

EXPLANATORY STATEMENT

Issued by the authority of Brendan O'Connor, Minister for Skills and Training

Higher Education Support (VET) Guideline 2015

Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time) Guidelines 2022

AUTHORITY

The *Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time) Guidelines 2022 (Amendment Guidelines)* are made under clause 99 of Schedule 1A to the *Higher Education Support Act 2003 (HESA)*.

Clause 99 of Schedule 1A to HESA provides that the Minister may, by legislative instrument, make guidelines (the *Higher Education Support (VET) Guideline 2015 (VET Guidelines)*), providing for matters: (a) required or permitted by Schedule 1A to be provided; or (b) necessary or convenient to be provided in order to carry out or give effect to Schedule 1A.

Clause 46AA of Schedule 1A to HESA provides for various matters to be prescribed by the VET Guidelines.

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.

BACKGROUND

The VET FEE-HELP scheme was a component of the Higher Education Loan Program (**HELP**), under which eligible students could access income-contingent loans for the purposes of undertaking vocational education and training. VET FEE-HELP loans were incurred by the student and the course fees paid by the Government directly to the education provider. Students are required to repay those loans once their income reaches a prescribed threshold, with repayments collected by the Australian Tax Office.

Under clause 46AA of Schedule 1A to HESA, the Secretary may re-credit a person's HELP balance where the person incurred a VET FEE-HELP debt as a result of the inappropriate conduct of a VET provider (or an agent of the provider). Where an amount is re-credited under clause 46AA, the corresponding VET FEE-HELP debt is remitted.

The Secretary may re-credit a person's HELP balance on application by a person or on the Secretary's own initiative. The Secretary often decides to re-credit a person's HELP balance

on the recommendation of the VET Student Loans Ombudsman made under paragraph 20ZM(1)(ca) of the *Ombudsman Act 1976*.

Subclauses 46AA(9)-(10) of Schedule 1A to HESA provide that the Secretary must not re-credit a person's HELP balance: (a) on the Secretary's own initiative, after 31 December 2020; and on application made by a person, if the application is made after 31 December 2020. However, subclauses 46AA(9)-(10) enable a later date to be prescribed by the VET Guidelines (paragraphs 46AA(9)(b) and 46AA(10)(b)).

The Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection) Guidelines 2020 amended the VET Guidelines to prescribe a later date of 31 December 2022. As a result, section 58AC of the VET Guidelines currently provides that 31 December 2022 is: (a) the final date for the Secretary to re-credit a person's HELP balance under subclause 46AA(1) on the Secretary's own initiative; and (b) the final date on which a person can make an application under subclause 46AA(3) for a re-credit of their HELP balance under subclause 46AA(1). This initial extension of time for the purposes of clause 46AA was implemented primarily in response to the COVID-19 pandemic, the impacts of which may have led to some students not being aware of their VET FEE-HELP debt or being unable to lodge an application for a re-credit before the original deadline of 31 December 2020.

PURPOSE AND OPERATION

The purpose of the Amendment Guidelines is to extend the date prescribed by the VET Guidelines for the purpose of subclauses 46AA(9)-(10) of Schedule 1A to HESA by 12 months. As a result, 31 December 2023 will now be the final date: (a) for the Secretary to re-credit a person's HELP balance under subclause 46AA(1) on the Secretary's own initiative; and (b) on which a person can make an application under subclause 46AA(3) for a re-credit of their HELP balance under subclause 46AA(1).

The majority of inappropriate VET FEE-HELP debts have been re-credited over the four years in which clause 46AA has been in operation, including more than 163,000 students re-credited at the Secretary's initiative to date. However, advice from the Australian Government Actuary is that there remain potentially further students whose debts may be eligible to be re-credited.

The Amendment Guidelines allow further time for more complex data and evidence-based analysis to be undertaken so that the Secretary may identify other students who, due to their vulnerability, remain unaware that they have incurred a VET FEE-HELP debt for which a re-credit could be available.

