

**Issued by the authority of the Minister for Tertiary Education, Skills, Science and Research**

Disallowable instrument

made under the

*Higher Education Support Act 2003*

**Subject: VET Administration Guidelines**

**EXPLANATORY STATEMENT**

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**Authority**

Schedule 1A to the *Higher Education Support Act 2003* (the Act) provides for loans, called VET FEE-HELP assistance, to be made available to students enrolled in certain vocational education and training (VET) courses.

Clause 99 of Schedule 1A to the *Higher Education Support Act 2003* (the Act) provides that the Minister may make Guidelines for the purposes of the Act. In particular, Item 4 of the table in subclause 99(1) of Schedule 1A specifies that the Minister may make *VET Administration Guidelines* (the Guidelines) to give effect to matters set out in Part 3 of Schedule 1A to the Act.

**Purpose**

Part 3 of Schedule 1A to the Act deals with administration matters relating to the operation of the VET FEE-HELP assistance scheme. These Guidelines set out additional requirements to those that appear in the Act to cover such matters as:

- a) details to be included in the *notice* that a VET provider must give to every person who is enrolled with the VET provider and who is seeking Commonwealth assistance under the VET FEE-HELP Assistance Scheme;
- b) publication requirements relating to census dates; and
- c) electronic communication between VET providers and students.

This instrument revokes and remakes the previous VET Administration Guidelines. The previous provisions have been revised to provide clarity, ease of reading and reflect changes due to the *Higher Education Support Amendments (No.1) Act 2011* and the *National Vocational Education and Training Regulator (Consequential Amendments) Act 2011*. The Instrument has been reformatted to reduce complexity and the numbering sequence has been amended from rising in multiples of five to rising sequentially by one unit. The amendments do not change existing obligation or responsibilities for VET providers.

Amendments have also been made to terminology to reflect a change in the Administrative Arrangements Order.

**Consultation**

Consultation was not undertaken and was not considered necessary or appropriate as the instrument contains amendments that are technical in nature and do not alter existing arrangements for VET providers or policy intent, in accordance with section 18 of the *Legislative Instruments Act 2003*.

## **Statement of Compatibility with Human Rights**

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

### **VET Administration Guidelines**

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*.

### **Overview of the Legislative Instrument**

The *VET Administration Guidelines* (the Guidelines) are made under subsection 99(1) of Schedule 1A to the *Higher Education Support Act 2001* (the Act). This legislative instrument revokes the VET Administration Guidelines registered on the Federal Register of Legislative Instruments on 4 June 2008 (F2008L01958) and remakes the Guidelines pursuant to subsection 99(1) of Schedule 1A to provide for matters set out in Part 3 of the Act.

Part 3 of Schedule 1A to the Act deals with various administration matters relating to the operation of the VET FEE-HELP assistance scheme by the Commonwealth and VET providers. The Guidelines set out additional requirements to these matters, in particular in relation to the notice that a VET provider must give to a person who is seeking VET FEE-HELP assistance, the publication of census dates, and electronic communication between students and VET providers.

### **Human Rights Implications**

#### *Right to Education*

The Guidelines set out requirements that VET providers must follow with respect to giving notice to a person who is enrolled with the VET provider regarding the VET unit of study for which they are seeking Commonwealth assistance. The Guidelines also set out various requirements for the publication of the census date by VET providers. While, the Guidelines establish administrative requirements that place obligations on VET providers, these obligations have some impact on students and to that extent they engage an individual's right to education.

Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of everyone to education. To the extent that Article 13 of the ICESCR is engaged, it is engaged positively as the Guidelines establish clear requirements about the way in which notice is to be provided to students regarding the Commonwealth assistance available to them. The Guidelines also establish clear requirements about the VET provider's obligations regarding publication and variation of census data.

