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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**HIGHER EDUCATION SUPPORT AMENDMENT (VET FEE-HELP AND
OTHER MEASURES) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Tertiary Education, Skills, Jobs and
Workplace Relations)

HIGHER EDUCATION SUPPORT AMENDMENT (VET FEE-HELP AND OTHER MEASURES) BILL 2011

GENERAL OUTLINE

This Bill makes amendments to improve the Commonwealth's ability to manage risk to public monies and potential risks to students, as well as provide for greater administrative efficiencies in the operation of the FEE-HELP and VET FEE-HELP Assistance Schemes under the *Higher Education Support Act 2003*.

Specifically, the Bill contains: information use and disclosure provisions including with the newly established national regulators in the vocational education and training and higher education sectors being the National VET Regulator and the Tertiary Education Quality Standards Agency respectively; strengthened compliance provisions for approved VET providers; amendments which provide greater clarity and transparency for administrative arrangements for applications times; and amendments which provide improved congruity with tax-related legislation with respect to Higher Education Loan Program (HELP) debts.

FEE-HELP and VET FEE-HELP are available to eligible students studying in higher level education and training, and provides a loan for all or part of a student's tuition fees. This assistance is aimed at encouraging students to take up higher level skill qualifications by reducing the financial barriers associated with study.

FINANCIAL IMPACT STATEMENT

There are no financial impacts associated with this Bill.

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NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Bill, when it is enacted, to be cited as the *Higher Education Support Amendment (VET FEE-HELP and Other Measures) Act 2011*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions of the Bill. Each provision of the Bill specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for:

- Clauses 1 to 3 and anything else in the Bill not otherwise covered by the table to commence on the day the Bill (once enacted) receives Royal Assent;
- Parts 1, 3, 4 and 5 of Schedule 1, and Schedule 2 to commence on the day after Royal Assent; and
- Part 2 of Schedule 1 to commence on a day to be fixed by Proclamation, or, if the provisions do not commence within 6 months beginning on the day the Bill receives Royal Assent, the day after the end of that period.

A Note makes it clear that these commencement times will not be amended by any later amendments of the Bill (once enacted).

Subclause 2(2) provides that information in column 3 of the table does not form part of the Bill. Information in column 3 may be inserted or varied in any published version of the Bill (once enacted).

Clause 3 - Schedule(s)

Provides that each Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and that any other item in a Schedule has effect according to its terms.

For ease of description, this Explanatory Memorandum uses the following abbreviations:

‘HESA’ means the *Higher Education Support Act 2003*.

Schedule 1

General Amendments

Part 1 – Time limit for decision on approval of provider

Higher Education Support Act 2003

Item 1 – After subsection 16-50(3)

Section 16-50 provides that the Minister must decide an application for approval as a higher education provider. Subsection 16-50(3) provides that the decision must be made within the timeframe specified in that subsection. New subsection 16-50(3A) has been inserted to make it clear that the Minister’s power or obligation to make a decision on an application continue regardless of the expiry of statutory time periods specified under subsection (3).

A situation may arise (for the Minister or for the applicant) where the specified timeframe has expired and the Minister has not made a decision on an application. The amendment made by this item will clarify that where the Minister has not made a decision on an application within the timeframe specified in subclause (3), the Minister still has the power to decide an application for approval as a higher education provider.

Item 2 – After subclause 11(3) of Schedule 1A

Clause 11 of Schedule 1A to HESA provides that the Minister must decide an application for approval as a VET provider. Subclause 11(3) provides that the decision must be made within the timeframe specified in that subsection. New subclause 11(3A) has been inserted to make it clear that the Minister’s power or obligation to make a decision on an application continue regardless of the expiry of statutory time periods specified under subclause (3).

A situation may arise (for the Minister or for the applicant) where the specified timeframe has expired and the Minister has not made a decision on an application. The amendment made by this item will clarify that where the Minister has not made a decision on an application within the timeframe specified in subclause (3), the Minister still has the power to decide an application for approval as a higher education provider.

Item 3 – Application

This item inserts an application provisions which provides that the amendments made by this Part will apply to decisions on application made on or after commencement of this Part, being the day after the Act receives the Royal Assent.

Part 2 – VET compliance requirements

Higher Education Support Act 2003

Item 4 – Subclause 25(2) of Schedule 1A

This item will repeal and substitute subclause 25(2).

Subclause 25(1) provides that a VET provider must notify the Minister in writing of any events that affect the provider's ability to comply with the VET quality and accountability requirements.

The amended subclause 25(2) will impose an obligation on VET providers to notify the Minister in writing of any event that may significantly affect whether:

- (a) any of the conditions in subclause 6(1) are or could be met in relation to the provider after the event; or
- (b) there is or may be a ground for revoking under Subdivision 5-B the approval of the VET provider.

Subclause 6(1) contains the requirements that bodies corporate must meet to become an approved VET provider.

Subdivision 5-B provides the grounds by which the Minister may revoke an approved provider.

