

EXPLANATORY STATEMENT

VET Student Loans Rules 2016

Issued by the authority of the Minister for Education and Training

Background

The *VET Student Loan Rules 2016* (the Rules) form part of the Australian Government's reform of the student loan arrangements for vocational education and training (VET) courses, the full policy context and background for which is set out in the Explanatory Memorandum to the *VET Student Loans Act 2016* (the Act). The purpose of the Act is to effectively replace the VET FEE-HELP loan scheme from 1 January 2017 and introduce a vastly improved student loans program for VET.

Authority

The Commonwealth Minister for Education and Training (the Minister) makes this instrument under section 116 of the *VET Student Loans Act 2016*.

Purpose and operation

The measures in the Rules are designed to give effect to the Act by enhancing the protection of students and taxpayers, the regulation of providers and the efficient administration of the VET student loans program.

The Rules achieve this in a number of key respects by:

- detailing the provider suitability requirements for the purpose of ensuring loans are paid to suitable providers. These requirements raise the bar for providers seeking entry into the student loans program and also set the standards that must be maintained once a provider has been approved;
- strengthening the tuition assurance requirements and imposing greater obligations on the tuition assurance operator. These new requirements provide that students will be transferred to replacement courses wherever possible and fee repayment will only arise where no equivalent course is available.
- imposing a number of requirements and limitations on the marketing of courses by approved course providers;
- providing further detail regarding the rights of students in respect to the re-crediting of their FEE-HELP balances; and
- improving provider processes such as through retention of information and ongoing information requirements, which include requiring providers to provide ongoing financial forecasting information.

In many aspects the Rules broadly replicate the existing *Higher Education Support (VET Guideline) 2015*, for example the rules relating to tuition fees, census days, many of the required processes and procedures for providers and information to be provided to students. However, these rules have been reviewed and enhanced wherever possible to accommodate the new VET Student Loans program.

The Rules also introduce a cap on the total amount of VET student loans that can be approved for each of the next 3 calendar years (starting 2017). This measure introduces fiscal sustainability and is in response to the unsustainable growth of the VET FEE-HELP scheme and the unscrupulous provider behaviour which led to poor student outcomes.

These Rules form part of the legislative package designed to overhaul the VET FEE-HELP scheme. The package includes the Act, the *VET Student Loans (Charges) Act 2016* and the *VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016* as well as legislative instruments made under these Acts. The Rules commence on 1 January 2017.

The notes on the sections to the Rules are set out in Attachment A.

Consultation

In April 2016, the former Minister for Vocational Education and Skills, Senator the Hon Scott Ryan, hosted a series of face-to-face consultations in Perth, Adelaide, Melbourne, Sydney, Brisbane and Cairns, to inform the content of a VET FEE-HELP discussion paper. 176 VET FEE-HELP providers and peak bodies attended the consultations.

On 29 April 2016, the Government released the 'Redesigning VET FEE-HELP discussion paper' to inform the final design of the new program. The Department of Education and Training received a total of 121 submissions from interested parties including VET FEE-HELP providers, peak bodies, students, industry and state and territory governments. This feedback helped inform the design of the current scheme and the intent behind the Rules.

The Department of Education and Training has also consulted with the *VET Student Loans Implementation Advisory Group*, which consists of peak bodies and key VET providers. This process has allowed for the draft Rules to receive external feedback from key stakeholders which has assisted with the final stages of designing the Rules. The Minister for Finance has also been consulted on these Rules.

Regulation Impact Statement

The Rules give effect to policies and proposals examined in the Regulation Impact Statement for the Act, entitled '*VET FEE-HELP Redesign*'.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights is set out in Attachment B. It has been prepared in accordance with section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

VET Student Loans Rules 2016

Notes on Sections

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *VET Student Loans Rules 2016* (the Rules).

Section 2 – Commencement

The table in this section specifies that the Rules commence on 1 January 2017.

Section 3 – Authority

This section provides that the Rules are made under the authority of the *VET Student Loans Act 2016* (the Act).

Section 4 – Definitions

This section sets out the definitions of terms used in the Rules. Unless any contrary intention is provided for in these Rules, in accordance with paragraph 13(1)(b) of the *Legislation Act 2003*, the terms used in the Rules have the same meaning as they do in the Act.

Section 5 – Meaning of ‘genuine student’

Section 5 provides for the meaning of ‘genuine student’ for the purposes of section 6 of the Act. The concept of a ‘genuine student’ arises in the Act in three contexts:

- under section 20, the Secretary is not required to pay a loan amount if satisfied the student is not genuine;
- under section 45, enables an approved course provider to be audited to determine if the provider’s students are genuine; and
- under section 71, enables the Secretary to re-credit a student’s FEE-HELP balance if satisfied the student is not genuine.

These provisions are designed to deter providers from enrolling students in approved courses when the student has little or no interest in undertaking the course.

Subsection 5(2) sets out the matters that may be taken into account for determining whether a person is a ‘genuine student’ in relation to a course. This list is not exhaustive.

If a student has enrolled in an online course and the student has logged in to the course on only a nominal number of occasions, this will suggest the student is not a genuine student. Similarly, a student may not be considered genuine if the student fails to communicate to the Secretary when required his or her agreement to continue to use the VET student loan to pay tuition fees. It is

anticipated that students will be required to confirm with the department for one or more of the fee periods and prior to the census day that the student intends to continue to use the VET student loan. An electronic process for this confirmation of student progression and engagement is proposed to be in place from 1 July 2017.

Paragraph 5(2)(h) is relevant to determining if a student is entitled to VET FEE-HELP assistance during the 2017 transitional period. In accordance with section 43 of the *Higher Education Support Act* 2003, students (referred to as the ‘grandfathered’ students) are only entitled to VET FEE-HELP assistance if amongst other things, the Secretary is satisfied the student is a genuine student within the meaning of the Act. This is managed through an electronic ‘student opt-in’ which is currently in place and has been communicated to existing VET FEE-HELP students.

Part 2—Loans to students

Division 1— Courses

Section 6 – Purpose of this Division

This section provides that Division 1 is made for the purpose of paragraph 14(2)(b) of the Act. This provision enables the Rules to specify other requirements a course must meet to be an approved course. A VET student loan is only payable for an approved course.

Section 7 – Kinds of Courses

The effect of subsection 7(1) is that if a course provider receives funding from a State or Territory for enrolments in the course, to be an approved course the course must lead to a qualification of diploma or advanced diploma in the Australian Qualifications Framework (which is defined in the Act). If the course meets these requirements, subsection 7(2) provides the course is a ‘State or territory subsidised course’. This definition is relevant to section 12 of the Rules.

Section 8 – Course Content and activities must be necessary

Section 8 requires that to be an approved course, the course must not include content or activities that do not contribute to achieving the qualification concerned. This rule will ensure students are being delivered the education required for their qualification and not being in effect charged tuition fees for material not relevant to their qualification.

Division 2— Applications for loans

Section 9 – Purpose of this Division

This section provides Division 2 is made for the purposes of paragraphs 17(2)(b) and (c) of the Act. Section 17 of the Act sets out the requirements for a VET student loan application.

Section 10 – Applications for loans

Subsections 10(1) and (2) require that an application for a loan must:

- not be made before the end of the period of 2 business days after the student enrolls in the course; and
- be made on or before the census day for the course, or the part of the course.

Together these provisions ensure students are given time to consider their enrolment before they apply for a VET student loan and before the census day which is the date by which they can cancel their enrolment without incurring tuition fees. The requirements relating to setting census days are outlined in section 131 of the Rules.

Subsection 10(3) requires the loan application to be signed by the student. The first note underneath this subsection reminds the reader that most applications signed by students under 18 years of age will also have to be signed by a responsible parent (see subsection 17(3) of the Act). The second note assists the reader by including reference to section 152 of the Rules which enables an application made by electronic communication to be regarded as signed by the student if certain requirements are met.

Part 3—Paying and repaying loan amounts

Section 11— Purpose of this Part

Section 11 provides that this Part is made for the purposes of paragraph 137-19(2)(b) of the *Higher Education Support Act 2003*. Ordinarily, the amount of the VET student loan debt is 120% of the loan amount. Paragraph 137-19(2)(b) enables the Rules to specify a lesser percentage of the loan amount as being the VET student loan debt.

Section 12 – Amount of VET student loan debt

This section specifies that if the course to which the VET student loan debt relates is a State or Territory subsidised course, the amount of the VET student loan debt for the person is 100% of the loan amount.

Part 4—Course provider requirements

Division 1—Meaning of provider

Section 13 – Meaning of provider

The course provider requirements are relevant both at the time of assessing the suitability of a body as an approved course provider (section 25 of the Act) and as ongoing requirements that must be met once a body has been approved (section 47 of the Act). For ease of reference, section 13 defines ‘provider’ to mean the body applying to be approved as an approved course provider for the purposes of section 25 and to mean the approved course provider for the purposes of subsection 47(2).

Division 2—Fit and proper person requirements

Section 14 – Purpose of this Division

A course provider requirement is that a body must be a fit and proper person. Section 116(3) of the Act enables rules to provide for matters that a decision maker may or must have regard to in making the decision. This division sets out the matters the Secretary may have regard to in deciding whether a body is a fit and proper person for the purposes of paragraph 25(2)(f) of the Act. The test applies for most of its parts to both the applicant body and its key personnel.

Section 15 – Compliance with the law

Subsection 15(1) provides that the Secretary may have regard to whether a provider or any of its key personnel has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Commonwealth or State/Territory law in deciding if the provider is a fit and proper person. A note underneath this subsection reminds the reader that in certain circumstances spent convictions are not required to be disclosed and must be disregarded.

Subsection 15(2) provides if there has been such an order or conviction, the Secretary may have regard to the seriousness of the offence or contravention concerned.

Subsection 15(3) enables the Secretary to also have regard to whether a provider or any of its key personnel is currently involved in proceedings before a court or tribunal in deciding whether a provider is a fit and proper person.

Section 16 – Meaning of *key personnel*

This section defines ‘key personnel’. For a provider to be a fit and proper person, some of the requirements must be met by its key personnel as well as the provider. This ensures close scrutiny of those responsible for the management of the provider and not just the provider.

Section 16 provides each of the following is one of a provider’s key personnel:

- a director, officer or member of the provider’s governing body;
- a person or body that is concerned with, or takes part in, the executive or senior management of the provider, or that exercises control or influence over the management or direction of the provider;
- a person who exercises control or influence over the allocation of the resources of the provider.

Section 17 – Financial record

In deciding whether a provider is a fit or proper person, section 17 enables the Secretary to have regard to a list of factors relating to the financial records of the provider or any of its key personnel, such as if they have been insolvent or bankrupt or have outstanding debts to the Commonwealth. For example, the Secretary may have regard to the type of debt owed to the Commonwealth, such as whether it is a small amount of income tax still owing by a key personnel as compared to a substantive amount of debt owed by the provider which has remained unpaid for a length of time.

Section 18 – Management record

This section enables the Secretary to have regard to the management record of a provider in deciding whether a provider is a fit and proper person.

Subsection 18(1) provides that the Secretary may have regard to whether the provider has had cancelled, revoked or suspended:

- its registration as a registered training organisation or registered higher education provider;
- its approval as an approved course provider, VET provider (under the VET FEE-HELP scheme) or as a higher education provider; or
- any subsidy arrangements it has with a State or Territory for the provision of education.

Subsection 18(2) provides that the Secretary may have regard to whether the provider has had a condition imposed on a registration, approval or arrangement covered by subsection (1) or breached such a condition.

Subsection 18(3) provides that the Secretary may have regard to whether any of the provider's key personnel has been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*.

Section 19 – Provision of information

This section provides that the Secretary may have regard to whether a provider or any of its key personnel has provided false or misleading information in deciding whether a provider is a fit and proper person. The false or misleading information must have been provided to one of the bodies listed in paragraphs (a) to (d) and in circumstances where it is reasonable to assume that the provider or its key personnel knew that the information was false or misleading.

Section 20 – Previous conduct and involvements

In deciding whether a provider is a fit or proper person, section 20 enables the Secretary to have regard to previous conduct and involvements of the provider and its key personnel.

Subsection 20(1) allows the Secretary to have regard to whether the provider or any of its key personnel has been found not to be a fit and proper person for the purposes of one or more of the Commonwealth laws listed in paragraphs (a) to (e) or for the purposes of subsidy funding arrangements with a State or Territory for the provision of education.