#### *Right to Privacy*

This Legislative Instrument engages the right to privacy contained in Article 17 of the ICESCR. The Guidelines set out a range of information technology requirements for the electronic communication of information and documents between VET students and VET providers. The Guidelines also set out the requirements for electronic communications from a VET student to a VET provider, to enable unique identification of the VET student in an electronic form and for methods that may be used by VET students to identify themselves and indicate their approval of information which is communicated electronically, for instance by the use of a unique identifier.

To the extent that any of the information exchanged contains personal information, it will be subject to protection under the Act. The Act is consistent with the *Privacy Act 1988* and includes the requirement that both higher education and VET providers comply with the information privacy principles in the *Privacy Act 1988*. The Act also includes the use of penalties where an officer uses personal information acquired in the course of their official employment for purposes other than their official employment.

To the extent that the right to privacy is engaged, it is not limited by the Instrument as the protections in place are consistent with the way in which personal information is collected and protected under the *Privacy Act 1988*.

### Conclusion

This Legislative Instrument is compatible with human rights. While the Guidelines engage the two identified human rights, it does not place limitations on those rights.

### **Detailed explanation of the amendments made to the *VET Administration Guidelines***

#### **Table of contents**

The table of contents lists the number, title and page number of the chapters contained within the Guidelines.

The Table of Contents has been updated to reflect the amendments made to the chapter titles and page numbers.

#### **Chapter 1      Interpretation**

Chapter 1 provides interpretation of the terms within the Guidelines.

1.1.1    Specifies that unless the contrary intention appears, terms have the same meaning as in the Act.

1.1.2    Specifies that terms in italics are those defined in paragraph 1.1.3.

1.1.3    Defines terms used in the Guidelines.

The specific amendments to the previous Guidelines are as follows:

Amendments have been made to this chapter to provide for the correct referencing style when referring to Schedule 1A to the Act.

New paragraphs 1.1.2 and 1.1.3, previously paragraphs 1.1.5 and 1.1.10 respectively, have been renumbered to provide for a logical, sequential order of items listed.

Some definitions in this chapter have already been defined in the *VET Provider Guidelines*. Rather than duplicating definitions for commonly used terms under the Act, the amendments refer the reader to the *VET Provider Guidelines*.

A definition for 'census date' has been inserted for reasons of transparency and clarity as clause 67 of Schedule 1A to the Act does not define what a census date is, but provides guidance on how a census date is to be determined.

## Chapter 2      Notice to Students

Chapter 2 sets out the requirements for notices that a VET provider must give to a person that receives VET FEE-HELP assistance.

2.1      Sets out the *Purpose* of the chapter.

2.1.1    Details the purpose of the chapter.

2.2      Sets out the *Notices that a VET provider must give to a person*.

2.2.1    Requires that a VET provider give a notice to a person enrolled with a VET provider for a VET unit of study and who is seeking Commonwealth assistance.

2.3      Sets out the *Information that a notice must contain*.

2.3.1 – 2.3.5    Specifies information that must or can be contained in a notice, including information on the person's right to request the correction of information contained in the notice.

2.4      Sets out the *Period within which a notice must be given*.

2.4.1    Requires that a VET provider give a notice within 28 days of the census date indicated in the notice.

The specific amendments to the previous Guidelines are as follows:

Amendments have been made to this chapter to provide for the correct referencing style when referring to Schedule 1A to the Act.

Paragraph 2.1.1 has been amended for clarity and ease of reading purposes. Unnecessary references to the Act have been removed to reduce confusion and legalese and provide for a plain English style approach.

Previous paragraphs 2.5, 2.5.1, 2.10, 2.10.1, 2.10.10, 2.10.15, 2.10.20, 2.10.25, 2.15 and 2.15.1 have been renumbered to 2.2, 2.2.1, 2.3, 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.5, 2.4 and 2.4.1 respectively to provide for a logical, sequential order of items listed.

New paragraph 2.2.1, previously paragraph 2.5.1, has been amended to reflect changes made to paragraph 2.1.1.

