which are not VET tuition fees charged to students which may be a barrier to students undertaking the VET course of study.

Section 67 – Purpose

The section provides that Division 2 of Part 7 of the VET Guideline is made for the purposes of clauses 27A and 64 of Schedule 1A to the Act.

Section 68 – VET providers to which this Division applies

The section provides that Division 2 of Part 7 of the VET Guideline applies to VET providers that are Table A providers.

The effect of this section is to limit the type of VET providers for which this section applies. The section is intended to enable altered requirements for Table A providers than those required by all other VET providers.

Section 69 – Charging VET tuition fees

The section provides for the way in which a VET provider must charge a student's tuition fees for a VET course of study, if the student is enrolled as a VET student, in the VET units of study forming part of the course, with the VET provider.

The effect of this section is to specify students must be charged VET tuition fees consistent with the delivery of the course and the student's participation in the course. The section is

intended to strengthen the protection of students and protect Commonwealth monies through ensuring Table A VET providers do not charge the whole course fee on commencement

Section 70 – Invoice notices

The section provides that a VET provider must charge those tuition fees by giving the student an invoice notice at a certain time and which contains certain information.

The section also provides that a VET provider must notify the student of certain other information either in an invoice notice or before an invoice notice is given.

The effect of this section is to ensure students are provided with 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 section is intended to strengthen the protection of students and protect Commonwealth monies.

Section 71 – Purpose

The section provides that Division 3 of Part 7 of the VET Guideline is made for the purposes of clause 27A of Schedule 1A to the Act.

Section 72 – VET providers to which this Division applies

The section provides that Division 3 of Part 7 of the VET Guideline applies in relation to a VET course of study that a student undertakes with a VET provider if the VET provider is not a Table A provider and if the student is enrolled as a VET student, in the VET units of study forming part of the course, with the VET provider.

The effect of this section is to specify the type of VET providers for which this section applies. The section is intended to specify the requirements for VET providers that are not Table A providers.

Section 73 – Object of this Division

The section provides that the object of Division 3 of Part 7 of the VET Guideline is to ensure that the student's tuition fees for those units are spread over the duration of the course in proportion to when those units are completed.

The effect of this section is to specify students must be charged VET tuition fees consistent with the delivery of the course and the student's participation in the course. The section is intended to strengthen the protection of students and protect Commonwealth monies through ensuring providers do not charge the whole course fee on commencement and instead levy fees proportionately.

Section 74 – Fee periods

The section provides for the way in which fee periods for a course are to be determined by a VET provider.

The effect of this section is to ensure students are charged VET tuition fees consistent with the delivery of the course and the student's participation in the course. These requirements

include a VET course of study must have a minimum of three fee periods which must be sequential, be of equal length and contain at least one census date for a unit forming part of the course. The section is intended to strengthen the protection of students and protect Commonwealth monies through ensuring providers do not charge the whole course fee on commencement and instead levy fees sequentially over a minimum of three fee periods to ensure students accrue debt as they progress through the course.

Section 75 – Proportionately spreading VET tuition fees over the fee periods

The section provides for the way in which a VET provider must ensure that the student's tuition fees for the course are spread over the duration of the course; it also provides that none of the tuition fees may become payable outside of a fee period.

The effect of this section is to ensure students' VET tuition fees are spread over the duration of the course with the same portion of the VET tuition fees becoming payable in each of the fee periods of the course. The section is intended to strengthen the protection of students and protect Commonwealth monies through ensuring providers do not charge the whole course fee on commencement and instead levy fees proportionately over a minimum of three fee periods.

Section 76 – Estimating VET tuition fees

The section provides for the circumstances in which a VET provider may estimate a student's tuition fees for a course for the purposes of section 75 of the VET Guideline.

It also provides that the estimate must not exceed the maximum tuition fees payable (by any student) that were mentioned by the VET provider in accordance with subsection 25(5) before the student started the course.

The section also provides that, if the estimate falls short of the tuition fees payable by the student for the course, the VET provider may only charge the student the shortfall during the final fee period for the course.

The effect of this section is to enable VET providers to estimate a student's VET tuition fees if at the time the student starts the course the VET provider cannot know the amount of the VET tuition fees for all of the VET units of study forming part of the course. This will allow for instances where students change their study patterns or request Recognition of Prior Learning (RPL) credits. The section is intended to address significant implementation issues identified by the VET sector in relation to the requirements set out in this section.