Subsection 20(2) provides the Secretary may have regard to whether the provider, its key personnel or any person engaged to act for, or on behalf of, the provider, has engaged in conduct that reasonably suggests a deliberate pattern of unethical behaviour or of acting inconsistently with laws of the Commonwealth, State or Territory relating to the provision of education or training. This subsection enables the Secretary to consider the actual conduct of the provider and not just whether a court order has been made against the provider when it has acted contrary to the law.

Subsection 20(3) enables the Secretary to consider the past business activities of the provider or its key personnel. It provides that the Secretary may have regard to whether the provider or any of its key personnel has previously been involved in a business that provided education and whether, at the time of that involvement, the business would have been a fit and proper person for the purposes of paragraph 25(2)(f) of the Act.

Subsection 20(4) is a 'catch all' provision that enables the Secretary to have regard to any other matter relevant to the honesty, knowledge or ability of the provider and its key personnel.

Division 3—Provider suitability requirements

Subdivision A—Purpose of this Division

Section 21— Purpose of this Division

For the purposes of subsection 26(1) of the Act, this Division 3 sets out the provider suitability requirements for the purposes of ensuring that loan amounts are paid to suitable course providers. These requirements are an integral part of the reform for the VET student loan program and are introduced to ensure the bar is raised in terms of both the quality of providers eligible for approval and the standards that must be maintained once a provider is approved.

The first note to section 21 reminds the reader that the provider suitability requirements form part of the course provider requirements. The Secretary must be satisfied that the course provider requirements are met for a provider to be approved as an approved course provider (section 25 of the Act). The second note reminds the reader that once approved, providers must continue to meet the course provider requirements (section 47 of the Act).

Subdivision B—General requirements

Section 22 – General requirements

Section 22 sets out the general requirements to be met for the provider suitability requirements. This is an important provision because it sets the standard for the remaining provider suitability requirements. It is not enough to meet these requirements for a provider to merely comply with strict legal requirements. A provider must be committed to the delivery of high quality vocational education and training and to achieving the best outcomes for students (paragraph 22(a)).

Paragraph 22(b) requires the provider to act efficiently, honestly and fairly in all dealings with the Commonwealth, students and stakeholders.

Paragraph 22(c) provides that the provider must have a record of satisfactory conduct in relation to any previous vocational education and training provided by the provider and for which the Commonwealth, a State or a Territory provided funding. For example, this means to meet the suitability requirements for an approved course provider, the provider must have a satisfactory record as a VET provider under the VET FEE-HELP scheme.

Subdivision C—Financial performance

Section 23 – Financial performance

This section deals with the financial performance aspect of the provider suitability requirements.

A provider must be able to pay its debts as and when they are due and payable (subsection 23(1)). The provider must also be financially viable (subsection 23(2)). Subsection 23(3) sets out a list of indicators for when a provider is financially viable. This list is not exhaustive and it is a matter for the Secretary's discretion the weight to be given to any of the indicators and whether the Secretary is satisfied the provider is financially viable.

The financial record of the provider is considered under section 17 of the Rules as part of the fit and proper person assessment. Financial information must be provided annually under section 113 of the Rules.

Section 24 – Dividends and related party transactions

Subsection 24(1) provides that a provider's total dividend distributions during a financial year must not exceed the provider's after tax profits for the previous financial year.

Subsection 24(2) provides that the provider's payments to key personnel and related parties for the provision of goods and services must be only for goods and services that are reasonably necessary for the operations of the provider and on terms that comply with the accounting standard, including in relation to arm's length transactions. Accounting standard has the same meaning as in the *Corporations Act 2001*; accounting standards are legislative instruments.

Section 25 – Insurance

Section 25 provides it is a provider suitability requirement that a provider must have in place workers compensation insurance as required by law and adequate public liability insurance.

Subdivision D—Management and governance

Section 26 – Management and governance

This section deals with the role of management and governance as a provider suitability requirement.

A provider must have robust and appropriate management and governance structures with clearly defined decision-making processes that ensure accountability for decisions and actions. This requires a clear chain of accountability linking outcomes and actions to the persons responsible for making the relevant decisions.

Subsection 26(2) requires a provider to maintain the integrity of student records and data and report data consistently, accurately and on time to the Commonwealth. These requirements are important both from a student and the Commonwealth's perspective to ensure the accuracy of records and enable loan amounts to be paid on time for genuine students. An approved course provider may be audited (section 45 of the Act) to ensure compliance with these requirements.

Section 27 – Key personnel and advisers

There are two tiers to the provider suitability requirements in section 27. Subsection 27(1) requires the key personnel and advisers of the provider to have the experience and expertise necessary to perform their respective duties and responsibilities. Subsection 27(2) requires the combined experience and expertise of the provider's key personnel and advisers to include experience and expertise within a number of specific fields.

Subsection 27(3) makes clear that the fields of experience/expertise identified in subsection 27(2) do not limit the experience/expertise the provider's key personnel and advisers must have to perform their duties and responsibilities.

Section 28 – Paying commissions to staff

Section 28 prohibits a provider from paying its staff commissions, benefits or bonuses (however described) that have any connection to the number of students enrolled by the provider and whose tuition fees are paid (in whole or part) using VET student loans.

This section is intended to ensure a provider's staff are not incentivised to merely maximise student enrolments but rather the focus for the provider is on delivering high quality vocational education and training. Section 28 is also consistent with section 49 of the Act which prohibits a provider from using brokers or agents to undertake certain activities.

Section 29 – Compliance with laws

It is a provider suitability requirement that a provider must comply with any of the Commonwealth, State or Territory laws listed in subsection 29(1).

Subsection 29(2) requires a provider to have the organisational and administrative resources to ensure it is able to meet its responsibilities under the laws covered by subsection 29(1). A provider must also review on a regular basis its compliance with, and effectiveness of its operations in relation to, those laws. This requirement, in effect, will require providers to prioritise their compliance programs and ensure their systems and operations are regularly reviewed.

Section 30 – Provider must meet certain standards

Section 30 provides that it is a provider suitability requirement that a provider must meet (and continue to meet) the standards for a registered training organisation. The standards that apply to a provider will differ slightly depending on whether the provider is an NVR registered training organisation or registered with either the Western Australia Training Accreditation Council or the Victorian Registration and Qualifications Authority. Failure of an approved course provider to continue to meet these standards may result in compliance action such as a compliance notice being issued and/or possible suspension or revocation.

Subdivision E—Experience and course offerings

Section 31— Experience in providing vocational education and training.

A provider is required to have experience in providing vocational education and training as a registered training organisation. Subsection 31(2) provides a list of factors the Secretary may have regard to in deciding whether a provider has sufficient experience. This list is not exhaustive. The factors include:

- whether the provider has been registered as a registered training organisation for 3 or more years. If this criterion is not met, it may still be satisfied if the provider demonstrates sufficient experience and explains why it has not being registered for 3 or more years (for example, due to a recent change in legal structure);
- the history of the provider and its key personnel in delivering vocational education and training to genuine students. It is not enough that the provider and its key personnel have had substantial experience in delivering VET, the experience must be in delivering VET to genuine students which is consistent with the overarching commitment to achieving best outcomes for students;
- the history in delivering education through subsidy funding arrangements with a State or Territory;
- the scope of the courses the provider and its key personnel have experience in providing and the levels of qualification provided by those courses. Again, it does not eliminate a provider as being suitable if the provider has not been delivering diploma and above courses, for example, the Secretary may decide the provider has sufficient experience if it has been delivering for many years a Certificate IV in a particular field of expertise.

Section 32 – Minimum course offerings

This section provides that a provider must be providing at least one course set out in the courses and loan caps determination to be approved as an approved course provider and that an approved course provider must continue to provide an approved course to continue to meet the course provider requirements.

Subdivision F—Student outcomes

Section 33 – Completion rates

Subsection 33(1) requires, as part of the provider suitability requirements, that the Secretary must be satisfied the provider has (or will have) adequate student completion rates for each of its courses (or parts of courses) that lead to a diploma, advanced diploma, graduate certificate or graduate diploma as set out in the Australian Qualifications Framework.

Subsection 33(2) provides that to continue to meet the course provider requirements, the Secretary must be satisfied that from the time the provider was approved as an approved course provider, the provider has met the completion rate benchmarks for courses or parts of courses. The benchmarks will be determined by the Secretary and published on the Department's website (as in force from time to time) and so will be freely available. The Secretary may decide to publish benchmarks particular to the VET sector generally or may provide for benchmarks that are more particular to a type of course or specific to particular courses.

Under section 30 of the Rules, it is a provider suitability requirement that providers must meet the standards that apply to their registration as a training organisation, which will protect against providers lowering their quality standards in order to meet the completion rate benchmarks.

Section 34 – Student support

This section requires the Secretary to be satisfied that the provider has genuine students with satisfactory levels of student engagement and student satisfaction. This provision reflects the general requirement that a provider be committed to achieving the best outcomes for students. Section 5 of the Rules sets out factors that may be considered in determining whether students are genuine.

Subsection 34(2) requires that a provider must assess annually student satisfaction in relation to each of its courses. This information will be required to be given by the provider to the Secretary as part of the annual ongoing information requirements detailed in section 116 of the Rules.

Subdivision G—Workplace relevance

Section 35 – Workplace relevance

This section requires providers to have established and maintained material, relevant and appropriate links with industry and other bodies to ensure its approved courses meet workplace needs and improve employment outcomes. Relationships with industry are an integral component to ensuring the best outcomes for students. Subsection 35(2) sets out a list of other bodies which is not exhaustive but acknowledges other links which improve students' employment outcomes, such as links with registered higher education providers, providing pathways for students to progress onto further study.

Division 4—Listed course providers taken to meet certain requirements

Section 36 – Purpose of this Division

This section is made for the purposes of subsection 27(1) of the Act which enables the rules to provide for a listed course provider to be taken to meet one or more course provider requirements. A listed course provider is defined in subsection 27(2) of the Act.

Section 37 – Listed course providers taken to meet certain requirements

Section 37 provides that a listed course provider is taken to meet the following course provider requirements:

- the requirement in paragraph 25(2)(a) of the Act to be a body corporate that is not a trustee; and
- the provider suitability requirements set out in sections 23 (financial performance), 24 (dividends and related transactions) and 31 (experience in providing vocational education and training) of the Rules.

Part 5—Approving course providers

Section 38 – Purpose of this Part

This section provides that Part 5 of these Rules has effect for the purpose of paragraph 32(1)(b) of the Act. It provides that the Secretary is not required to consider or decide an application for approval as an approved course provider in the circumstances set out in the rules.

Section 39 – Applications that will be considered

Section 39 prescribes two circumstances in which the Secretary is not required to consider or decide an application for approval as an approved course provider.

Under paragraph 39(1)(a) the Secretary is not required to consider an application which is made outside of the period notified on the Department's website. In effect this means that no longer will applicants for provider approval be able to apply at any time but rather must apply during an application period. It is anticipated for approval as an approved course provider commencing 1 July 2017, the application period will open late December 2016 and close in or about mid-February 2017.

Paragraph 39(1)(b) provides the Secretary is not required to consider an application if the approval by the Secretary of additional VET student loans during the calendar year would result in the VET student loans cap for the calendar year being exceeded. The VET student loans cap for each of the calendar years 2017, 2018 and 2019 is the amount specified in section 155 of these Rules.

Part 6—Tuition assurance arrangements

Division 1—Approved tuition assurance arrangements

Subdivision A—Purpose of this Division

Section 40 – Purpose of this Division

This section describes the purpose of Division 1 of Part 6 of the Rules as being to set out the requirements that must be met for a tuition assurance arrangement to be an approved tuition assurance arrangement. It is a course provider requirement (section 25 of the Act) that a provider must be a party to an approved tuition assurance arrangement.

Subdivision B—Operator must be approved

Section 41 – Operator must be approved

It is a requirement for an approved tuition assurance arrangement that the tuition assurance scheme operator (the operator) is approved by the Secretary (subsection 41(1)). A person must apply to the Secretary to be approved as an operator and the application must be in the form approved by the Secretary.

Subsection 41(4) provides that the Secretary may approve a person as an operator if the Secretary is satisfied that the person meets the three requirements specified. First, that the person has the capacity (including the administrative and financial resources) to meet the operator's obligations under an

approved tuition assurance arrangement and under the Act. Second, the person has the capacity (including the administrative resources) to assess quickly whether or not to enter into a tuition assurance arrangement with an approved course provider. Third, that the person is a fit and proper person.