New subclause (3) provides that a notice under subclause (1) or (2) must be given to the Minister as soon as practicable after the VET provider becomes aware of the event mentioned in the subclause.

New subclause 25(2) will support the integrity of the VET sector by keeping the Minister aware of any significant changes which may affect the approval of a provider allowing the Minister to take action where necessary. This amendment is especially important for VET providers as approval as a VET provider is given in perpetuity and there is currently no renewal system.

Item 5 – Application

This item is an application provision which provides that the amendments made by Part 2 apply in relation to VET providers approved before, on or after the commencement of the amendment.

Part 3 – Use and disclosure of information

Higher Education Support Act 2003

Items 6, 7 and 8 – management of information

Items 6, 7 and 8 substitute references to the term ‘protection of personal information’ with ‘management of information’. These items are consequential amendments to the insertion of a new Division in item 11. The change in terminology reflects that the new Division no longer deals with the protection of personal information but will now encompass the use and disclosure of other information, for example, information of a confidential nature, as well as personal information obtained for specific purposes.

Items 9, 10 and 11 – Division 180–Other rules about information

Items 9 and 10 make amendments consequential to item 11.

Item 11 inserts a new Division 180 at the end of Part 5-4 titled, Other rules about information.

The amendments in item 11 provide for the authorisation of certain uses and disclosures of information. In particular, this section will allow for the disclosure of certain personal information obtained in connection with an application under 16-40 of HESA and other information obtained under Chapter 2 or 3 of HESA to the Tertiary Education Quality and Standards Agency (TEQSA) and the National VET Regulator. It will also allow those information to be used by a Commonwealth officer in the course of his or her official employment (including for instance, for the purpose of a Commonwealth officer performing duties or functions under Schedule 1A of HESA).

New Division 180 will contain new section 180-1.

Subsection 180-1(1) sets out the information to which the section applies being:

- personal information obtained in connection with an application under section 16-40 (applications for approval of bodies as higher education providers); or
- information that is not personal information which is obtained by a Commonwealth officer for the purposes of Chapter 2 or 3 of HESA.

Subsection (2) provides that a Commonwealth officer will be able to use the information referred to in subsection (1) in the course of his or her official employment.

Subsection (3) allows the Secretary to disclose the information to either TEQSA or the National VET Regulator for the performance of duties or functions, or the exercise of powers, under, or for the purposes of the TEQSA Act or the *National Vocational Education and Training Regulator Act 2011*, respectively.

Subsection (4) provides that section 180-1 does not limit the use or disclosure of the information in that section.

Items 12 and 13 – management of information

Items 12 and 13 substitute references to the term ‘protection of personal information’ with ‘management of information’ contained in Schedule 1A. These items are consequential amendments to the insertion of a new subdivision in item 16. The change in terminology reflects that the new Subdivision no longer deals with the protection of personal information but will now encompass the use and disclosure of other information, for example, information of a confidential nature, as well as personal information obtained for specific purposes.

Items 14, 15 and 16 – Subdivision 14-B–Other rules about information

Items 14 and 15 make amendments consequential to item 16.

Item 16 inserts new subdivision 14-B at the end of Division 14 of Schedule 1A titled, Other rules about information.

The amendments in item 16 mirror those at item 11 in relation to VET providers, providing for the authorisation of certain uses and disclosures of information. In particular, the amendments contained in this item will allow for the disclosure of certain VET personal information obtained in connection with clause 9 of Schedule 1A of HESA and other information obtained under Schedule 1A of HESA to the Tertiary Education Quality and Standards Agency (TEQSA) and the National VET Regulator. It will also allow those information to be used by a Commonwealth officer in the course of his or her official employment (including for instance, for the purpose of a Commonwealth officer performing duties or function under chapters 2 or 3 of HESA).

New sub-division 14-B will contain new clause 78A.

Subclause 78A(1) sets out the information to which the clause applies being:

- personal information obtained in connection with an application under clause 9 (applications for approval of bodies as VET providers); or
- information that is not personal information which is obtained by a Commonwealth officer for the purposes of Schedule 1A to HESA.

Subclause (2) provides that a Commonwealth officer will be able to use the information referred to in subclause (1) in the course of his or her official employment.

Subclause (3) allows the Secretary to disclose the information to either TEQSA or the National VET Regulator for the performance of duties or functions, or the exercise of powers, under, or for the purposes of the TEQSA Act or the *National Vocational Education and Training Regulator Act 2011*, respectively.

Subclause (4) provides that clause 78A does not limit the use or disclosure of the information in that section.

Item 17 - Application

Item 17 contains an application provision which provides that the amendments made in Part 3 apply in relation to information whether it was obtained or created before, on or after the commencement of Part 3.

Part 4 – Variation and revocation of determinations for advances

Higher Education Support Act 2003

Items 18 and 19 – After subclause 61(1) of Schedule 1A

Clause 61 of Schedule 1A allows the Secretary to determine that an advance is to be made to a VET provider on account of an amount that is expected to become payable under a provision of Schedule 1A to the provider.