Section 77 – If compliance is affected by State or Territory subsidy funding arrangements

The section provides that a VET provider need not comply with Division 3 of Part 7 of the VET Guideline to the extent that non-compliance would be inconsistent with an arrangement made with an agency or authority of a State or Territory, if the VET provider is fully complying with that arrangement and has given the required written notice to the Secretary in relation to arrangement.

The effect of this section is to enable VET providers that have an arrangement with an agency or authority of a State or Territory to not contravene the State or Territory arrangement. The section is intended to address significant implementation issues identified by the VET sector in relation to the requirements set out in this section.

Part 8 – Notices to students

Section 78 – Purpose

This section replaces subclause 9.1 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of that subclause. In addition, some changes have been made to the substance of the provision.

The section provides that the notices required for the purposes of subclause 64(1) of Schedule 1A to the Act are the invoice notice described in section 79 and the assistance notice described in section 80.

The section also provides that Part 8 of the VET Guideline does not limit section 70 (about Table A providers).

Section 79 – VET FEE-HELP invoice notices

The section provides for the definition of a *VET FEE-HELP invoice notice*, and sets out the required content of such a notice and the time for giving the notice as in clause 9.2 and 9.3 of the Former Guidelines.

The section also provides for the required manner of giving a VET FEE-HELP notice, and the period in which it must be given.

In particular it prescribes the invoice notices must be provided to the personal email or mail address of a student. The intention of this requirement is to ensure, while the invoice notice may also be given to students in other ways which may include through a VET provider's online portal, students are given the notice in a manner which does not require them to have to log-on to an online portal to access the information.

The section specifies an invoice notice must be given within the period starting 42 days before a VET unit of study's commencement date and ending 14 days before the unit's census date.

The effect of this section is to ensure students are provided with 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 section is intended to improve transparency, assist students to be aware of the debts that are about to incur or have accrued, thereby strengthening the protection of students and protect Commonwealth monies.

Section 80 – Commonwealth assistance notices

This section replaces subclauses 9.2, 9.3 and 9.4 of the Former Guidelines. A number of amendments have been made to improve the clarity and structure of those subclauses. In addition, some changes have been made to the substantive requirements under the section.

The section provides for the definition of a *Commonwealth assistance notice*, and sets out the required content of such a notice.

The section also provides for the required manner of giving a Commonwealth assistance notice, and the period in which it must be given.

The substantive change prescribes the Commonwealth assistance notice (CAN) must be provided to the personal email or mail address of a student. The intention of this requirement is to ensure, while the CAN may also be given to students in other ways which may include through a VET provider's online portal, students are given the CAN in a manner which does not require them to have to log-on to an online portal to access the information.

The section specifies a VET provider must give the CAN within the period starting on the earliest census date for a VET unit of study included in the notice and ending 28 days after that census date.

Part 9 – Electronic communications

Section 81 – Purpose

This section replaces subclause 10.1 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that Part 9 of the VET Guideline sets out the information technology requirements for the purposes of subclause 70(1) of Schedule 1A to the Act and the requirements for the purposes of subclause 70(2) of that Schedule relating to electronic communications.

Section 82 – Information technology requirements

This section replaces subclause 10.2 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the information technology requirements with which a VET provider must comply if the Act requires or permits information or a document to be given by student to a VET provider or by a VET provider to a student by way of fax, email, web-based communication or any other form of electronic communications specified by the VET provider.

Section 83 – Electronic communications—identification requirements

This section replaces subclause 10.3 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the methods which a VET provider must have in place to enable a student to provide an electronic communication to a VET provider that is required to be signed.

It also provides that, if a student is required or permitted by the Act to sign a document to be given to a VET provider, and when giving the document the student uses such a method, the student is taken to have signed the document for the purposes of the Act.

The section also provides (by way of example) one method which a VET student can use to identify himself or herself, and provides for the identification requirements which the VET provider must satisfy if it wishes to adopt this method.