Subsection 41(5) enables the Secretary to revoke the approval of an operator at any time if the Secretary is no longer satisfied the operator meets the requirements specified in subsection 41(4). For example, if an operator has not met a requirement imposed on the operator by this Act (which includes these Rules), the Secretary may decide to revoke the person's approval as an operator. This will mean the arrangement with the course provider is no longer an approved tuition assurance arrangement.

Subdivision C—Fit and proper person requirements

Section 42 – Purpose of this Subdivision

This section provides that the Secretary may have regard to the matters set out in Subdivision C of Part 6 of the Rules for the purposes of deciding whether a tuition assurance scheme operator is a fit and proper person. Similar matters are provided for in Division 2 of Part 4 of these Rules in determining if a body is a fit and proper person for the purposes of the course provider requirements.

Section 43 – Compliance with the law

This section enables the Secretary to have regard to whether the operator or any of its key personnel has been convicted of an offence against, or ordered to pay a pecuniary penalty under, a law of the Commonwealth or a State or Territory for the purposes of deciding whether a tuition assurance scheme operator is a fit and proper person.

The Secretary may have regard to the seriousness of any past offences or contraventions and to any current court or tribunal proceedings involving the operator or any of its key personnel.

Section 44 – Meaning of *key personnel*

Section 44 defines who is included in a tuition assurance scheme operator's *key personnel* for the purposes of deciding whether an operator is a fit and proper person. This definition is, in effect, the same as that used in section 16 of the Rules in determining who is a provider's key personnel.

Section 45 – Financial record

This section enables the Secretary to have regard to the financial record of a tuition assurance operator or any of its key personnel for the purposes of deciding whether the operator is a fit and proper person. The matters the Secretary may have regard to include, for example, if the operator or any of its key personnel has been insolvent or bankrupt or has outstanding debts to the Commonwealth.

Section 46 – Management record

This section enables the Secretary to have regard to the management record of a tuition assurance scheme operator for the purposes of deciding whether the operator is a fit and proper person. This includes whether the operator, or a person with whom the operator has been associated, has been refused or had revoked a licence, registration or approval under a law of the Commonwealth, a State or a Territory, and the reasons for the refusal or revocation (subsection 46(1)).

Subsection 46(2) also enables the Secretary to have regard to whether the operator has had a condition imposed on a licence, registration or approval and if the operator has breached any such condition.

Subsection 46(3) provides that the Secretary may have regard to whether any of the operator's key personnel has been disqualified from managing corporations.

Section 47 – Previous conduct and involvements

Subsection 47(1) enables the Secretary, when deciding whether an operator is a fit and proper person, to have regard to whether the operator or any of its key personnel has previously been found not to be a fit and proper person for the purposes of Commonwealth legislation dealing with, or subsidy funding arrangements with a State or Territory for, the provision of education.

Subsection 47(2) allows the Secretary to consider whether the operator or any of its key personnel have previously been involved in a business that provided education and whether, at the time of that involvement, the business would have satisfied the fit and proper person requirement for the purposes of this Subdivision.

Section 48 – Previous provision of tuition assurance

This section enables the Secretary to have regard to the operator's conduct if it has previously provided tuition assurance for the purposes of deciding whether the operator is a fit and proper person. In particular, the Secretary may have regard to the commitment of the operator in ensuring that tuition assurance was successfully implemented for affected students and the extent to which the operator fulfilled its responsibilities in relation to the tuition assurance.

Section 49 – Other relevant matters

This section enables the Secretary to have regard to any other matter relevant to the honesty, knowledge or ability of the operator and its key personnel for the purposes of deciding whether the operator is a fit and proper person.

Subdivision D—Other requirements

Section 50 – Corporate separation requirements

This section deals with the relationship between the course provider and the tuition assurance scheme operator. It provides that the relationship must satisfy certain criteria as to corporate separation to be an approved tuition assurance arrangement.

If the corporate separation requirements are not met, the Secretary may determine in writing that the requirements are taken to be met. A provider will need to apply to the Secretary in writing for such a determination and describe the circumstances that result in the requirements not being met and the reasons for the circumstances. The provider may propose other arrangements in place of meeting the requirements for the Secretary to approve, such as a separate unconditional financial guarantee from a third person.

Section 51 – Student enrolment information

This section provides that a tuition assurance arrangement must require the course provider to give information about covered students to the tuition assurance scheme operator on at least a quarterly

basis. Covered students are those students to whom an operator has obligations under the tuition assurance arrangement. The intent of this provision is to ensure that the operator regularly receives updated student enrolment information which it can use in the event of a tuition assurance activation to contact affected students.

Section 52 – Information about events that affect provider

Subsection 52(1) provides that a tuition assurance arrangement must require the course provider to give the tuition assurance scheme operator written notice within 2 business days of certain events affecting its financial viability. Subsection 52(2) requires the arrangement to provide that the provider must give the operator as soon as practicable written notice of its intention to cease providing a course. The intent of section 52 is to strengthen the protection of covered students by ensuring that the operator has sufficient warning of, and can prepare for, a possible tuition assurance activation event.

Section 53 – Notice and information when course ceases

Section 53 provides that a tuition assurance arrangement must require the course provider to give the tuition assurance scheme operator written notice within 24 hours of the course provider ceasing to provide a course to which the arrangement applies. The section also describes the additional information regarding each covered student that must be given to the operator within 3 business days after the provider ceases to provide a course. Notably, this includes providing the operator with a copy of a statement of attainment for each covered student for the parts of the course the student has completed. This means that providers will need to be well-prepared and ensure the student information is readily accessible in order to satisfy this requirement of the tuition assurance arrangement.

The intent of this section is to strengthen the protection of covered students by ensuring operators have the information they need to quickly respond to a tuition assurance activation and successfully implement tuition assurance for affected students.

Section 54 – Replacement courses

This section sets out what each tuition assurance arrangement must provide for with respect to the replacement courses. The arrangement must require the replacement course to be provided by an approved course provider, for students enrolled in the replacement course to receive course credits for the parts of their original course successfully completed and that students are not charged tuition fees for the replacement components of the replacement courses (subsection 54(1)).

For example, if a student has completed 2 units of a course and is enrolled in 2 further incomplete units at the time the provider ceases to provide the course, the tuition assurance arrangement must enable the student to enrol in a replacement course, give the student credit for the 2 completed units and ensure the student is not charged tuition fees to complete the 2 unfinished units. The student will have to pay for any further units the student is required to complete to finish the course.

Subsection 54(2) sets out the requirements that must be met by a replacement course. This provision ensures that students are not offered a replacement course which is not suitable for the student, for example, the course is not comparable, or is a different mode of delivery, or is not in a reasonably proximate location to the student. If there is no replacement course, the student's FEE-HELP balance is required to be re-credited (section 73 of the Rules). A student has a right of review whether a course is in effect a replacement course (sections 71 and 72).

Subsection 54(3) provides the arrangement must require the operator to give a student 6 months to accept a replacement tuition offer and extend that period if the circumstances justify. A decision not to extend may also be reviewed (section 72 of the Rules).

Subsection 54(4) provides that the tuition assurance arrangement must require the operator to repay the student's tuition fees for a replacement component of a replacement course if the student's FEE-HELP balance is re-credited under section 68 of the Act due to special circumstances that prevented the student from completing that replacement component. In the absence of this provision, the replacement provider may have to repay the student's tuition fees which is not a reasonable outcome given it did not receive payment for the fees in the first instance.

Section 55 – Obligations to covered students must continue

This section clarifies that a tuition assurance arrangement must provide for obligations in relation to covered students to continue even if the arrangement is terminated. This means that even if an arrangement is terminated and the provider subsequently ceases to provide a course, all students enrolled with the provider at the time of termination will continue to be protected.

Subsection 55(2) also makes clear that the arrangement must provide the obligations to covered students continue despite any default under the arrangement, or non-compliance with the Act, by the course provider and regardless whether the provider is solvent or not.

These provisions are critical to tuition assurance arrangements. Tuition assurance is to protect students where their provider ceases delivering their course, and the obligations to students enrolled with a provider should not be able to be avoided by an operator terminating the arrangement. In any event, by terminating the arrangement, the operator limits its exposure since it will have no obligation to students that enrol with the provider after the arrangement has been terminated. Notice of termination is covered in section 57 of the Rules.

Section 56 – Secretary's consent to variation

Section 56 prevents the parties to a tuition assurance arrangement from varying the terms of their arrangement without the Secretary's written consent.

Section 57 – Notice of termination

This section deals with the notice requirements of the parties to a tuition assurance arrangement where one party wishes to terminate the arrangement. The arrangement must provide that for termination by a course provider, the provider must give both the operator and the Secretary 60 days' notice; for termination by the operator, the notice is at least 90 days. This is to ensure that sufficient time is given to enable the provider to enter into an alternative tuition assurance arrangement. If a provider is not party to an approved tuition assurance arrangement, the provider will not meet the course provider requirements and this may result in compliance action such as a compliance notice being issued and/or possible suspension or revocation.

Section 58 – Transitional period for tuition assurance arrangements

This section provides that for a transitional period from 1 January 2017 to 30 June 2017, if a course provider has an arrangement of a kind covered by subsection 9(2) of *Higher Education Support (VET) Guideline 2015* and that arrangement was operating for the purposes of Schedule 1A to the *Higher*

Education Support Act 2003 at 31 December 2016, the arrangement is taken to meet the tuition assurance arrangements requirements in Division 1 of Part 6 of the Rules.

This transitional provision enables providers to continue to rely on existing tuition assurance arrangements during the transitional period to satisfy the course provider requirement that the provider must be party to an approved tuition assurance arrangement. The tuition assurance scheme operator that is a party to a transitionally approved arrangement is still required to comply with its obligations under Division 3 of Part 6 of the Rules and Division 4 of Part 4 of the Act.

Subsection 58(2) enables the Minister to determine, by legislative instrument, that section 58 does not apply in relation to specified arrangements.

Division 2—Secretary requiring tuition assurance scheme operator to act

Section 59 – Purpose of this Division

Section 59 provides that Division 2 of Part 6 of the Rules is made for the purposes of paragraph 41(1)(b) of the Act. Section 116(3) of the Act enables rules to provide for matters that a decision maker may or must have regard to in making the decision. This division sets out the matters the Secretary may have regard to in deciding whether a provider has ceased to provide a course.

Section 60 – Deciding whether a course has ceased

This section sets out the matters to which the Secretary may have regard when deciding whether a provider has ceased to provide a course. This list is not exhaustive. If a provider ceases to provide a course, the tuition assurance scheme operator has obligations under both the Act and the Rules.

The intent of this section is to give further protection to the students so, for example, providers cannot take action to avoid a tuition assurance event by unfairly cancelling students from a course, or transitioning students to a superseded course (without consent) which is in effect no longer the same course.

Division 3—Requirements for tuition assurance scheme operators

Subdivision A—Purpose of this Division

Section 61 – Purpose of this Division

Section 61 provides that Division 3 of Part 6 of the Rules is made for the purposes of section 42 of the Act. It sets out requirements that must be met by a tuition assurance scheme operator that is, or was, a party to a tuition assurance arrangement with an approved course provider.

Subdivision B—General operation of tuition assurance arrangement

Section 62 – Information or documents to be given by operator to Secretary

This section prescribes the information or documents that an operator must give to the Secretary, and the times at which that information or documents must be given. This information is relevant for the Secretary to consider if he or she remains satisfied that the operator meets the matters provided for in subsection 41(4) of the Rules.

Subsection 62(2) prescribes the content required for the quarterly statement to be provided by the operator to the Secretary for each approved course provider with whom the operator has or had a tuition assurance arrangement in place.

Section 63 – Secretary may require tuition assurance scheme operator to be audited

Under this section, the Secretary may require an operator to be audited in order to determine whether the operator is able to meet its obligations under a tuition assurance arrangement and/or whether the operator is complying with the Act or any instrument made under the Act (which includes the Rules).

The audit must be conducted by the National VET Regulator or an auditor approved in writing by the Secretary and at such times and in such manner as the Secretary requires.

Subsection 63(4) provides that the auditor may require any person to provide the auditor with all reasonable facilities and assistance for the purposes of the audit.

Section 64 – Tuition assurance scheme operator must notify Secretary of approved course provider actions

Section 64 requires a tuition assurance scheme operator to notify the Secretary within 3 business days after becoming aware of the provider being in breach of the tuition assurance arrangement, the provider wanting to vary the arrangement or the provider intending to terminate the arrangement.

