

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 for Discretionary Powers) Guidelines 2023

AUTHORITY

The *Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time for Discretionary Powers) Guidelines 2023 (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.

Paragraph 46AA(9)(b) of Schedule 1A to HESA provides that the VET Guidelines may specify the latest date upon which the Secretary may, on the Secretary's own initiative, re-credit a person's Higher Education Loan Program (**HELP**) balance under clause 46AA.

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 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.

Currently the Secretary may re-credit a person's HELP balance on application by a person or on the Secretary's own initiative. The Secretary can decide 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*.

Subclause 46AA(9) of Schedule 1A to HESA provides that the Secretary must not re-credit a person's HELP balance on the Secretary's own initiative, after 31 December 2020 unless a later day is prescribed by the VET Guidelines for the purposes of paragraph 46AA(9)(b).

The *Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time) Guidelines 2022* amended the VET Guidelines to prescribe a later day, for the purposes of paragraph 46AA(9)(b), of 31 December 2023. As a result, section 58AC of the VET Guidelines currently provides that 31 December 2023 is the final date for the Secretary to re-credit a person's HELP balance under subclause 46AA(1) on the Secretary's own initiative.

PURPOSE AND OPERATION

The purpose of the Amendment Guidelines is to extend a date prescribed by the VET Guidelines for the purpose of part of subclause 46AA(9) of Schedule 1A to HESA by 12 months. Without amendment, clause 46AA will cease operating as an avenue for student redress on 31 December 2023. The Amendment Guidelines seek to extend the final date for the Secretary to re-credit a person's HELP balance under subclause 46AA(1) on the Secretary's own initiative until 31 December 2024.

While the majority of inappropriate VET FEE-HELP debts have been re-credited over the five years in which clause 46AA has been in operation, including more than 172,000 students re-credited at the Secretary's initiative to date, advice from the Australian Government Actuary is that there could be further students whose debts may be eligible to be re-credited.

Whilst the program known as the VET FEE-HELP Student Redress Measures will close to new applications from students, as intended, on 31 December 2023, the Amendment Guidelines will allow further time for the department to identify students who may still require redress. The amendment to extend the time for redress under subclause 46AA(9) will mean the department still has a mechanism under 46AA which it can utilise to provide redress to remaining eligible students.

The reason for not extending the deadline for student applications under subclause 46AA(10) is that, in the five years in which students have been entitled to make redress applications under clause 46AA, those likely to do so have already availed themselves of that opportunity. Other mechanisms for student redress under subdivision 7-B of Schedule 1A, along with the Secretary's redress option under subclause 46AA(9), will continue to operate and will provide a basis for students to obtain redress in a number of circumstances

– i.e. where special circumstances apply (clause 46), where the provider or the provider’s agent has demonstrated unacceptable conduct in relation to the student (clause 46A), or where the provider ceases to provide a course unit (clause 51).

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 2024.

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 given the thousands who still hold VET FEE-HELP debts. However, the department considers the view of the VET Student Loans Ombudsman and its insight from direct student complaints to be indicative of the needs of students. Accordingly, the VET Student Loans Ombudsman has been consulted and has agreed to the proposed amendment.

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 for Discretionary Powers) Guidelines 2023

The *Higher Education Support (VET) Amendment (VET FEE-HELP Student Protection – Extension of Time for Discretionary Powers) Guidelines 2023 (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 paragraph 46AA(9)(b) of Schedule 1A to the *Higher Education Support Act 2003 (HESA)* by 12 months. Without amendment, clause 46AA will cease operating as an avenue for student redress on 31 December 2023. The Amendment Guidelines seek to extend the final date for the Secretary to re-credit a person's Higher Education Loan Program (HELP) balance under subclause 46AA(1) on the Secretary's own initiative until 31 December 2024.

While the majority of inappropriate VET FEE-HELP debts have been re-credited over the five years in which clause 46AA has been in operation, including more than 172,000 students re-credited at the Secretary's initiative to date, advice from the Australian Government Actuary is that there could be further students whose debts may be eligible to be re-credited.

Whilst the program known as the VET FEE-HELP Student Redress Measures will close to new applications from students, as intended, on 31 December 2023, the Amendment Guidelines will allow further time for the department to identify students who may still require redress. The amendment to extend the time for redress under subclause 46AA(9) will mean the department still has a mechanism under 46AA which they can utilise to redress and remaining eligible students.

The reason for not extending the deadline for student applications under subclause 46AA(10) is that, in the five years in which students have been entitled to make redress applications under clause 46AA, those likely to do so have already availed themselves of that opportunity. Other mechanisms for student redress under subdivision 7-B of Schedule 1A, along with the Secretary's redress option under subclause 46AA(9), will continue to operate and will provide a basis for students to obtain redress in a number of circumstances – i.e. where special circumstances apply (clause 46), where the provider or the provider's agent has demonstrated unacceptable conduct in relation to the student (clause 46A), or where the provider ceases to provide a course unit (clause 51).

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 be identified to ensure the Secretary can re-credit affected students on the Secretary's own initiative for a further 12 months. The department's involvement in identifying students who may be eligible for redress under subclause 46AA(9) will ensure those affected individuals can have confidence and trust in the Commonwealth's commitment to the provision quality of VET in Australia. This is particularly important for any remaining 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 by the Secretary under clause 46AA of Schedule 1A to the 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 the 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 be identified for remission of their debts, by the Secretary, under clause 46AA of Schedule 1A to the 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 FOR DISCRETIONARY POWERS) GUIDELINES 2023

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 for Discretionary Powers) Guidelines 2023 (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 2024.

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 “2023” from subsection 58AC(1) of the *Higher Education Support (VET) Guideline 2015 (VET Guidelines)* and substitutes it with “2024”. The effect of this amendment is to extend the date prescribed by subsection 58AC(1) by 12 months, to 31 December 2024, for the purposes of paragraphs 46AA(9)(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 2023.
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 2024 (in accordance with the amendments to subsection 58AC(1)).
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 who may require redress under clause 46AA (and therefore, outside of the other existing HESA redress mechanisms). The extension ensures that the Secretary may identify and, if appropriate, rely on clause 46AA to re-credit the HELP balance of affected students for a further 12 months.