Part 10 – Specified qualifications for the trial to extend VET FEE-HELP to certain certificate IV qualifications

Section 84– Purpose

This section replaces subclause 11.1 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides that, for the purposes of giving effect to the Trial to Extend VET FEE-HELP to Specified Certificate IV Qualifications, and only for the duration of that Trial, Part 10 of the VET Guideline specifies certain matters.

Section 85 – Extra VET qualifications

This section replaces subclause 11.2 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section specifies certain qualifications for the purposes of paragraph (e) of the definition of *VET qualification* in Schedule 1 to the Act.

Section 86 – Students entitled

This section replaces subclause 11.3 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the circumstances in which a student enrolled as a VET student in a VET unit of study with a VET provider, where that unit forms part of a VET course of study that leads to the award of a VET qualification covered by subsection 85(1), is entitled to VET FEE-HELP assistance for the unit.

Section 87 – Expiration

This section replaces subclause 11.4 of the Former Guidelines. A number of minor amendments have been made to improve the clarity and structure of that subclause. The amendments are not intended to alter the legal effect of the Former Guidelines in any significant way.

The section provides for the expiration of sections 85 and 86.

Part 11 – Review of decisions

Section 88 – Reviewable decisions

This section provides that the Minister must, as soon as practicable after making a decision (the *reviewable decision*) under subsection 38(2) of the VET Guideline, give written notice to the relevant VET provider setting out: the reviewable decision; the reasons for the reviewable decision; a statement that the VET provider may apply to have the reviewable decision reviewed either under Part 11 of the VET Guideline (if the reviewable decision was made by a delegate of the Minister) or by the Administrative Appeals Tribunal (if the reviewable decision was made by the Minister personally).

The effect of this section is to enable decisions made under subsection 38(2) of the VET Guideline to be subject to merits review in line with Commonwealth policy. The section is intended to ensure VET providers are given right of review.

Section 89 – Internal review of reviewable decisions made by delegates

This section provides that the relevant VET provider may apply to the Minister to review a reviewable decision made by a delegate of the Minister. The section also provides for the manner of the application for review, the conduct of the review, the nature of the decision on review and the Minister's obligations to notify the applicant of certain matters within 30 days of making the decision on review.

The effect of this section is to specify the process for internal review of a decision made under subsection 38(2) of the VET Guideline. The section is intended to ensure VET providers are given right of review.

Section 90 – Review by the Administrative Appeals Tribunal

This section provides that applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister under subsection 89(4) of the VET Guideline or reviewable decisions made by the Minister personally.

The effect of this section is to enable decisions made under subsection 38(2) of the VET Guideline to be subject to merits review in line with Commonwealth policy. The section is intended to ensure VET providers are given right of review.

Part 12 – Other matters

Section 91 – Delegations by the Minister

This section provides that the Minister may, in writing, delegate to an SES employee or acting SES employee in the department any or all of the Minister's powers under this instrument.

The section also provides that, in exercising powers under the delegation, a delegate must comply with any directions of the Minister.

The effect of this section is to enable decisions to be made under the VET Guideline to be delegated by the Minister to an SES employee or acting SES employee of the department. The section is intended to bestow delegation powers for decisions made under the VET Guideline.

Section 92 – Application of provisions

This section provides for the way in which various provisions of the VET Guideline apply.

Subsection 92(1) provides that paragraphs 22(2)(a) to (c) of the VET Guideline apply while a body is approved as a VET provider on or after 1 January 2016 and paragraph 22(2)(d) applies in relation to a body's most recently completed annual financial reporting period that starts on or after 1 January 2016.

Subsection 92(2) provides that Division 2 of Part 4 of the VET Guideline applies in relation to conduct that happens on or after 1 January 2016.

Subsection 92(3) provides that section 33 applies in relation to enrolments happening, and requests given, on or after 1 January 2016.

Subsection 92(4) provides that Division 5 of Part 4 of the VET Guideline applies in relation to VET courses of study enrolled in on or after 1 January 2016.

Subsection 92(5) provides that section 43 and Division 2 of Part 6 of the VET Guideline apply in relation to unacceptable conduct engaged in on or after 1 January 2016.

Subsection 92(6) provides that section 69 and Division 3 of Part 7 of the VET Guideline apply in relation to a student enrolled as a VET student in the VET units of study forming part of a VET course of study, if the course commences on or after 1 January 2016.