Section 65 – Variation of tuition assurance arrangement

This section requires a tuition assurance operator to request in writing the Secretary's consent to a proposed variation to a tuition assurance arrangement. The request must be given to the Secretary at least 90 days before the variation is proposed to take effect, unless the Secretary consents to a shorter notice period.

Section 66 – Termination of tuition assurance by tuition assurance scheme operator

A tuition assurance operator is required to give the Secretary at least 90 days written notice if the operator proposes to terminate a tuition assurance arrangement, unless the Secretary consents to a shorter period. Tuition assurance is critical for the protection of students. Consequently it is important the Secretary is given sufficient notice to enable it to liaise with the provider and where appropriate initiate compliance action in the event it has no replacement tuition assurance arrangement.

Subdivision C—Operation of tuition assurance arrangement when course ceases

Section 67 – Application of this Subdivision

This section provides that Subdivision C of Division 3 of Part 6 of the Rules applies if an approved course provider ceases to provide an approved course and under a tuition assurance arrangement (including a terminated arrangement), a tuition assurance scheme operator has obligations to covered students.

Section 68 – Contact with students when course ceases

Section 68 sets out the preliminary steps the tuition assurance scheme operator is required to follow in terms of contacting the students to ensure they are reasonably informed about the consequences to the

students of an approved course provider ceasing to provide a course. This includes the requirement that within 20 business days after being notified of the course closure by the provider, the operator must send to each covered student a 'replacement tuition offer' or if the operator decides there is no replacement course for the student, send to the student a notice that accords with section 71 of the Rules.

Section 69 – Requirements of replacement tuition offer

Subsection 69(1) sets out the information that must be included in a 'replacement tuition offer'. Amongst other matters, the offer must describe the replacement course being offered to the student together with information on how the student can accept the offer.

An operator must ensure the replacement provider provides for students who accept replacement tuition offers to be enrolled in their replacement courses as soon as possible. The operator must keep records of replacement tuition offers made by the operator for at least 7 years.

Section 70 – Requirements if no response from student to replacement tuition offer

It is important that every reasonable effort is made to contact students to ensure students are aware of their replacement tuition offer. Section 70 sets out the requirements an operator must undertake in endeavouring to contact a student.

Section 71 – Requirements of notice that there is no replacement course

If the operator decides there is no replacement course available for the student, the operator must issue to the student a notice that meets the requirements of this section.

Section 72 – Operator must provide review procedures

Subsection 72(1) requires an operator to have a review procedure that provides for a covered student to seek review of a decision to offer or not a replacement course to a student and a decision not to extend the period in which a replacement tuition offer must be accepted. For example, a student may seek review of a decision that a course is a replacement course on the basis to attend the course imposes unreasonable travel time on the student (and so does not meet the requirements in section 54(2) of the Rules).

The remainder of section 72 sets out the requirements for the review procedure which includes having to provide for both internal as well as an external review. An operator must retain for at least 7 years the records relating to the use of the procedure.

Section 73 – Repayment and re-crediting

This section provides for the re-crediting of a student's FEE-HELP balance if there is no replacement course for the student.

Subsection 73(1) provides that the section applies if the operator sends a covered student a section 71 notice and the student does not, within 28 days, seek review of the decision that there is no replacement course or if the student earlier gives the operator notice that he or she will not seek review of the decision or if after a review the decision is affirmed.

Section 74 – Information to be provided to Secretary

This section requires the operator to provide weekly reports to the Secretary after a provider has ceased to provide a course until the Secretary advises otherwise. The report must contain the information listed.

Part 7—Other requirements for approved course providers

Division 1—Processes and procedures

Subdivision A—Preliminary

Section 75 – Purpose of this Division

This section provides that Division 1 of Part 7 of these Rules is made for the purposes of section 48 of the Act. Section 48 enables the rules to require an approved course provider to have specified processes and procedures in place. The note to this section alerts the reader that an approved course provider who fails to comply with this Division may be liable for a civil penalty under subsection 48(5) of the Act.

Section 76 – Processes and procedures an approved course provider must have in place

Section 77 – Approved course provider must act in accordance with processes and procedures

Section 78 – Approved course provider must train officers on processes and procedures

Section 76 requires an approved course provider to have in place processes and procedures that accord with each of the subdivisions of this Division. Section 77 requires approved course providers to act in accordance with its processes and procedures. Section 78 requires approved course providers to train each of their officers in relation to the processes and procedures the providers have in place and that are relevant to the officer's duties and responsibilities.

Section 79 – Approved course provider must publish processes and procedures on its website

This section requires an approved course provider to publish prominently on its website the processes and procedures the provider has in place. The material must be easily accessible without the provision of login information. This section is intended to ensure students are fully informed about requirements and administrative matters relating to the course they wish to undertake as well as having access to information to assist them during the course when issues may arise.

Subdivision B—Student entry

Section 12 of the Act requires a student to have been assessed by the course provider as academically suited to undertake the approved course. The assessment must have been done in accordance with the course provider's student entry procedure and any requirements in the rules. This subdivision B sets out the requirements for the provider's student entry procedures.

Section 80 – Academic suitability

Subsection 80(1) provides that an approved course provider's student entry procedure must specify that a student is academically suited to undertake the relevant approved course if: one of the requirements in subsection 80(2) are met; the student meets any other specified entry requirements for the course; and the provider believes on reasonable grounds that the student is academically suited to undertake the course. It is important this last requirement is not overlooked by providers – the case may be that a student has completed year 12 but is still not academically suited to undertake the course.

The note underneath subsection 80(1) guides the reader that the 'other specified entry requirements' may include other prior education qualifications the provider considers are prerequisites to being academically suited to undertake the course. For example, a student seeking to undertake a Diploma of Automotive Manufacturing, may also have to produce evidence of completion of the qualification of Certificate IV in automotive manufacturing.

The requirements provided for in subsection 80(2) include:

- (a) the provider obtains a copy of the student's Year 12 certificate (that is, an Australian Senior Secondary Certificate of Education); or
- (b) the student is assessed as displaying competence at or above Exit Level 3 in the Australian Core Skills Framework (as in force from time to time) in both reading and numeracy using an approved assessment tool described in section 82 and the provider reasonably believes that the student displays the competence; or
- (c) the provider obtains a copy of the student's certificate of a Level 4 or above qualification in the Australian Qualifications Framework and the course for the qualification was delivered in English.

The Australian Core Skills Framework is a tool which assists both specialist and non-specialist English language, literacy and numeracy practitioners describe an individual's performance in the five core skills of learning, reading, writing, oral communication and numeracy. The Framework could in 2016 be viewed at www.education.gov.au/australian-core-skills-framework.

This section is intended to ensure students are not able to enrol in an approved course and obtain a VET student loan for a course which they are not academically capable of completing.

Section 81 – Results of assessment of competence in reading and numeracy for the purposes of paragraph 80(2)(b)

This section provides that an approved course provider's student entry procedure must require the results of assessing a student's competence in reading and numeracy to be reported to the student as soon as practicable after the assessment and to the Secretary in the form, manner and by the time requested by the Secretary.

Section 82 – Assessment of competence in reading and numeracy for the purpose of paragraph 80(2)(b)

This section provides for the way in which an approved course provider's student entry procedure must deal with the process by which a student's level of competence in reading and numeracy may be assessed for the purposes of paragraph 80(2)(b) of these Rules.

Subsection 82(1) requires that an approved course provider's student entry procedure must describe the process (including testing tools) for validly and reliably assessing a student's competence in reading and numeracy against the Australian Core Skills Framework. The process must be conducted with honesty and integrity. The procedure must also specify the tool to be used as part of the process that is approved by the Secretary and published on the Department's website.

Subsection 82(2) allows the Secretary to approve a tool (on application by an approved course provider or a Commonwealth, State or Territory government agency), if the Secretary is satisfied the tool is a valid, reliable, fair and well-constructed way of assessing competence at or above Exit Level 3 in the Australian Core Skills Framework and the tool has been appropriately verified and evaluated using evidence-based assessment.

In approving a tool, the Secretary must have regard to a document published on the Department's website (as in force from time to time) and which sets out the criteria for approval of tools for testing competence and measures for quality assurance of such tools. The document is currently titled *Assessment of LLN testing instruments and processes for VET FEE-HELP providers*. The Secretary must as soon as practicable after making a decision give the applicant written notice of the decision. (See subsections 82(3) & (4)).

Subsection 82(5) provides that a tool approved under subsection 38(2) of the *Higher Education Support (VET) Guideline 2015* and the *Core Skills Profile for Adults* mentioned in subparagraph 38(1)(b)(i) of the *Higher Education Support (VET) Guideline 2015* are taken to be approved under subsection 82(2) of the Rules.

Section 83 – Review of Secretary's decision

If the Secretary decides not to approve a tool for assessing a student's competence in reading and numeracy, the Secretary's notice to the applicant must set out the reasons for the decision and a statement that the applicant may apply to have the decision reviewed by the Secretary (if the reviewable decision was made by a delegate) or by the Administrative Appeals Tribunal (if the reviewable decision was made by the Secretary personally).

The effect of this section is to enable decisions made under subsection 82(2) to be subject to merits review, consistent with Commonwealth policy.

Subdivision C—Course enrolment

Section 84 – Equal and fair treatment of student's seeking to enrol

Subsection 84(1) requires that an approved course provider's processes and procedures must provide for equal and fair treatment of all students seeking to enrol in an approved course. The provider must have open, fair and transparent procedures that the provider reasonably believes are based on merit for making decisions about the selection of students to enrol in approved courses and the treatment of such students (subsection 84(2)).

Subsection 84(3) provides that subsection (2) does not prevent an approved course provider from allowing the provider to take into account that a student may be enrolled in a course pursuant to an arrangement between the provider and an employer or industry body which limits or restricts enrolments in some or all of the places in the course. This rule acknowledges that there are at times limits to the number of course positions available where the course requirements are linked to practical work experiences.

Subdivision D—Information relating to applications for VET student loans

Section 85 – Processes and procedures for information relating to applications for VET student loans

Subsection 85(1) requires an approved course provider to have processes and procedures relating to the collection and verification of information for the purposes of, or in relation to, applications by students for VET student loans.

Subsection 85(2) provides that the processes and procedures must require the collection and verification of the following information and documents:

- information about the student's identity and date of birth;
- if the student is under 18, information that one of the signatories to the application is a responsible parent of the student or that the student has received youth allowance on the basis the student is independent;
- those relevant to establishing that the student meets the citizenship and residency requirements specified in section 11 of the Act; and
- a certificate from the Commissioner that the student has applied for a tax file number, if the student has not yet been issued with a number.

This section is particularly relevant to subsection 17(6) of the Act which provides it is a civil penalty if a provider collects information for the purposes of a student application and the provider gives the Secretary information and the information omits a material particular or is incorrect in a material particular. This means that approved course providers will need to verify information they collect from students for their loan applications.

Subdivision E—Withdrawal from courses and cancellation of enrolment

Section 86 – Processes and procedures for student to withdraw from approved course

Subsection 86(1) provides that an approved course provider must have processes and procedures that include procedures for a student to withdraw from an approved course (or part of) and procedures for student to re-enrol following a previous withdrawal. This subsection ensures students are able to easily access information about an approved course provider's withdrawal and re-enrolment procedures.

Subsection 86(2) requires that the procedures for withdrawal from an approved course (or part of) before a census day must not involve financial, administrative or other barriers to the withdrawal. It is a civil penalty under section 59 of the Act if, amongst other things, the provider fails to adhere to a student's request to cancel the student's enrolment before the end of the census day or if the provider engages in conduct that prevents the student from cancelling the enrolment or unnecessarily inconveniences the student.

Subsection 86(3) provides that an approved course provider must not, after a student has withdrawn, enrol the student in an approved course (or part of) without the written permission of the student which must be given after the withdrawal.

Section 87 – Processes and procedures for cancellation of enrolment

This section provides for the process than an approved course provider must implement and maintain for cancelling a student's enrolment after the census day, without the student's consent.

The effect of this section is to ensure the VET scheme only benefits those students who engage in vocation education and training in an appropriate manner by requiring approved course providers to have processes for cancelling student enrolments.

The section further provides for the protection of students in circumstances where a provider initiates its process for cancelling a student's enrolment by requiring approved course providers to: notify a student whose enrolment is proposed to be cancelled, provide that student with at least 28 days to initiate grievance procedures and set out the circumstances in which that student will (or will not) receive a refund of tuition fees for the relevant course (or part thereof).