The requirements contained within previous paragraphs 2.10.5 and 2.10.10 was duplicative. For ease of clarity and to simplify the administrative burden on VET providers, previous paragraphs 2.10.5 and 2.10.10 have been merged to form the new paragraph 2.3.2 with the duplicative content removed.

New paragraph 2.3.3, previously paragraph 2.10.15, has been amended to reflect changes in paragraph numbering. The paragraph has also been amended to make it clear that only one notice is required where all the VET units of study have the same census date and VET tuition fee amounts.

Paragraph 2.10.30 has been removed.

New paragraph 2.4.1 was previously 2.15.1. This paragraph has been amended to reflect changes to paragraph numbering.

## Chapter 3      Census date publication requirements

Chapter 3 sets out the date and manner in which census dates must be published and the dates before which, and the circumstances in which, published census dates can be varied and republished.

- 3.1      Sets out the *Purpose* of the chapter.
  - 3.1.1   Details the purpose of the chapter.
- 3.2      Sets out the *Periods to which the requirements for census dates apply*.
  - 3.2.1   Specifies the periods during which a VET provider provides or proposes to provide a VET unit of study must determine a census date for the unit.
- 3.3      Sets out the *Publication of census dates*.
  - 3.3.1   Specifies when a census date must be published, except where a VET unit of study is being undertaken only through a VET restricted access arrangement.
  - 3.3.2   Requires a VET provider to provide students with access to an information system where published census dates are only available through the Internet or other electronic format.
  - 3.3.3   Specifies where a census date is to be made available to each student if a VET unit of study is being undertaken only through a VET restricted access arrangement.
- 3.4      Sets out the *Variation to a published census date*.
  - 3.4.1   Specifies the circumstances which must exist for a VET provider to be allowed to vary a census date and the dates before which a variation to a census date must be made.
  - 3.4.2   Specifies the circumstances which must exist for the Minister to approve a variation to a census date.
  - 3.4.3   Specifies that, without limiting the generality of subparagraph 3.4.1(c) and 3.4.1(d), a VET student or person will be disadvantaged by a variation that brings the census date forward.
  - 3.4.4 – 3.4.6   Specifies the publishing requirement relating to variations of census dates.

The specific amendments to the previous Guidelines are as follows:

Amendments have been made to this chapter to provide for the correct referencing style when referring to Schedule 1A to the Act.

The title of this chapter has been amended to conform more closely to titles used in guidelines made under the Act and the words ‘census date’ italicised throughout this chapter to reflect changes made to paragraph 1.1.3 of the Guidelines.

Paragraph 3.1.1 has been amended for clarity. Unnecessary references to the Act have been removed to reduce confusion and legalese and provide for a plain English style approach.

Previous paragraph 3.5.5 was a duplication of the applicability of clause 67 of Schedule 1A to the Act and has therefore been deleted.

The title of new paragraph 3.2, previously paragraph 3.5, has been amended for reasons of clarity.

Previous paragraphs 3.5.1, 3.10, 3.10.1, 3.10.5, 3.10.10, 3.15, 3.20.1, 3.20.5, 3.25.5 and 3.25.10 have been renumbered to 3.2.1, 3.3, 3.3.1, 3.3.2, 3.3.3, 3.4, 3.4.1, 3.4.3, 3.4.4, 3.4.5 respectively to provide for a logical, sequential order of items listed.

New paragraph 3.3, previously paragraph 3.10 has been amended for reasons of clarity and to provide for a plain English style approach.

New paragraph 3.3.1, previously paragraph 3.10.1 has been amended to remove unnecessary references to the Act. New subparagraph 3.3.1(b)(iii) has been inserted to allow for a process for newly approved providers to begin offering VET FEE-HELP assistance to students outside of the publishing periods identified in new subparagraphs 3.3.1(b)(i) and 3.3.1(b)(ii) on written approval by the Department. Already approved providers who wish to add additional units or courses outside of their schedule of VET tuition fees, will also be able to apply for approval from the Department.