Further, the Amendment Guidelines allow students more time to come forward if they have debts for incomplete units of study incurred as a result of the inappropriate conduct of their VET provider. This is particularly important for students who are only now learning of their

VET FEE-HELP debts and need time to seek assistance and advice from the VET Student Loans Ombudsman. Indeed, despite the reduced impacts of the COVID-19 pandemic of 2020 (which factored into the prescription of 31 December 2022 in section 58AC of the VET Guidelines), the VET Student Loans Ombudsman has continued to receive complaints from students who were not previously aware of their VET FEE-HELP debts and who wish to dispute them. Additionally, some students may have only recently been made aware of historical VET FEE-HELP debts not previously visible to them because of an IT system issue that has delayed the transfer of records from the Department to the Australian Taxation Office. The extension of the timeframe prescribed by section 58AC for a further year ensures these students are not unfairly disadvantaged.

REGULATORY IMPACT

The Office of Best Practice Regulation has advised that no Regulatory Impact Statement is required.

COMMENCEMENT

The Amendment Guidelines commence on 1 January 2023.

CONSULTATION

The Department consulted the VET Student Loans Ombudsman, Department of Finance and Department of the Prime Minister and Cabinet in determining the appropriateness of a further extension of time for the program. The Department also considered recent advice from the Australian Government Actuary.

The Department has not consulted students in respect of the amendments contemplated by this instrument because the amendment will benefit them in allowing more time for them to seek a re-credit or be identified as being potentially eligible for a re-credit. Information regarding students' ability to seek a re-credit and the extension of the date prescribed under section 58AC of the VET Guidelines will be provided through multiple sources, including various forms of media (including social media), websites and government agencies. Therefore, consultation is not considered necessary. Further, direct consultation with students would be logistically impractical.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time) Guidelines 2022

The *Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time) Guidelines 2022 (Amendment Guidelines)* are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Amendment Guidelines

The purpose of the Amendment Guidelines is to extend the date prescribed by the VET Guidelines for the purpose of subclauses 46AA(9)-(10) of Schedule 1A to HESA by 12 months. As a result, 31 December 2023 will now be the final date: (a) for the Secretary to re-credit a person's HELP balance under subclause 46AA(1) on the Secretary's own initiative; and (b) on which a person can make an application under subclause 46AA(3) for a re-credit of their HELP balance under subclause 46AA(1).

The majority of inappropriate VET FEE-HELP debts have been re-credited over the four years in which clause 46AA has been in operation, including over 163,000 students re-credited at the Secretary's initiative to date. However, advice from the Australian Government Actuary is that there remain potentially further students whose debts may be eligible to be re-credited.

The Amendment Guidelines allow further time for more complex data and evidence-based analysis to be undertaken so that Secretary may identify other students who, due to their vulnerability, remain unaware that they have incurred a VET FEE-HELP debt for which a re-credit could be available.

Further, the Amendment Guidelines allow students more time to come forward if they have debts for incomplete units of study incurred as a result of the inappropriate conduct of their VET provider. This is particularly important for students who are only now learning of their VET FEE-HELP debts and need time to seek assistance and advice from the VET Student Loans Ombudsman. Indeed, despite the reduced impacts of the COVID 19 pandemic of 2020 (which factored into the prescription of 31 December 2022 in section 58AC of the VET Guidelines), the VET Student Loans Ombudsman has continued to receive complaints from students who were not previously aware of their VET FEE-HELP debts and who wish to dispute them. Additionally, some students may have only recently been made aware of historical VET FEE-HELP debts not previously visible to them because of an IT system issue

that has delayed the transfer of records from the Department to the Australian Taxation Office. The extension of the timeframe prescribed by section 58AC for a further year ensures these students are not unfairly disadvantaged.

Human rights implications

The Amendment Instrument engages:

- the right to education – article 28 of the *Convention on the Rights of the Child (CRC)* and article 13 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*;
- the rights of the child – article 3 of the CRC;
- the rights of people with disabilities – article 10 of the Declaration on the Rights of Disabled Persons (**DRDP**).

Right to education

The Amendment Instrument engages the right to education and vocational education contained in article 28 of the CRC, and through that, the right to education contained in article 13 of the ICESCR. These articles recognise the important personal, societal, economic and intellectual benefits of education.

Paragraph 13(2)(b) of the ICESCR provides 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, and, in particular, by the progressive introduction of free education.

Clause 46AA of Schedule 1A to HESA provides a remedy for persons who incurred VET FEE-HELP debts as a result of the inappropriate conduct of VET providers (or agents of those providers) but were left with little to no training outcomes.

Due to the inappropriate conduct of these providers and their agents, affected individuals may have lost confidence in the ability to seek an education.