Subdivision F—Dealing with complaints

Section 88 – Grievance procedure

The section provides that an approved course provider must have processes and procedures (both internal and external) for dealing with student complaints of an academic and non-academic nature. The effect of this section is to require approved course providers to publish a procedure which is easily accessible by students in relation to complaints (of an academic and non-academic nature) or requests for review of certain decisions of the approved course provider.

This section is intended to ensure students are aware of their right to make complaints and request review of decisions under certain circumstances, the process for doing so and their rights and responsibilities in regards to that process.

Subdivision G—Re-crediting FEE-HELP balances

Section 89 – Explaining re-crediting

This section provides that an approved course provider must have processes and procedures for explaining the re-crediting of students' FEE-HELP balances under Part 6 of the Act. Subsection 89(2) sets out the information that must be addressed in these processes and procedures.

The section is intended to ensure students are aware of their right to request a re-credit of a FEE-HELP balance under certain circumstances and the process for doing so.

Subdivision H—Treatment of students seeking review etc

Section 90 – No victimisation or discrimination of students for seeking review etc.

Section 90 provides that approved course providers' processes and procedures must ensure that students are not victimised or discriminated against for seeking review or reconsideration of a decision, using the provider's grievance procedures or making an application for re-credit of a FEE-HELP balance under Part 6 of the Act.

Subdivision J—Tuition assurance

Section 91 – Action when provider ceases to provide course

Section 91 provides that an approved course provider must have a procedure to ensure the provider undertakes certain actions after the provider ceases to provide an approved course after it starts but before it is completed. These actions complement the requirements for tuition assurance scheme operators following a provider ceasing to provide a course under Division 3 of Part 6 of the Rules.

Section 92 – Procedures as replacement provider

Section 92 applies if an approved course provider is providing the replacement course following another provider ceasing to provide a course. This section provides that an approved course provider must have a procedure to ensure that a student enrolled in a replacement course with the provider is granted course credits for parts of the original course successfully completed by the student and is not charged tuition fees for a replacement component of the replacement course.

Subdivision K—Fees

Section 93 – Fees other than tuition fees

Subsection 93(1) provides that approved course providers may only charge fees other than tuition fees if they have processes and procedures to ensure that students understand that the fees are not for tuition, the purpose of the fees, the students' total liability for the fees and when and how these fees are to be paid.

Subsection 93(2) provides that the approved course providers processes and procedures for charging non-tuition fees must not require the payment of fees for assessments of a student's academic suitability or to apply for enrolment or to enrol in an approved course. Fees for assessments of a student's academic suitability may be included in the tuition fees for an approved course (as per section 118 of the Rules).

The effect of this section is to ensure students are fully informed in relation to fees other than tuition fees (division 6 of Part 7 of the Rules sets out requirements in respect to tuition fees) and that the students are not charged to apply to enrol.

Subdivision L—Handling information

Section 94 – Handling information

Subsection 94(1) provides that approved course providers must have processes and procedures for handling information. Subsection 94(2) sets out the matters that must be included in these processes and procedures. These include providing: for the management of students' personal information in accordance with the Australian Privacy Principles; for students to access and correct their personal information; and for accurate information to students about the use and disclosure of their of personal information. In particular, the processes and procedures must include information about the disclosure of the student's information to the Commonwealth and to tuition assurance scheme operators.

Division 2—Specified broker arrangements

Section 95 – Purpose of this Division

This section provides that Division 2 of Part 7 of these Rules has effect for the purposes of paragraph 49(2)(b) of the Act. Subsection 49(1) prohibits approved course providers from entering into arrangements that provide for another person to undertake one or more of the activities listed in relation to an approved course. Subsection 49(2)(b) enables the rules to specify an arrangement to which this prohibition does not apply.

Section 96 – Specified broker arrangements

Section 96 provides that subsection 49(1) of the Act does not apply in relation to an arrangement with a member of the Australasian Conference of Tertiary Admission Centres.

Division 3—Information for Students

Subdivision A—Purpose of this Division

Section 97 – Purpose of this Division

This section provides that Division 3 of Part 7 of the Rules is made for the purposes of subsection 50(1) of the Act. This Division sets out the requirements for approved course providers to provide comprehensive and accurate information to students and prospective students about tuition fees for courses, VET student loans, tuition assurance, and other matters.

The note to this section alerts the reader that failure by an approved course provider to comply with this Division may result in a civil penalty or prosecution for a criminal offence (see subsections 50(2) and (3) of the Act).

Subdivision B—General information

Section 98 – Providing information before enrolment

This section requires an approved course provider to give a prospective student the information set out in the section before enrolling the prospective student in an approved course. This includes information about tuition and other fees charged by the provider for the course, tuition fee payment options, VET student loans, census days, cancelling a student's enrolment and how a student may access the provider's processes and procedures.

The purpose of this section is to ensure that prospective students are fully informed of the tuition fees and other fees that apply to the course, are clear about their responsibilities, obligations and rights if they enrol in the course and are clear about their responsibilities, obligations and rights if they apply for a VET student loan.

The information given to a student under this section is required by section 105 of the Rules to be retained for 5 years.

Section 99 – VET student loan fee notice

This section requires an approved course provider to give a student enrolled in an approved course a notice (a *VET student loan fee notice*) that includes all of the information set out in subsection (4) in relation to each fee period.

The provider must give the student the notice no earlier than 42 days before the start of the fee period (unless the provider is a Table A provider), and no later than 14 days before the first census day in the fee period. The notice must be sent to the student's personal e-mail or postal address or to the student by another method agreed by the student.

If the provider is a Table A provider, the notice is not required to include the information in paragraphs (4)(n) to (s) if the Table A provider has already given the student that information.

This notice is in effect an invoice notice. It ensures students are provided with accurate information about their tuition fees, the amount of their tuition fees to be covered by a VET student loan, the amount of the HELP debt the students will incur and the applicable census days and withdrawal information, allowing them to make informed decisions about continued study participation and incurring a VET student loans debt, and provided with sufficient time for the student to withdraw prior to the census date without the student being liable for tuition fees for the part of the course if they do not wish to continue. The section is intended to improve transparency and increase students' awareness of the debts they are about to incur.

Section 100 – Commonwealth assistance notice

Section 100 requires an approved course provider to give a student who is enrolled in part of an approved course as at the census day for that part of the course, and who has a VET student loan for the course, a notice (a *Commonwealth assistance notice*) that includes all of the information set out in subsection (4).

The provider must give the student a Commonwealth assistance notice within the period starting on the census day and ending four weeks after the census day. The notice must be sent to the student's personal e-mail or postal address or to the student by another method agreed by the student.

The notice may relate to more than one part of the course, provided the time for issuing the notice is complied with for each part of the course included in the notice. For example, the notice could not include the information for two units (or competencies) if the census days for these respective units are more than 5 weeks apart.

This section will ensure students have accurate information about the VET student loans debts that they have incurred in relation to an approved course (or part of) allowing them to keep information on their remaining FEE-HELP balance and make informed decisions about continued study participation and incurring further VET student loans debts.

Subdivision C—Information about tuition assurance

Section 101 – Provider must publish statement of tuition assurance

Section 101 requires approved course providers to publish statements on their websites about their tuition assurance arrangements, and to keep those statements up to date and accurate. Assurance exempt providers (i.e. providers that the Secretary has exempt, under paragraph 25(3)(a) of the Act,

from the requirement to be party to an approved tuition assurance scheme) must publish statements in accordance with section 103; other providers must publish statements in accordance with section 102.

Section 102 – Content of statement—provider other than assurance exempt provider

This section sets out the content requirements for a tuition assurance statement published by a provider other than an assurance exempt provider. The statement must explain the approved tuition assurance arrangements the provider has in place for students enrolled in approved courses and include the contact details of the tuition assurance scheme operator the provider has an arrangement with. Subsection 102(3) sets out the detail required for the content of the statement. This statement ensures students are able to access information from the provider's website about the implications for the student of the provider ceasing to provide a course.

Section 103 – Content of statement—assurance exempt provider

This section requires an assurance exempt provider to publish a statement setting out the arrangements it has in place for providing replacement courses (in the event the exempt provider ceases to provide a course) and the consequences for students of the provider's exemption from the requirement to be a party to an approved tuition assurance arrangement.

Division 4—Retaining information and documents

Section 104 – Purpose of this Division

This section provides that Division 4 of Part 7 of the Rules is made for the purposes of section 51 of the Act. Section 51 enables the rules to set out the requirements for approved course providers to retain information and documents related to the operation of the Act. The notes to this section alert the reader that failure by an approved course provider to comply with this Division may result in a civil penalty or prosecution for a criminal offence (see subsections 51(3) and (4) of the Act).

Section 105 – Information and documents to be retained for 5 years

Section 105 requires approved course providers to retain the information and documents listed in subparagraphs (1)(a) to (j) for a period of five years. The section is intended to give effect to the various eligibility, registration, performance and reporting requirements contained within the Act. Subsection 105(2) requires the provider to give any of the information retained under subsection (1) to the Secretary on request.

Division 5—Ongoing information requirements

Subdivision A—Purpose of this Division

Section 106 – Purpose of this Division

This section provides that Division 5 of Part 7 of the Rules is made for the purpose of section 52 of the Act. Section 52 enables the rules to set out *ongoing information requirements* for the purposes of ensuring that approved course providers are complying with the Act and that the Secretary has access to information and documents related to the operation of the Act.

Subdivision B (sections 107 to 111) requires approved course providers to notify the Secretary of particular events. Subdivision C (sections 112 to 116) requires approved course providers to provide the Secretary with information on a regular or *ad hoc* basis.

The notes to this section alert the reader that failure by an approved course provider to comply with this Division may result in a civil penalty or prosecution for a criminal offence (see subsections 52(4) and (5) of the Act).

Subdivision B—Notice of events

Section 107 – Student does not want fees to be paid using loan

Under section 107, if a student tells an approved course provider that the student does not wish to use a VET student loan to pay tuition fees for the course (or part of) before the census day for the course (or part of), the provider must inform the Secretary of that as soon as practicable after being told by the student.

Section 108 – Termination of tuition assurance by approved course provider

Section 108 requires an approved course provider to notify the Secretary in writing at least 60 days before the provider proposes to terminate a tuition assurance arrangement. The Secretary may agree to a shorter notice period. It is a course provider requirement that an approved course provider is party to an approved tuition assurance arrangement. The Secretary needs to be given early notice by the provider prior to the proposed termination so that the Secretary can ensure alternate arrangements will be put in place and be satisfied students have adequate tuition assurance protection.

Section 109 – Event effecting capacity to comply with Act

Section 109 requires an approved course provider to notify the Secretary, in writing, as soon as practicable after becoming aware of an event affecting the provider, its key personnel or a related body corporate, that is likely to affect the provider's capacity to comply with the Act or an instrument made under the Act. This includes the capacity of the provider to comply with the course provider requirements.

Section 110 – Changes to provider

Section 110 requires an approved course provider to notify the Secretary, in writing, of any of the matters listed at paragraphs (a) to (e); these matters have the potential for significant operational impact on the provider and the provider's compliance with the Act and which are important for the Secretary to know for proper administration of the VET student loans program. The provider must notify the Secretary as soon as practicable of the relevant change or proposal.

Section 111 – Other events

Subsection 111(1) requires approved course providers to notify the Secretary of the occurrence of any of the events specified at paragraphs (b) to (g) within 24 hours of the occurrence of that event. These predominantly relate to the financial viability of the provider.

Paragraph 111(1)(a) imposes an obligation on approved course providers having to notify the Secretary within 24 hours of ceasing to provide a course. Subsection 111(2) requires the provider to give the Secretary notice of an intention to cease providing a course as soon as practicable after

forming that intention. These requirements are intended to strengthen the protection of covered students by ensuring the Secretary is informed at the earliest opportunity of a tuition assurance activation event or possible event. Sections 52 and 53 of the Rules ensure the same notice is given to the tuition assurance scheme operator.

Subdivision C—Other information

Section 112 – Information about students enrolled in approved course that provider has ceased to provide

Section 112 provides for the information that must be given to the Secretary by an approved course provider where the provider ceases to provide an approved course. The information required to be provided under this section must be given to the Secretary within 3 business days of the cessation of the course.