New paragraph 3.3.3, previously paragraph 3.10.10, has been amended by deleting unnecessary words and formatting style changes.

The title of new paragraph 3.4, previously paragraph 3.15, has been amended for reasons of clarity.

New subparagraphs 3.4.1(a), 3.4.1(b) and 3.4.1(c), previously subparagraphs 3.20.1(a), 3.20.1(b) and 3.20.1(c) respectively, have been amended for reasons of transparency and clarity and to remove unnecessary references to the Act and the Guidelines. Previous paragraph 3.15.1 has been subsumed into new subparagraphs 3.4.1(c) and 3.4.1(d) for simplification and clarification purposes. New subparagraph 3.4.1(d) has been added for transparency and clarity purposes.

Previous paragraphs 3.20, 3.25 and 3.25.1 have been removed to create a concise and logical sequence of requirements under new paragraph 3.4 entitled 'Variation to a *published census date*.'

New paragraph 3.4.2 has been added for reasons of transparency and clarity.

New paragraph 3.4.3 has been amended to reflect changes made to paragraph numbering.

New paragraph 3.4.4, previously paragraph 3.25.5, has been amended to reflect formatting style changes.

New paragraph 3.4.5 was previously paragraph 3.25.10. This paragraph has been amended to simplify the applicability of published census date requirements to varied census dates.

New paragraph 3.4.6 has been inserted to provide clarity around the process for approval of a variation of a census date by the Minister where the variation disadvantages a student or person.

## **Chapter 4      Electronic communication**

Chapter 4 sets out requirements relating to information systems used by students to give documents to their VET provider and for systems used by VET providers to give notices to students. This chapter also specifies the methods that may be used by students to identify themselves to their VET provider and indicate their approval of electronic documents.

- 4.1 Sets out the *Purpose* of the chapter.
- 4.1.1 Details the purpose of the chapter.
- 4.2 Sets out the *Information technology requirements*.
- 4.2.1 Specifies requirements for the information system to communicate notices or documents electronically from students to VET providers. It includes details of the kinds of electronic communications and the requirements of the information system regarding accessibility, security, storage, unique identification where required and printable receipt verification.
- 4.2.2 Specifies requirements relating to the electronic communication of notices or other documents given by a VET provider to a student. It includes details of the kinds of electronic communications and provisions for students to be informed and given authority to use the system and for storage and accessibility of the notices or documents.
- 4.3 Sets out the *Electronic communication requirements*.
- 4.3.1 – 4.3.3 Requires VET providers ensure that where a student is enabled to provide a signed communication electronically, that it must be done by a method that includes an identification that is unique to the student.

The specific amendments to the previous Guidelines are as follows:

Amendments have been made to this chapter to provide for the correct referencing style when referring to Schedule 1A to the Act.

Paragraph 4.1.1 has been amended to remove Notes 1 and 2 in this paragraph. Note 1 has been removed as the topic matter exclusively deals with electronic communications. Note 2 has been removed as the obligations for handling VET personal information is provided for in the Act and any such breach is an offence under clause 73 of Schedule 1A to the Act.

New paragraphs 4.2, 4.2.1, 4.2.2, 4.3, 4.3.1 and 4.3.3, previous paragraphs 4.5, 4.5.1, 4.5.5, 4.10, 4.10.1, 4.10.5 respectively, have been renumbered to respectively to provide for a logical, sequential order of items listed.

New paragraphs 4.2.1 and 4.2.2, previously paragraphs 4.5.1 and 4.5.5 respectively have been amended for clarity and ease of reading purposes.

The title of new paragraph 4.3, previously paragraph 4.10, has been amended for reasons of simplicity and clarity.

New paragraph 4.3.1, previously paragraph 4.10.1, has been amended to remove unnecessary references to the Act.

New paragraph 4.3.2 replaces the 'Note' title. This paragraph has been amended to reflect changes made to paragraph numbering only.

New paragraph 4.3.3, previously paragraph 4.10.5 has been amended to reflect changes to paragraph numbering.