Subsection 92(7) provides that sections 70 and 79 of the VET Guideline apply in relation to VET units of study with census dates on or after 28 January 2016.

Subsection 92(8) provides that section 80 of the VET Guideline applies in relation to VET units of study for which the period referred to in subsection 80(7) of the VET Guideline starts on or after 1 January 2016.

The effect of this section is to specify the application dates for new provisions for clarity.

Section 93 – Transitional—things done under the VET Guidelines 2015

This section provides that a thing done before the commencement of the VET Guideline and under or in relation to a provision of the Former Guidelines has effect after that commencement as if the thing had been done under or in relation to the corresponding provision of the VET Guideline. The section also provides that (without limiting subsection 93(1)) a thing includes a notice and a decision.

Schedule 1 – Repeals

Section 1

This section repeals the *Amendment No. 1 to the VET Guidelines 2015*.

Section 2

This section repeals the *VET Guidelines 2015*.

Statement of Compatibility with Human Rights

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

Higher Education Support (VET) Guideline 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*.

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Overview of the Legislative Instrument

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

Schedule 1A to the Act provides a legislative framework for the provision of VET FEE-HELP assistance to students enrolled in those VET courses. The *VET Guidelines 2015* (the Former Guidelines) supplement these statutory requirements.

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

On 12 March 2015, the Australian Government announced a suite of eight reforms to the VET FEE-HELP scheme to protect students, taxpayers and the reputation of the VET sector. The reforms spanned areas such as marketing and inducements, consumer information, debt processes and provider standards. The first of these measures came into effect on 1 April 2015 with a second tranche of measures coming into effect on 1 July 2015.

This Legislative Instrument (the VET Guideline) revokes and replaces the Former Guidelines as part of the broader reforms introduced by the *Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015*. It imposes a number of new obligations upon VET providers in relation to the provision of VET units and courses of study for which students are entitled to Commonwealth assistance. The VET Guideline also amends many of the existing provisions of the Former Guidelines to improve the structure and clarity of those provisions.

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 purpose of these amendments is to implement the third and final tranche of these measures by clarifying students' rights and obligations to enable students to make payment decisions with clear information, ensuring student debt is incurred in line with course delivery and continued student participation, specifying circumstances of unacceptable conduct for remission of students' debts and establishing minimum pre-requisite and prior education qualifications.

Human Rights Implications

The VET Guideline engages the following human rights:

the right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

the right to privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR)

Right to Education

The VET Guideline engages the right to education which is set out in Article 13 of the ICESCR. Article 13 recognises the important personal, societal, economic and intellectual benefits of education.

The Article sets out that secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means.

The intent of the VET FEE-HELP loan scheme is to make technical and vocational secondary education more accessible to students who may not otherwise have had access. The measures in the VET Guideline enhance the protection of students as they seek out educational opportunities within Australia, including by strengthening the quality, accountability and compliance requirements imposed upon VET providers.

To the extent that the VET Guideline requires students to meet certain student entry requirements which could potentially limit a student's ability to access education in a VET course of study, that limitation is justifiable. The measure seeks to protect vulnerable students who have been signed up to the VET FEE-HELP loan scheme and who do not have the academic ability to undertake the course, leaving them with significant debt and no educational or training outcome. These measures will particularly benefit regional students, the unemployed, culturally and linguistically diverse communities, people with a disability and the elderly.

The VET Guideline is compatible with the right to education.

The Right to Privacy

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

The Bill includes a measure which replaces the Former Guidelines with no change to the legal effect, which may require a student to provide personal identification information to a VET provider. It should be noted that the student will only be required to do so in order to verify his or her identity for the purposes of approving information communicated by the student to the VET provider. Further, the VET provider is required to take certain steps to ensure that there is no unauthorised access to, or use of, the student's personal information. The disclosure of personal information required will not be arbitrary and will in each case be reasonable, necessary and proportionate to the objective. To the extent that the measures in the Bill limit a person's right to privacy, in any case, this is justifiable because the personal information is to be disclosed for the purpose of facilitating electronic the student's approval of his or her communications between the student and to the VET provider.

The VET Guideline is compatible with the right to privacy.

Conclusion

This Legislative Instrument is compatible with human rights.

The Hon Luke Hartsuyker MP
Minister for Vocational Education and Skills