Section 113 – Annual financial statements

Section 113 requires approved course providers to give the Secretary general purpose financial statements within 3 months of the end of each financial year. Listed course providers (i.e. the providers listed in subsection 27(2) of the Act) are not required to provide financial statements to the Secretary under this section.

The financial statements must comply with the requirements of subsection (2), and must be accompanied by the documents set out in subsections (3) and (4). The package of material required to be given to the Secretary under this section must be given in the manner and form approved by the Secretary.

Section 114 – Copies of notices given to other regulators

Subsection 114(1) provides that an approved course provider must give the Secretary a copy of a notice required to be given to the National VET Regulator under section 25 of the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) at the same time as the notice is given to the Regulator. Section 25 of the NVETR Act requires an NVR registered training organisation to give the National VET Regulator written notice of: any event that would significantly affect the organisation's ability to comply with the VET Quality Framework; any change to the name or contact details of an executive officer or high managerial agent of the organisation; and any other substantial change to the operations of the organisation.

Subsection 114(2) provides that an approved course provider must give the Secretary a copy of a notice required to be given to the Commissioner of the Australian Charities and Not-for-profits Commission under section 65-5 of the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) at the same time as the notice is given to the Commissioner. Section 65-5 of the ACNC Act requires a registered charity to give notice to the Commissioner of: a change of name, address for service, or governing rules; a change to any responsible entity in relation to the charity; and any significant non-compliance by the charity with the ACNC Act.

Section 115 – Fees for approved courses

Under section 115 approved course providers are required to provide the Secretary with a list of fees charged for each approved course delivered by the approved course provider, including the tuition

fees for each part of the course. The provider must update the list whenever there is a change to the fees charged. The list is required to be provided to the Secretary in a manner and form approved by the Secretary. It is anticipated that the Secretary will require providers to upload this list onto the *myskills* website at www.myskills.gov.au, the national directory of vocational education and training organisations and courses.

Section 116 – Annual forecast

Section 116 imposes an annual reporting requirement upon approved course providers and requires they provide the information specified in subsection 116(1) to the Secretary by 31 March each year. Paragraph 116(1)(l) allows the Secretary to determine additional information to be provided annually by approved course providers; for the purposes of this paragraph, the Secretary may determine different information that must be given by different providers (see subsection (2)).

Division 6—Tuition fees

Division 6 of Part 7 of the Rules sets out the requirements that approved course providers must comply with when determining their tuition fees for approved courses. An approved course provider that fails to comply with the requirements of the Division may incur a civil penalty (see subsection 55(3) of the Act).

Subdivision A—Determining tuition fees

Section 117 – Purpose of this Subdivision

Section 117 provides that this Subdivision A is made for the purposes of paragraph 55(2)(a) of the Act. It enables rules to be made in relation to matters an approved course provider must or must not have regard in determining tuition fees.

Section 118 – Matters an approved course provider must not have regard to in determining tuition fees

This section provides for the matters to which an approved course provider must not have regard in determining the tuition fees for an approved course. VET student loans are used to pay for tuition fees. This provision is intended to ensure providers do not include matters unrelated to tuition in their tuition fees. In effect, a provider may only include in the tuition fees matters relating to enrolment in the course, tuition, examination for the course and the award of a qualification for completion of the course. A provider is also permitted to include in the tuition fees, fees payable for assessing whether a student is academically suited to undertake a course, noting that such fees may not be charged for outside of tuition fees (see section 93 of the Rules).

Subdivision B—Charging of tuition fees by Table A providers

Section 119 – Purpose of this Subdivision

Section 119 provides that Subdivision B of Division 6 of Part 7 is made for the purpose of paragraph 55(2)(c) of the Act. It enables rules to be made regarding how and when tuition fees may be charged.

Section 120 – Charging of tuition fees by Table A providers

This section provides that a Table A provider may charge tuition fees only in a way that is consistent with the delivery of the course and the student's participation in the course. This ensures Table A providers do not charge students the whole course fee on commencement.

Subdivision C—Charging of tuition fees by other approved course providers

Section 121 – Purpose and application of this Subdivision

Section 121 provides that this Subdivision C is made for the purpose of paragraph 55(2)(c) of the Act (how and when tuition fees may be charged) and applies to approved course providers other than Table A providers.

Section 122 – Proportionately spreading tuition fees over periods of the course

Section 122 sets out rules about the apportionment of tuition fees over the duration of a course. An approved course provider must apportion the tuition fees reasonably across the fee periods for the course and the parts of the course (units, competencies or modules) included in the fee periods. Importantly, this means the fees must not be just reasonably apportioned across the fee periods but across the units or competencies within a fee period. None of the tuition fees can be payable outside of the fee period for the course.

The provider's apportionment of tuition fees can reflect an estimate of the fees in circumstances where the provider is uncertain about the total cost or duration of the course or whether the student will need to pay all of tuition fees usually charged for the course (for example, if it is uncertain if students are to be given credit for prior learning).

However, the fee estimate must not exceed the maximum tuition fees payable by any student mentioned by the provider in its marketing of the course. If the estimate falls short of the tuition fees payable by the student for the course, the approved course provider may only charge the student the shortfall during the final fee period for the course.

The section is intended to strengthen the protection of students and protect Commonwealth monies through ensuring providers do not charge the whole course fee on commencement and instead levy fees proportionately across the fee periods. It also ensures students are not charged fees disproportionately to study content and duration.

Section 123 – Fee periods

This section requires an approved course to choose a minimum of three fee periods for an approved course, which periods must be sequential, of equal (or approximately equal) length based on the estimated duration of the course and each fee period must contain at least one census day. The provider may choose different fee periods for different students, for example, fee periods may be longer for students studying part-time.

Subsection 123(3) enables the length of any fee periods that are yet to start to be adjusted in proportion to a change at that time to the duration of the course. The changed fee periods must be of equal, or approximately equal, length.

The section is intended to strengthen the protection of students and protect Commonwealth monies through ensuring providers do not charge the whole course fee on commencement and instead must charge fees sequentially over a minimum of three fee periods to ensure students accrue debt as they progress through the course. It also ensures students are not charged fees disproportionately to study content and duration.

Section 124 – Exemption from complying with this Subdivision to comply with State or Territory subsidy funding arrangements

Section 124 provides that an approved course provider need not comply with this Subdivision C to the extent that compliance would be inconsistent with an arrangement made with an authority of a State or Territory. This section only applies if the approved provider is fully complying with that arrangement and has given the required written notice to the Secretary regarding the arrangement.

The note to this section clarifies that Subdivision C will apply to the extent that compliance is consistent with a State or Territory arrangement.

Subdivision D—Varying tuition fees

Section 125 – Purpose of this Subdivision

Section 125 provides that this Subdivision D is made for the purpose of paragraph 55(2)(d) of the Act. It enables rules to be made regarding how and when tuition fees may be varied. The note to this section alerts the reader that an approved course provider that fails to comply with this subdivision may be liable for a civil penalty under subsection 55(3) of the Act.

Section 126 – Varying tuition fees

The section provides for the date prior to which and the circumstances in which the tuition fees for an approved course (or part thereof) may be varied. This section is intended to protect students by preventing approved course providers from varying fees unless either the Secretary approves the variation; or the variation occurs prior to the census day for the course (allowing a student to withdraw prior to incurring liability to pay fees), the variation does not disadvantage any student, and is necessary to correct an administrative error (e.g. a typographical error in the published fee) or to deal with a change in circumstance.

A student is taken to be disadvantaged by an increase in the tuition fees for the course or part of course in which the student is enrolled.

However, the section does not preclude variations to fees for courses offered under or in accordance with an arrangement between the provider and an employer or industry body and which arrangement restricts or limits enrolments.

Section 127 – Publishing variation of tuition fees

This section requires an approved course provider to publish a variation in tuition fees on its website as soon as practicable after the variation and in a manner which is easily accessible by the public without provision of login information.

Subdivision E—Statement about covered fees

Section 128 – Purpose of this Subdivision

This section provides that this Subdivision E is made for the purposes of section 56 of the Act. Section 56 requires an approved course provider to give a student a written statement as to whether or not the student's enrolment is accepted on the basis that some or all of the tuition fees for the course will be covered by a VET student loan.

Section 129 – Requirements for statement about covered fees

Subsection 129(1) provides the statement required by section 56 of the Act must include the title '*VET Student Loan Statement of Covered Fees*' and must contain the information set out at paragraph 56(2)(b) of the Act and paragraphs 99(4)(a) to (i) of the Rules.

Subsection 129(2) provides that the statement must be given to the student after the student has enrolled in a course, but before the first census day for the course. The statement may be given to the student at the same time as the provider gives the student the first VET student loan fee notice under section 99 of the Rules.

The purpose of this statement is to ensure students are given greater visibility of their tuition fees and what part of these fees will be covered by the VET student loan.

Division 7—Census days

Subdivision A—Purpose of this division

Section 130 – Purpose of this Division

This section provides that Division 7 of Part 7 of the Rules is made purposes of section 58 of the Act.

Section 58 of the Act requires an approved course provider to determine the date or dates for an approved course before which a student enrolled in that course can be cancelled without the student being liable for tuition fees for the course. Such dates are called *census days*. Under subsections 58(4) and (5) of the Act, a provider must determine a census day in accordance with the Rules, publish the census day in accordance with the Rules, and not vary the census day other than in accordance with the Rules. Failure by an approved course provider to comply with the rules under this Division can be a civil penalty (see subsections 58(6) and (7) of the Act).

Subdivision B—Determining census days

Section 131 – Determining census days

Section 131 provides that there must be at least 3 census days for each approved course. The section further provides that the date determined to be the census day for part of an approved course (e.g. unit or competency) must be at least 20% of the way through the period starting at the commencement of that part of the approved course and ending on the day a student would reasonably be expected to complete that part of the course.

The section is intended to strengthen the protection of students and protect Commonwealth monies through ensuring the whole tuition fees for a course are not incurred on a single census day.

Section 132 – Publishing determination of census days

The section provides for the approved course provider's obligations in relation to the publication of census days. The effect of this section is to enable students to identify the dates on which tuition fees are incurred prior to enrolling in the approved course (or part of) and in a manner that is easily accessible without the provision of login information.

Subdivision C—Varying census days

Section 133 – Varying census days

This section provides for the date prior to which and the circumstances in which the census day for an approved course (or part of) may be varied. This section is intended to protect students by preventing approved course providers from varying a census day unless either the Secretary approves the variation; or the variation occurs prior to the current census day for the course, the variation does not disadvantage any student, and is necessary to correct an administrative error (e.g. a typographical error in the published census day) or to deal with a change in circumstance.

A student is taken to be disadvantaged by a change to the census day for the course or part of course in which the student is enrolled if the varied census day is earlier than the original census day.

However, the section does not preclude variations to census days for courses offered under or in accordance with an arrangement between the provider and an employer or industry body and which arrangement restricts or limits enrolments.

Section 134 – Publishing variation of census days

This section requires an approved course provider to publish a variation in census day on its website as soon as practicable after the variation and in a manner which is easily accessible by the public without provision of login information.

Division 8—Marketing

Division 5 of Part 5 of the Act imposes a number of requirements and limitations on the marketing of approved courses by approved course providers. Relevantly:

- section 61 of the Act precludes providers from offering benefits to persons that would reasonably induce them to apply for a VET student loan – except for benefits specified in the Rules (s 61(2));
- section 62 of the Act precludes providers from cold-calling a person to market a course, and when doing so, mentioning the possibility of VET student loans for students undertaking the course – and allows the Rules to set out conduct that is taken to be cold-calling (s 62(3));
- section 63 of the Act precludes providers from using a student's contact details sourced from another person to contact the student to market a course, and mentioning the possibility of VET student loans for students undertaking the course – and allows the Rules to set out exceptions (s 63(2)); and
- section 64 of the Act allows the Rules to set out other requirements in relation to the marketing of approved courses.

In each case, a provider that contravenes the relevant provision can incur a civil penalty.

Division 8 of Part 7 of the Rules sets out permissible inducements for section 61 (Subdivision A), exceptions to the prohibition on using third party contact lists for section 63 (Subdivision B), and other marketing requirements for section 64 (Subdivision C).

Subdivision A—Offering certain inducements

Section 135 – Purpose of this Subdivision

This section provides that Subdivision A is made for the purposes of subsection 61(2) of the Act (permissible inducements).

Section 136 – Benefits that may be offered

Section 136 specifies those benefits that a provider can offer to a prospective student that can induce the student to apply for a VET student loan for a course. The benefits are the content and quality of the course, the amount of tuition fees for the course, that a VET student loan is available and marketing merchandise up to the total value of \$30 per person.

