



Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection) Guidelines 2018

I, Michaelia Cash, Minister for Small and Family Business, Skills and Vocational Education, make the following guidelines.

Dated 21 December 2018

Michaelia Cash
Minister for Small and Family Business, Skills and Vocational Education

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1 Name

This instrument is the *Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection) Guidelines 2018*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	25 December 2018
2. Schedule 1	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Schedule 1 to the <i>Higher Education Support Amendment (VET FEE-HELP Student Protection) Act 2018</i> .	1 January 2019
3. Schedule 2	Immediately after the commencement of Schedule 3 to the <i>Higher Education Support Legislation Amendment (Student Loan Sustainability) Act 2018</i> .	1 January 2020

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Higher Education Support Act 2003*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Higher Education Support (VET) Guideline 2015

1 Section 5

Insert:

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

vulnerable person includes:

- (a) a person with a physical or intellectual disability or a physical or mental illness; and
- (b) a person who suffers social or financial hardship; and
- (c) a person who cannot communicate, or has difficulty communicating, in English; and
- (d) a person who is otherwise disadvantaged.

2 At the end of Part 6

Add:

Division 3—Re-crediting FEE-HELP balance if inappropriate conduct

58A When a person is taken not to have completed the requirements for a VET unit of study

For the purposes of subparagraph 46AA(1)(a)(ii) of Schedule 1A to the Act, a person (the *student*) is taken not to have completed the requirements for a VET unit of study with a VET provider if it is reasonably likely that the student did not complete the requirements for the unit, regardless of whether the student is recorded as having completed the unit.

58AB Prescribed matters for inappropriate conduct

- (1) For the purposes of paragraph 46AA(1)(b) of Schedule 1A to the Act, in determining whether it is reasonably likely that a VET provider (or an agent of the VET provider) engaged in inappropriate conduct towards a person (the *student*) in relation to a VET unit of study, or a VET course of study of which the unit forms a part, the matters that the Secretary must have regard to are the following:
 - (a) whether the provider engaged in conduct towards the student that involved treating the student as being entitled to VET FEE-HELP assistance under clause 43 of Schedule 1A to the Act, when the student was not entitled to that assistance;
 - (b) whether the provider or agent engaged in any of the following conduct:
 - (i) unconscionable conduct;
 - (ii) systemic conduct, or a pattern of behaviour, that is unconscionable;
 - (iii) misleading or deceptive conduct;

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- (iv) making a representation about a future matter (for example, doing, or refusing to do, any act) where there were no reasonable grounds for making the representation;
 - (v) advertising tuition fees for the course where there were reasonable grounds for believing that the provider would not be able to provide the course for those fees;
 - (vi) the use of physical force, harassment or coercion;
 - (c) whether any of the circumstances involving unacceptable conduct specified in Division 2 of this Part (other than sections 53, 57 and 58) exist;
 - (d) whether any of the circumstances involving unacceptable conduct specified in section 53, 57 or 58 exist on or after 1 January 2016;
 - (e) whether the provider or agent failed to comply with a requirement under Division 2 of Part 3-2 of Chapter 3 of the Australian Consumer Law (unsolicited consumer agreements);
 - (f) whether the provider has financial, administrative or other barriers that prevented the student from fulfilling an expressed intention to withdraw from the VET unit of study before the census date;
 - (g) whether the student was a vulnerable person;
 - (h) any recommendation made by the VET Student Loans Ombudsman under paragraph 20ZM(1)(ca) of the *Ombudsman Act 1976* regarding the student or any other student of the provider;
 - (i) the provider's (or the agent's) history of compliance with:
 - (i) the Act and the regulations; and
 - (ii) this Guideline; and
 - (iii) any conditions imposed on the provider's approval as a VET provider; and
 - (iv) the *National Vocational Education and Training Regulator Act 2011*; in relation to the provider's (or the agent's) conduct towards any student;
 - (j) any other matter that the Secretary considers relevant.
- (2) In considering whether the conduct was unconscionable for the purposes of subparagraph (1)(b)(i), the Secretary may have regard to the following:
- (a) the relative strengths of the bargaining positions of the persons concerned;
 - (b) whether the student was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of another person;
 - (c) whether the student was able to understand any documents related to the application for the VET student loan;
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the student or a person acting on behalf of the student;
 - (e) whether the provider, or person acting on the provider's behalf, failed to disclose anything to the student;
 - (f) the extent to which the provider, or person acting on the provider's behalf, acted in good faith.

Schedule 2—Consequential amendments

Higher Education Support (VET) Guideline 2015

1 Section 7 (paragraph (c) of note 2)

Omit “FEE-HELP balance”, substitute “HELP balance”.

2 Paragraph 10(5)(a)

Omit “FEE-HELP balance”, substitute “HELP balance”.

3 Subsection 10(5) (note)

Omit “FEE-HELP balance”, substitute “HELP balance”.

4 Subsection 10(7)

Omit “FEE-HELP balance”, substitute “HELP balance”.

5 Subparagraph 16(2)(d)(ii)

Omit “FEE-HELP balance”, substitute “HELP balance”.

6 Subsection 21(4)

Omit “FEE-HELP balance”, substitute “HELP balance”.

7 Subsection 21(4) (note)

Omit “FEE-HELP balance”, substitute “HELP balance”.

8 Section 43 (heading)

Omit “FEE-HELP balances”, substitute “HELP balances”.

9 Paragraphs 43(2)(a) and (b)

Omit “FEE-HELP balance”, substitute “HELP balance”.

10 Part 6 (heading)

Omit “FEE-HELP balances”, substitute “HELP balances”.

11 Division 2 of Part 6 (heading)

Omit “FEE-HELP balance”, substitute “HELP balance”.

12 Division 3 of Part 6 (heading)

Omit “FEE-HELP balance”, substitute “HELP balance”.

13 Paragraph 79(4)(f)

Omit “FEE-HELP balance”, substitute “HELP balance”.

14 Subsection 80(4)

Omit “FEE-HELP balance” (wherever occurring), substitute “HELP balance”.

15 Subsection 92(5) (heading)

Omit “*FEE-HELP balances*”, substitute “*HELP balances*”.