Item 18 inserts new subclauses 61(1A) and (1B) and will allow the Secretary to revoke or vary any determination made to pay an advance in certain circumstances. The new subclauses have been inserted to make it explicit that the Secretary has the power to vary or revoke a determination. This provision will allow the Secretary to vary or revoke a determination where, for example, the Secretary becomes aware of information which may affect the decision to pay the advance after the determination is made but before the payment is delivered. The new subclauses also provide certainty to approved providers by explicitly stating the grounds when the Secretary may take such actions.

New subclause 61(1A) will allow the Secretary to vary or revoke a determination that an advance is made to a VET provider if:

- (a) the Secretary is satisfied that the provider has not complied with Schedule 1A and any regulations relating to Schedule 1A or Guidelines made under clause 99; or
- (b) the Secretary is aware of information that suggests that the provider may not comply with Schedule 1A, any regulations relating to Schedule 1A or Guidelines made under clause 99; or
- (c) the Secretary is aware of information that suggests that the provider may not remain financially viable.

New subclause 61(1B) provides a list of matters that the Secretary may consider in revoking or varying a decision under subclause 61(1A). The insertion of this provision is to provide transparency and certainty for approved providers as to the kinds of matters that the Secretary may take into consideration before making a decision to vary or revoke a determination.

Item 19 clarifies that clause 61 of Schedule 1A does not affect the determination of advances under section 164-10. Section 164-10 concerns the payment of advances to higher education providers.

Item 20 - Application

Item 20 inserts an application clause which provides that subclauses 61(1A and (1B) inserted by item 18 will apply to the variation or revocation of determinations made before, on or after commencement of those subclauses.

Part 5 – Form of statements of information

Higher Education Support Act 2003

Items 21 and 22

Section 19-70 requires a higher education provider to give to the Minister statistical and other information when requested by the Minister.

Similarly, clause 24 of Schedule 1A requires a VET provider to give to the Minister statistical and other information when requested by the Minister.

Paragraphs 19-70(2)(a) and 24(2)(a) require that the information be given to the Minister in a form approved by the Minister. The amendments in items 21 and 22 will amend these paragraphs to provide that the information must be given to the Minister in the approved form, *if any*. This clarifies that where the Minister has not specified an approved form in which the information can be delivered, the provider will still comply with paragraphs 19-70(2)(b) and 24(2)(b) by providing the information requested.

Item 23 – Application

Item 23 inserts an application provision which provides that the amendments in items 21 and 22 will apply in relation to information required after the commencement of Part 5, being the day after the Royal Assent.

Schedule 2

Debt-related amendments

Part 1 – General Administration

Higher Education Support Act 2003

Item 218 - After section 238-7

This item inserts new section 238-8. New section 238-8 provides that the Commissioner has the general administration of HESA to the following extent:

- a) Chapter 4, except section 154-30;
- b) Section 179-25;
- c) Section 179-30, so far as it relates to the Commissioner;
- d) Part 5-5;
- e) Divisions 206 and 209, so far as they relate to reviewable decisions for which the Commissioner is the decision maker;
- f) Clause 76 of Schedule 1A;
- g) Clause 77 of Schedule 1A, so far as that clause relates to the Commissioner;
- h) Division 15 of Schedule 1A.

A note at the end of the section explains that one effect of this section is that HESA is to the extent listed in the section a taxation law for the purposes of the *Taxation Administration Act 1953*.

The reason for this section is that taxation law is defined in part as ‘an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act). This provision will allow the Commissioner of Taxation to administer parts of HESA for which the Commissioner has responsibility.

Part 2 – Approved forms

Higher Education Support Act 2003

The amendments contained in this Part amends a number of sections in HESA to provide that where a person writes to the Commissioner or gives the Minister a certificate, it must be done in the approved form.

This part will also add a definition of ***approved form*** into Schedule 1A. ***Approved form*** is defined as having the meaning given by section 388-50 in Schedule 1 of the *Taxation Administration Act 1953*.

The rationale for these amendments is that requiring the use of a standard form with the necessary information will allow for more efficient administration of the scheme and is consistent with similar provisions in the *Taxation Administration Act 1953*.

Part 3 – Time of application to amend assessment

Higher Education Support Act 2003

Item 9 – Paragraph 154-50(2)(a)

Subsection 154-50(1) allows a person to write to the Commissioner for an amendment of an assessment made in respect of the person's HELP debt.

Paragraph 154-50(2)(a) requires that an application made under subsection (1) be made no later than 2 years after the end of the income year to which the assessment relates.

This item amends paragraph 154-50(2)(a) to require that an application under subsection (1) must be made within 2 years *after the day on which the Commissioner gives notice of the assessment to the person*.

This amendment will provide a more equitable link between the date the Commissioner gives notice of the assessment and the period within which a person can apply for an amended assessment.