Subdivision B—Use of third party contact lists

Section 137 – Purpose of this Subdivision

This section provides that Subdivision B is made for the purposes of subsection 63(2) of the Act (circumstances in which a provider may use a third party contact list to contact a prospective student).

Section 138 – Use of third party contact lists

Section 138 has the effect of permitting an approved provider to contact a prospective student (having received the student's details from another person) to market or enrol a student in a course if the student has provided express consent to the provider doing so. Subsections 138(2) and (3) set out the circumstances in which a student is taken to have provided that express consent. In particular:

- the purpose of subsection (2) is to ensure that students have to actively and consciously agree to their contact information being provided to the third party for the purpose of the provider contacting them, and that the consent is not a “default” option or a requirement or precondition for doing something else;
- the purpose of subsection (3) is to allow students who are deliberately seeking information on courses to agree to being contacted.

Subdivision C—Other marketing requirements

Section 139 – Purpose of this Subdivision

This section provides that Subdivision C is made for the purposes of subsection 64(1) of the Act which enables the Rules to set out other marketing requirements. The note to this section alerts the reader that an approved course provider may be liable to a civil penalty if the provider fails to comply with this Subdivision.

The requirements in Subdivision C are focused on ensuring that when approved course providers market approved courses to the public, they properly identify themselves, and provide suitable information about their tuition fees and VET student loans for those courses. The requirements are, of

course, cumulative: marketing of a course through means other than social media must comply with sections 140, 141 and 142; marketing of a course through social media must comply with sections 140, 141 and 143.

Section 140 – Information that must be provided

Under section 140, an approved course provider must ensure that any marketing of its approved courses prominently displays the provider's name and any registered business name or other business name that the provider uses, the provider's registration code and the maximum tuition fees chargeable for the approved course.

The effect of this section is to ensure prospective students are fully aware of the provider they may be enrolling with and the maximum tuition fees payable for the approved course they are interested in undertaking. The section is intended to enable prospective students to select an approved course based on considerations of quality and price of training.

Section 141 – Information about fees

Section 141 prohibits approved course providers from marketing an approved course unless the tuition fees for the course have been published on the provider's website in a way that is readily accessible by the public and given to the Secretary in accordance with section 115 of these Rules. This ensures students have ready access to tuition fee information for any marketed approved course.

Section 142 – Marketing that mentions VET student loans

Section 142 contains the requirements that an approved course provider must meet in relation to the manner, form and content of the marketing of approved courses offered or provided by that approved course provider where that marketing mentions the possible availability of a VET student loan (however described).

The intent of this section is to minimise the opportunity for prospective students to be misled by a provider's marketing as to the nature of a VET student loan. It also ensures providers are required to comply with the Department's style guide on the use of the VET student loans logo to be published on the Department's website.

Section 143 – Marketing through social media

Section 143 prohibits an approved course provider from marketing the provider or its approved courses through social media in a way that mentions the possible availability of a VET student loan (however described). The section is intended to enhance the protection of students by prohibiting aggressive marketing practices. Social media includes, for example, facebook, instagram and twitter.

Part 8—Re-crediting FEE-HELP balances

Part 6 of the Act provides for the re-crediting of students' FEE-HELP balances in certain circumstances. When a student's FEE-HELP balance is re-credited under Part 6, their VET student loan debt is remitted by the amount re-credited (see subsection 137-19(4) of the *Higher Education Support Act 2003*).

Division 1—Re-crediting by course provider

Section 144 – Purpose of this Division

This section provides that Division 1 of Part 8 has effect for the purposes of section 68 of the Act.

Section 68 of the Act provides that an approved course provider must (on behalf of the Secretary) re-credit a student's FEE-HELP balance if it is satisfied that special circumstances prevent the student from completing the course requirements. Division 1 of Part 8 of the Rules sets out matters that the provider must and may take into account in deciding whether or not circumstances are special circumstances for this purpose.

Section 145 – Circumstances to which the provider must have regard

Section 145 specifies the matters to which an approved course provider must have regard when deciding whether circumstances are special circumstances because they make it impracticable for the student to complete course requirements (see paragraph 68(3)(c) of the Act). The matters include whether the student could:

- do enough private study, attend training sessions or engage online to meet the course requirements;
- complete any assessments or demonstrate any competencies required; or
- complete any other requirements arising because of the student's inability to do the things described above.

Section 146 – Circumstances to which the provider may have regard

Section 146 specifies the matters to which an approved course provider may have regard when deciding whether circumstances are special circumstances because they make it impracticable for the student to complete course requirements (see paragraph 68(3)(c) of the Act). The matters include (noting this section does not limit providers considering other matters):

- medical circumstances of the student;
- circumstances that relate to the student personally or to the student's family;
- circumstances relating to the student's employment.

For example, the provider may have regard to if the student's employer requires the student to work in a different location for 6 months which may prevent the student from attending the course.

Section 147 – Special circumstances application in relation to replacement component of replacement course

Under subsection 68(4) of the Act, when an approved course provider re-credits a student's FEE-HELP balance, the amount of the re-credit equals the amount of the VET student loan that has been used to pay tuition fees for the course or relevant part of the course.

When a student is undertaking a replacement component of a replacement course provided to that student under tuition assurance arrangements, the provider actually providing that course will not have charged the student any tuition fees for the replacement component of the replacement course, and no VET student loan will have been used to pay tuition fees for that replacement component.

Section 147 of the Rules is intended to ensure subsection 68(4) of the Act operates as intended in those circumstances, by providing that the VET student loan amount is taken to have been paid for the replacement component of the replacement course – meaning that when the provider of the replacement component re-credits the student’s FEE-HELP balance, the amount re-credited is equal to the amount of VET student loan used to pay for the tuition fees for the original course.

Division 2—Re-crediting by Secretary

Section 148 – Unacceptable conduct relating to an application for a VET student loan

This section provides for the definition of *unacceptable conduct* for the purposes of subsection 71(2) of the Act. Amongst other things, under subsection 71(1) of the Act, the Secretary may re-credit a student’s FEE-HELP balance where the Secretary is satisfied the student’s approved course provider engaged in unacceptable conduct in relation to the student’s application for a VET student loan.

Subsection (1) provides that the following are unacceptable conduct by a provider in relation to a student’s application for a VET student loan:

- unconscionable conduct (whether or not a particular individual is identified as having been disadvantaged by the conduct);
- misleading or deceptive conduct;
- the making of a representation with respect to any future matter, such as the doing of, or the refusing to do, any act, if the maker of the representation does not have reasonable grounds for making the representation;
- advertising tuition fees for the course where there are reasonable grounds for believing that the provider will not be able to provide the course for those fees;
- use of physical force, or harassment or coercion, in connection with the application or enrolment in the course.

These circumstances do not limit each other – particular behaviour can satisfy more than one criterion.

Subsection 148(3) sets out matters that the Secretary may have regard to in deciding whether or not a provider has engaged in unconscionable conduct.

It should be noted that none of the circumstances set out in subsection (1) are defined by reference to other laws using the same or similar language (e.g. the *Competition and Consumer Act 2010*). They are intended to have broad meaning, particularly as subsection 71(1) of the Act provides for a subjective test – that is, that the Secretary must be satisfied that particular behaviour is unacceptable conduct, as opposed to an objective test of whether unacceptable conduct has occurred. Although the Secretary will take guidance from the interpretation given to phrases such as “unconscionable conduct” and “misleading and deceptive conduct” in other statutory contexts, the Secretary is not bound to apply such interpretations.

Section 149 – Requirements for application to Secretary to re-credit student’s FEE-HELP balance

Section 71 of the Act enables the Secretary to re-credit a student’s FEE-HELP balance (if satisfied of certain matters) on the Secretary’s initiative and is not dependent on a student applying for the re-credit. Section 72 of the Act permits a student to apply to the Secretary for re-crediting of their

FEE-HELP balance, in writing, and in accordance with the any requirements in the Rules. Section 149 of the Rules sets out the requirements for such applications; they must:

- be made within 5 years after the census day for the course (or such other longer period allowed by the Secretary);
- set out the grounds on which the student is asking for their FEE-HELP balance to be re-credited; and
- to the extent known to the applicant, contain information about the course to which the application relates; the course provider; the loan amount to be re-credited; the applicant's unique student identifier; and any supporting documentation.

Part 9—General provisions

Division 1—Electronic communications

Section 150 – Purpose of this Division

This section provides that Division 1 of Part 9 is made for the purposes of subsection 102(1) of the Act. In particular this Division of the Rules provides for the requirements that apply for and in relation to electronic communications between: the Commonwealth and students, the Commonwealth and approved course providers and students and approved course providers.

The note to this section alerts the reader that an approved course provider may be liable to a civil penalty if the provider fails to comply with this Division.

Section 151 – Electronic communications—identification requirements

The section provides for the methods which an approved course provider must have in place to enable a student to identify themselves and indicate approval of electronically communicated information where the electronic communication requires or permits a response from the student.

This section further provides that a student is taken to have signed an electronic communication made to an approved course provider if they comply with the method prescribed by the approved course provider and permitted by these rules.

Subsection 151(4) provides for the requirements that apply where an approved course provider's method for identifying students in electronic communications involves any of the student's identification numbers.

Section 152 – Electronic communication between students and the Commonwealth

Section 152 requires the Secretary to take an application for a VET student loan as having been signed by the student where that application is communicated electronically and that communication contains the student's unique student identifier and tax file number (or certificate from the Commissioner of Taxation stating that the student has applied for such a number), an acknowledgement by the student that he or she has read and understood the application, and a confirmation by the student of the accuracy of the information in the application.

Section 153 – Electronic communication between students and approved course providers

The section provides for the information technology requirements with which an approved course provider must comply if a student is required or permitted to give information or a document to the provider or if the approved course provider is required or permitted to give information or a document to a student by way of fax, email, web-based communication or any other form of electronic communications specified by the provider.

Section 154 – Communication systems requirements

Section 154 requires the system of communication between approved course providers and students, or between approved course providers and the Commonwealth to be secure, capable of disaster recovery and be sufficiently up-to-date.

The purpose of this section is to enhance the protection of students by requiring information to be communicated securely through a system that has in-built processes for restoring electronic communications and related IT infrastructure in the event the system fails.

Division 2—Cap on amount of VET student loans

Section 155 – Cap on amount of VET student loans

Section 155 has effect for the purpose of subsection 116(7) of the Act. Section 155 specifies that the cap on the amount of VET student loans that can be approved for each of the calendar years 2017, 2018 and 2019 is \$2,070,000,000.

Note that the Secretary is not required to consider an application for approval of course providers if the approval of additional VET student loans during the year would result in this relevant year's cap being exceeded (see section 39 of the Rules).

The immediate outcome of this Rule is that approved course providers are likely to have conditions imposed limiting the loan amounts that can be paid to the providers.

Statement of Compatibility with Human Rights

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

VET Student Loans Rules 2016

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 Student Loans Rules 2016* (the Rules) are made by the Minister under section 116 of the *VET Student Loans Act 2016* (the Act) and give effect to the full overhaul of VET FEE-HELP announced through the *Redesigning VET FEE-HELP: Discussion Paper* on 27 April 2016 and provided for in the Act.

The measures in the Rules are designed to give effect to the Act by enhancing: the protection of students, the regulation of providers and the efficient administration of the VET student loans Program as a whole.

The Rules achieve this in a number of key respects by:

- detailing the provider suitability requirements for the purpose of ensuring loans are paid to suitable providers. These requirements raise the bar for providers seeking entry into the student loans program and also set the standards that must be maintained once a provider has been approved;
- strengthening the tuition assurance requirements and imposing greater obligations on the tuition assurance operator. These new requirements provide that students will be transferred to replacement courses wherever possible and fee repayment will only arise where no equivalent course is available;
- imposing a number of requirements and limitations on the marketing of courses by approved course providers;
- providing further detail regarding the rights of students in respect to the re-crediting of their FEE-HELP balances; and
- improving provider processes such as through retention of information and documentation requirements and to provide ongoing financial forecasting information.

In many aspects the Rules broadly replicate the existing *Higher Education Support (VET Guideline) 2015*, for example the rules relating to tuition fees, census days, many of the required processes and procedures for providers and information to be provided to students. However, these rules have been reviewed and enhanced wherever possible to accommodate the new VET student loans program.