The Amendment Guidelines ensure that, where appropriate, affected individuals can continue to access a remedy under clause 46AA. They also seek to restore affected individuals' confidence and trust in the quality of the education and training system in Australia and its accessibility to them. This is particularly important for vulnerable students who may have been unfairly signed up to debts for training they could never complete or from which they derived little to no education benefit.

The Amendment Guidelines are compatible with, and promote, the right to education.

Rights of the child

Article 3 of the CRC provides that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The Amendment Guidelines protect vulnerable children who may have experienced unscrupulous behaviour by training providers approved under the VET FEE-HELP scheme (or agents of those providers) by ensuring that, where appropriate, debts incurred as a result of this behaviour can continue to be remitted under clause 46AA of Schedule 1A to HESA.

The Amendment Guidelines are compatible with, and promote, the rights of the child.

Rights of people with disability

Article 10 of the DRDP ensures that disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

Further, Article 6 of the DRDP provides, in relevant part, that disabled persons have the right to education and vocational training to develop their capabilities and skills to the maximum and hasten the processes of their social integration or reintegration.

The Commonwealth is aware that the VET FEE-HELP scheme was plagued by some unethical provider or agent practices that resulted in vulnerable, including disabled, persons being taken advantage of.

The Amendment Guidelines ensure that, where appropriate, vulnerable people who were signed up to the VET FEE-HELP scheme and incurred a significant financial liability without fully understanding the consequences of what they were signing up to, can continue to have their debts remitted under clause 46AA of Schedule 1A to HESA.

The Amendment Guidelines are compatible with, and promote, the rights of people with a disability.

Conclusion

The Amendment Guidelines are compatible with human rights because the measures advance the right to education, the rights of the child and the rights of people with a disability.

Minister for Skills and Training
The Hon Brendan O'Connor MP

HIGHER EDUCATION SUPPORT (VET) AMENDMENT (VET FEE-HELP STUDENT PROTECTION – EXTENSION OF TIME) GUIDELINES 2022

EXPLANATION OF PROVISIONS

Section 1: Name

1. This section provides that the name of the instrument is the *Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time) Guidelines 2022 (Amendment Guidelines)*.

Section 2: Commencement

2. The table in subsection 2(1) sets out when the provisions of the Amendment Guidelines commence.
3. The table provides that the whole of the Amendment Guidelines are to commence on 1 January 2023.

Section 3: Authority

4. This section provides that the Amendment Guidelines are made under clause 99 of Schedule 1A to the *Higher Education Support Act 2003 (HESA)*.

Section 4: Schedules

5. This section provides that each instrument that is specified in a Schedule to the Amendment Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Instrument has effect according to its terms.

Schedule 1 – Amendments

Higher Education Support (VET) Guideline 2015

Item 1: Section 58AC

1. This item omits “2022” from section 58AC of the *Higher Education Support (VET) Guideline 2015 (VET Guidelines)* and substitutes it with “2023”. The effect of this is to extend the date prescribed by section 58AC by 12 months, to 31 December 2023, for the purposes of paragraphs 46AA(9)(b) and 46AA(10)(b) of Schedule 1A to HESA.
2. Currently in accordance with subsection 58AC(1) of the VET Guidelines, the Secretary must not re-credit a person’s HELP balance pursuant to subclause 46AA(1) of Schedule 1A to HESA on the Secretary’s own initiative after 31 December 2022. Subsection 58AC(2) of the VET Guidelines similarly provides that the Secretary must not re-credit a person’s HELP balance pursuant to subclause 46AA(1) of Schedule 1A to HESA on application made by a person if the application is made after 31 December 2022.
3. This amendment will permit the Secretary to make decisions to re-credit a person’s HELP balance under subclause 46AA(1) on the Secretary’s own initiative until 31 December 2023 (in accordance with the amendments to subsection 58AC(1)). Similarly, the Secretary will be able to re-credit a person’s HELP balance in accordance with subsection 58AC(2) provided the application is made on or before 31 December 2023.
4. The prescription of the new date is necessary given that, despite the majority of inappropriate VET FEE-HELP debts being successfully re-credited, there likely remain some students with debts they are unaware of. The extension ensures that students have more time to access the assistance provided by Government if they meet the eligibility requirements. That is:
 - affected students can seek assistance from the VET Student Loans Ombudsman;
 - affected students can make an application for re-credit; and
 - the Secretary may identify and, if appropriate, re-credit the HELP balance of affected students.