The Rules commence on 1 January 2017 and, alongside the Act, the *VET Student Loans (Charges) Act 2016* and the *VET Student Loans (Consequential Amendments and Transitional Provisions) Act 2016*, form part of the legislative package designed to overhaul the VET FEE-HELP scheme.

Human Rights Implications

The Rules engage the following human rights:

The right to work – Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The right to education – Article 13 of the ICESCR

The right to privacy – Article 17 of the International Covenant on Civil and political Rights (ICCPR)

The Rights of the child – Article 3 of the Convention on the Rights of the Child (CRC)

The rights of people with disabilities – Article 10 of the Declaration on the Rights of Disabled Persons.

The principal reforms are set out in the Act and the human rights implications associated with establishing the new VET student loans program are dealt with in the comprehensive Statement of Compatibility with Human Rights attached to the Explanatory Memorandum for the Act. The Statement of Compatibility with Human Rights for these Rules focuses on those matters particular to the Rules rather than those matters addressed more generally in the Statement provided in respect to the Act. For example, whilst a provider may be liable for a civil penalty as a result of not complying with a Rule, the power for this derives from the Act. Accordingly, this Statement does not consider the human rights implications of the *Regulatory Powers (Standard Provisions) Act 2014* in conjunction with the Rules in respect of the right to a fair and public hearing and the right to be presumed innocent as those matters have been addressed for in the Statement of Compatibility with Human Rights in relation to the Act.

Right to Work

The Rules engage the right to work which is set out in Article 6 of the ICESCR.

Under Article 6(1), States Parties are required to recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Article 6(2) provides that the steps to be taken by a State Party to achieve the full realisation of this right include providing technical and vocational guidance and training programs.

This right goes to a purpose of the VET student loans program, which is to ensure loans to students are provided for vocational education and training that meet workplace needs and improve employment outcomes.

The Rules provide measures that give effect to certain provisions of the Act which may make it more difficult for some prospective students to access the VET student loans program relative to the VET FEE-HELP scheme. The Act requires that VET student loans only be provided to genuine students who have been assessed as being academically suitable to undertake the approved course of study, which are higher level vocational education and training courses. The Rules define what is meant to be a genuine student and provide for parameters about academic suitability. The Rules further contain requirements (such as the provider suitability requirements) designed to lift the bar for providers to be approved in the new program which may reduce the supply of available positions in approved courses.

While these measures may preclude some students from obtaining vocational education and training, they represent a reasonable and proportionate limitation as they protect vulnerable people from being enrolled in VET courses and incurring a HELP debt where they are not in a position to undertake and complete the course and obtain the benefit of the study.

The Rules also give effect to the new framework to limit course eligibility for VET student loans by providing additional measures regarding the kinds of courses that are eligible. This might seem to impact detrimentally on the right to work since it limits further the scope of VET courses students might otherwise undertake and their content. These measures are justified as they ensure the content of the courses are targeted towards the qualifications sought and the VET student loans program will provide support for students for courses which have qualifications that are more likely to lead to employment outcomes.

The Rules further specify an annual cap on VET student loans for the calendar years of 2017, 2018 and 2019 of \$2.07 billion. While placing an annual cap upon the amount of VET student loans that may be approved in a calendar year will impede access to vocational education and training where that cap is met, this measure is necessary to ensure the program (including debt accumulated in relation to the program) is fiscally sustainable over the long term.

The Rules are compatible with, and promote, the right to work.

Right to Education

The Rules engage the right to education which is set out in Article 13 of the ICESCR. Article 13 recognises the important personal, societal, economic and intellectual benefits of education.

The Article sets out 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.

The intent of the VET student loans program is to make technical and vocational secondary education more accessible to students who may not otherwise have had access. The measures in the Rules enhance the protection of students as they seek out educational opportunities within Australia, by specifying the quality, accountability and compliance requirements imposed upon approved course providers. In doing so the Rules seek to maximise educational outcomes by, for instance, requiring approved course providers to have appropriate levels of experience in the provision of education or training and to monitor and report on student outcomes, including student satisfaction, completion rates and employment outcomes.

The Rules also promote a systematic improvement in the quality of the Australian VET sector by providing the mechanisms for greater accountability of approved course providers within the marketplace. These measures include specifying the course provider requirements (which includes provider suitability and 'fit and proper' person requirements) and increased protections to students through the tuition assurance requirements. While these measures may increase the cost of regulatory compliance to approved course providers that choose to be involved and thereby reduce the supply of available positions in approved courses, the measures are necessary to protect the integrity of the VET sector and the rights of students.

The Rules further contain a number of information gathering, storing and reporting requirements that apply to approved course providers to facilitate the administration and regulatory oversight of the VET student loans program. Those measures may raise the threshold for entry into the program and

increase the compliance cost imposed upon providers choosing to be involved, thereby reducing the supply of available positions within approved courses. Despite that possibility, the measures are justified as being necessary to adequately safeguard students, and to minimise the regulatory burden of administering the program to ensure the overall fiscal sustainability for the Commonwealth to effectively regulate the sector.

The Rules contain a wide range of provisions intended to increase protections available to students which is consistent with the right to education.

The Rules require providers to develop and apply appropriate student entry procedures to ensure that a student is properly assessed as being academically suitable for a course, before being enrolled. While this measure may potentially limit a prospective student's ability to access education in an approved course, the limitation is justifiable. It protects vulnerable students who do not have the academic ability to undertake a course from being burdened with a significant debt with limited or no educational or training outcome. These measures will particularly benefit regional students, the unemployed, culturally and linguistically diverse communities, people with a disability and the elderly.

The Rules also specify mechanisms by which the VET student loans program will enhance the integrity of the VET sector and strengthen the protection of students as they seek out educational opportunities within Australia. For instance, the Rules specify a range of processes and procedures that approved course providers are required to have in place, for example, procedures for varying tuition fees, withdrawal and cancellation of students' enrolment and dealing with students' complaints.

The Rules also prescribe a number of requirements in relation to the marketing of VET courses, including requirements as to the content and form of marketing that mentions the availability of VET student loans for courses.

Regulating the form and content of the marketing of approved courses for which VET student loans are available may limit the dissemination of information about the availability of those loans and therefore reduce the uptake of educational opportunities under the program. These measures are justified as enhancing the protection of students, reducing unscrupulous behaviour and making education and training providers more accountable for their marketing practices.

The Rules clarify the circumstances in which a student may seek a re-credit of their FEE-HELP loan debt balance and remission of a debt. For instance, the Rules specify the matters to which a provider must and may have regard when considering a student's application for re-crediting of a FEE-HELP balance under section 68 of the Act. The Rules also provide for the matters that will amount to 'unacceptable conduct' by a VET provider for the purpose of deciding whether to re-credit a student's FEE-HELP balance under section 71 of the Act.

As discussed under the right to work, the Rules specify an annual cap on VET student loans for the calendar years of 2017, 2018 and 2019. While placing an annual cap upon the amount of VET student loans that may be approved in a calendar year will impede access to vocational education and training where that cap is met, this measure is necessary to ensure the program (including debt accumulated in relation to the program) is fiscally sustainable over the long term.

In addition, the Rules specify a number of robust performance requirements that must be met for providers seeking approval under the VET student loans program. These are intended to enhance the integrity of the program by ensuring that providers are properly scrutinised to ensure they have

experience in providing VET, satisfy financial requirements, meet governance and management standards and that students achieve quality outcomes for their investment in education and training.

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

Right to Privacy

The VET student loan program engages the right to privacy which is set out in Article 17 of the ICCPR. Article 17 provides that no-one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation.

The Rules include requirements relating to the collection, retention, use and disclosure of VET information (which may include personal information). These requirements are important to ensure the integrity of the VET student loans program, including ensuring eligibility requirements of students are met. This is particularly important where students are accessing income support and to check citizenship status.

The Rules specify the information required to be disclosed by a provider and prospective student which in turn enables the Commonwealth to check the veracity of student enrolments and consequently the expenditure of Commonwealth monies. The information required to be disclosed under the Rules is also important to enable tuition assurance scheme operators to have access to up to date and accurate information so that they can support students in the event a provider ceases to provide a course and so ensure the integrity of the tuition assurance arrangement.

The information required to be disclosed under the Rules is also critically important to assist with ensuring an approved course provider's compliance with the program and the subsequent protection of students. Compliance action taken against less scrupulous providers assists with protecting a student's rights and may enable the re-crediting of a student's FEE-HELP debt in certain circumstances.

The right to privacy under Article 17 can be permissibly limited in order to achieve a legitimate objective and where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. In this case, the legitimate end is the protection of students, the efficacy of educational outcomes and the accountability of providers.

Disclosure will not be arbitrary and will in each case be reasonable, necessary and proportionate to the objective of providing loan support to those students eligible and actively engaged in training. As such, the limitation is proportionate because the measures are precisely directed to the legitimate aim being pursued.

For example, to the extent that the measures in the Rules limit a person's right to privacy with regard to sharing information with Commonwealth agencies for the purposes of their programs and in respect to the collection of the unique student identifier (USI) (unless exempt), this is a reasonable and proportionate limitation because sharing this information is ultimately for the purposes of ensuring the veracity of the student's enrolment and protecting the student from potential accumulation of debt without their knowledge. The collection of USI information also improves program performance assessment and future policy development as it will allow for the analysis of performance and student outcomes for approved course providers or VET courses of study, allowing for reforms where necessary or redirection of Commonwealth funding into, or away from, areas which are not having the

intended outcome (as the case may be). This disclosure is intended to prevent the misuse of Commonwealth monies and protect the broader reputation of the VET sector in Australia.

It is notable that the Rules require VET providers to establish and maintain processes and procedures for the handling of students' personal information in accordance with the Australian Privacy Principles. The Rules further require providers to comply with the *Privacy Act 1988*.

The Rules protect the privacy of students by requiring approved course providers to maintain secure and up-to-date systems for the communication of VET information which may include personal information.

The Rules are compatible with the right to privacy. To the extent the right is limited, the limitation is reasonable, necessary and proportionate.

Rights of the child

The VET student loans program engages and promotes the rights of the child which are provided for in Article 3 of the CRC. Article 3 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 Rules provide for the processes and procedures approved course providers are required to have in place. Those requirements include a general requirement to train officers of the provider in the processes and procedures required to be followed, including for instance, in the processes designed to protect vulnerable students such as the process for assessing a student's academic suitability. Providers are also required to have processes about the collection and verification of a responsible parent's signature for a loan application if the student is under 18 years (unless the student receives youth allowance on the basis that they are independent).

The Rules also specify a number of requirements relating to the form and content of the marketing of approved courses and VET student loans to address unscrupulous behaviour of course providers. Without adequate understanding of what they are signing up to, or through pressure sales tactics, a loan can represent a significant financial liability to the student. Additionally, the Rules prescribe information that must be given to students before they enrol to ensure students are better informed as to their rights, responsibilities and obligations. These provisions seek to protect vulnerable students from being exploited.

Insofar as the Rules impose requirements designed to protect vulnerable students from exploitation, the Rules accord with the object and purpose of the CRC.

The Rules are compatible with the rights of the child.

Rights of persons with disabilities

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

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

The Rules give effect to a range of new measures contained within the Act designed to protect vulnerable students. In particular the Rules require providers to establish and maintain processes to

ensure that prospective students are academically capable of undertaking the course before enrolling the student in the course. The Rules further provide for the information gathering and retention requirements in relation to the results of a student's assessed academic suitability. In doing so, the Rules facilitate the monitoring and enforcement of the academic suitability requirement which, in turn, protects vulnerable students including disabled persons. The Rules further protect disabled people by requiring providers to have an established process for obtaining a re-credit of the student's tuition fees in relation to a course (or part thereof) and requiring providers to provide information about that process to students.

The Rules also provide support for disabled persons by providing more detail in relation to the rights of students to seek the re-credit of their FEE-HELP balance. This includes describing the circumstances a provider may or must have regard to when considering if special circumstances apply because it is impracticable for the student to complete the course requirements (for example, the student is sick and not able to complete the course). The Rules also define when a provider's conduct is unacceptable conduct in relation to the student's application for a loan for the purposes of the Act which enables a student's FEE-HELP balance to be re-credited in the event of unacceptable conduct.

The Rules are compatible with the rights of disabled persons.

Conclusion

The Rules are compatible with human rights because, to the extent that it may limit human rights, the limitations are reasonable, necessary and proportionate.

Senator the Hon Simon Birmingham, Minister for Education and Training